

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

IN RE:)	CHAPTER 13
)	
RONNIE LEE ROSBOROUGH, SR.,)	Case No. 10-70889
)	
Debtor.)	

DECISION AND ORDER UPON MOTION TO EXTEND STAY

This case is before the Court upon the Debtor’s Motion to Extend Stay (the “Motion”) filed on April 14, 2010 and heard on April 26, 2010. This Chapter 13 case was filed on April 12, 2010. 11 U.S.C. § 362(c)(3)(B) requires that a motion of this kind be heard within thirty days of the filing date. Situations of this kind are contemplated by the definition contained in 11 U.S.C. § 102(1) which permits “such notice as is appropriate in the particular circumstances” and even action without an actual hearing if “there is insufficient time for a hearing to be commenced before such act must be done.” The Court finds that under the circumstances presented here that adequate notice has been given to the creditors of the noticed hearing upon the Motion.

The Debtor appeared in person and by counsel at the April 26 hearing. Counsel for the Chapter 13 Trustee also appeared. The attorneys agreed that each might present evidence by proffer. The Trustee opposed the Motion. No creditor or other party in interest appeared.

This Court has jurisdiction over this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on July 24, 1984. While the present Motion is not precisely one to “terminate, annul or modify the automatic stay” as provided for in 28 U.S.C. § 157(b)(2)(G), the Court concludes that it is of the same nature as such a motion and therefore constitutes a “core” bankruptcy

proceeding within the meaning of such statute.

The Debtor's history in this Court is rather mixed. The present case is the fourth one he has filed in this Court, all of which have been filed under Chapter 13. His first case (No. 96-00329) was filed on February 9, 1996. In that case a Chapter 13 plan was confirmed on May 6, 1996 and he received a discharge on August 28, 2001. His next case (No. 07-70412) was filed on March 20, 2007. A Chapter 13 plan was confirmed on June 19, 2007 in that case as well but was not successfully completed and the case was dismissed on April 22, 2008. His third case (No. 09-71100) was filed on May 1, 2009 and was dismissed on November 3, 2009 without a plan having been confirmed. His initial Chapter 13 plan filed in that case proposed monthly payments of \$545 and the Trustee's report indicates that he paid to her a total of \$2,190 within five months of the filing date. In that case his counsel filed the required special notice of proposed adequate protection payments to the creditors secured by his personal property and the Trustee did make \$105 in adequate protection payments prior to case dismissal.

Counsel for the Debtor proffered on his behalf at the hearing that he stopped making payments to the Trustee in the 2009 case due to a serious traffic charge (driving while under the influence) which resulted in his having to pay approximately \$4,000 for attorney's fees, court costs and related expenses, effectively terminating his ability to continue his payments to the Trustee. This account was not disputed at the hearing by counsel for the Trustee. It appears that the reason for the dismissal of that case was the failure to continue to make plan payments. The case was dismissed just over a month after the Debtor failed to make the payment which was due on October 1, 2009 in that case. The Debtor has not yet filed his schedules or a proposed plan in the present case. Two secured creditors, however, have filed

motions for relief from the stay which are set to be heard on May 24, 2010. Both motions were filed more than thirty days prior to the scheduled hearing date and both filed contemporaneous motions to extend the automatic stay until that May 24 hearing date. Neither of these creditors appeared at the April 26 hearing to oppose the Motion noticed for that date. After consideration of the evidence provided by counsel by proffer, the Court accepts the Debtor's representation that the dismissal of his 2009 case resulted from the expenses he incurred to extricate himself from the serious charge with which he had to deal during that case.

The issue before the Court is surprisingly ambiguous. At the request of two secured creditors the automatic stay has already been extended to the May 24 hearing date for their motions for relief from the stay. Logic would suggest that these creditors would be most opposed to the granting of the Debtor's Motion, but neither has objected to it, perhaps for reasons of expense, but this is speculative. No other creditor has opposed the Motion, although the Chapter 13 Trustee does oppose it because of the Debtor's payment history in his two most recent cases. The Debtor did successfully complete a Chapter 13 case approximately ten years ago, but his two subsequent cases have been unsuccessful. The Court concludes that the presumption created by 11 U.S.C. § 362(c)(3)(C) that the present case was not filed in good faith as to the Debtor's creditors is not applicable here because (i) there has been only one other case on behalf of the Debtor pending within the one year period preceding the filing of this case (§ 362(c)(3)(C)(i)(I)), (ii) the prior case was not dismissed due to his failure to file or amend the petition or other documents as required by the Bankruptcy Code or the Court or to his failure to provide adequate protection to his secured creditors or to "perform the terms of a plan confirmed by the court" (§ 362(c)(3)(C)(i)(II)), or (iii) because "there has not been a substantial change in .

. . [his] financial or personal affairs . . . since the dismissal” of that case (§ 362(c)(3)(i)(III)).

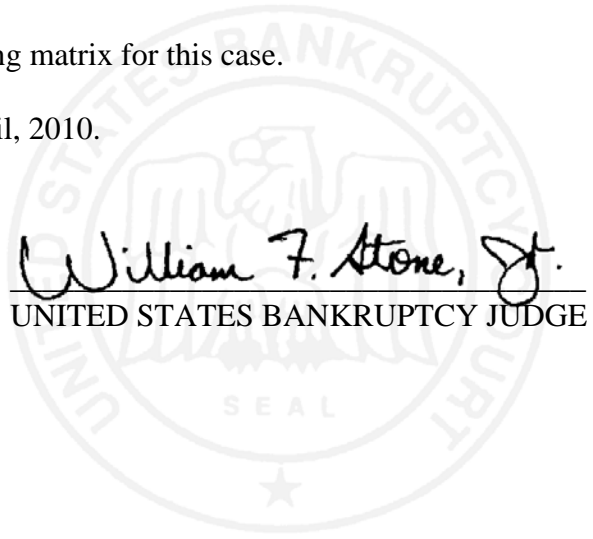
The Court concludes that the Debtor’s payment of over 80% of an approximate \$4,000 expense incurred in connection with the criminal charge during the latter part of the 2009 case and the time since its November 3, 2009 dismissal before filing the present case does constitute a substantial positive change in his financial and personal affairs since the time of that dismissal.

Nevertheless, even without having to overcome the statutory presumption that the present case was not “filed in good faith” (§ 362(c)(3)(C)), the Debtor still has the burden to “demonstrate[] that the filing of the later case is in good faith as to the creditors to be stayed.” 11 U.S.C. § 362(c)(3)(B). At the time of the hearing on the Motion the Debtor had not filed his schedules or his proposed Chapter 13 plan. He has, however, filed a motion for an extension until April 30 do so. That motion is noticed for a hearing before the Court on May 10, 2010. Such date is within thirty days of the filing date. Without having an opportunity to review the information disclosed in the Debtor’s schedules and the provisions of his proposed plan, the Court does not believe that it is in a sound position to make a finding that the present case has been filed in good faith as to Mr. Rosborough’s creditors. Accordingly, the Court will continue the Motion for further hearing on May 10, 2010 at 11:00 a.m. in Roanoke at which time it will expect to rule after having reviewed information not available at this time.

It is SO ORDERED.

The Clerk is directed to send electronically or by mail, as appropriate, a copy of this Order to all parties on the current mailing matrix for this case.

ENTER this 28th day of April, 2010.

The seal of the United States Bankruptcy Court is visible in the background, featuring an eagle with spread wings, a shield on its chest, and the words "SEAL" and "UNITED STATES BANKRUPTCY COURT" around the perimeter.
William F. Stone, Jr.
UNITED STATES BANKRUPTCY JUDGE