

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:06-bk-00501-ABB
Chapter 13

JENNIE M. UNDERBAKKE,

Debtor.

ORDER

This matter came before the Court on the Emergency Motion to Impose Automatic Stay as to all Creditors Pursuant to 11 U.S.C. § 362(C)(4)(B) (Doc. No. 52) (“Motion to Impose”) filed by Jennie M. Underbakke, the Debtor herein (“Debtor”). A hearing on the Motion was held on September 6, 2006 at which the Debtor, her counsel, counsel for Bank of America, and the Chapter 13 Trustee appeared. The Court makes the following findings and rulings after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

Case Background

The Debtor filed a previous Chapter 13 case, captioned In re Jennie M. Underbakke, Case No. 6:05-bk-09704-ABB (“Case I”), which was dismissed on March 7, 2006 for plan payment delinquencies. She filed the above-captioned Chapter 13 Case (“Case II”) on March 17, 2006 (“Petition Date”). Case II was filed within one year of the dismissal of Case I. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) governs Case II.¹

The automatic stay of 11 U.S.C. § 362(a) arose upon the filing of Case II, but was due to terminate within thirty days of the Petition Date pursuant to 11 U.S.C. § 362(c)(3)(A). Section 362(c)(3)(B) provides a party in interest may file a motion seeking continuation of the automatic stay

“and upon notice and hearing, the court may extend the stay in particular cases as to any and all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing *completed before the expiration of the 30-day period* only if the party in interest demonstrates 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) (2005) (emphasis added). A case “is presumptively filed not in good faith” if certain conditions exist. 11 U.S.C. § 362(c)(3)(C). The presumption is rebuttal. Id.

The Debtor filed a Motion to Extend Automatic Stay as to All Creditors (Doc. No. 17) (“Extension Motion”) on April 3, 2006 seeking to extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). She did not designate the Extension Motion as an emergency matter. Bank of America, a secured creditor holding a mortgage on the Debtor’s home, filed an opposition to the Extension Motion (Doc. No. 20). The Court erred by setting the Extension Motion for hearing on April 24, 2006, which date was too late pursuant to § 362(c)(3)(B) which required a hearing on the Extension Motion be conducted by April 17, 2006.

A hearing was conducted on April 24, 2006 on the Extension Motion and the matter was taken under advisement. No opinion was issued because Case II was dismissed on April 27, 2006 (Doc. No. 25) for the Debtor’s failure to file payment advices. Case II was reinstated on May 24, 2006 upon the granting of the Debtor’s Motion to Reinstate Chapter 13 Case (Doc. No. 34). Bank of America filed a motion seeking confirmation the automatic stay was terminated (Doc. No. 43) (“Termination Motion”).

A hearing on the Termination Motion was held on August 22, 2006. The Debtor contends the automatic stay was revived through reinstatement of Case II. Bank of America contends the stay cannot be revived or reimposed because it automatically expired on April, 17, 2006 by statute. Bank of America’s Termination Motion was granted and the Debtor was granted leave to file a motion seeking reimposition of the automatic stay. The Debtor filed an Emergency Motion to Impose Automatic Stay as to All Creditors Pursuant to 11 U.S.C. § 362(C)(4)(B) (Doc. No. 52) (“Emergency Motion”).

The hearing on the Emergency Motion was treated, by agreement of the parties and the Court, as an adversary proceeding pursuant parties’ agreement. The Debtor has established the filing of Case II was in good faith as to all creditors and conditional

¹ Pub. L. No. 109-8, 119 Stat. 23 (2005). The Bankruptcy Abuse Prevention and Consumer Protection Act was enacted on April 20, 2005. The new law became generally effective on October 17, 2005, but certain provisions became effective upon enactment. Section 362(c)(3)(B), which is relevant to this proceeding, became effective on October 17, 2005.

reinstatement of the automatic stay is appropriate. Amendment of the Debtor's plan payment schedule is appropriate to facilitate the success of this case.

The Debtor's monthly plan payment is \$4,038.00 and is currently due on the twenty-eighth day of each month. The Debtor's plan payment for September 2006 shall be extended to October 14, 2006 and on such date the Debtor must pay \$4,038.00 plus \$2,019.00. The Debtor shall remit to the Trustee \$4,038.00 on the fourteenth day of each following thereafter. An injunction shall issue enjoining all creditors from taking any action inconsistent with the automatic stay provisions of 11 U.S.C. § 362(a). The injunction shall terminate in the event the Debtor defaults on her plan payment obligations.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Motion to Impose Automatic Stay as to All Creditors is hereby **CONDITIONALLY GRANTED**; and it is further

ORDERED, ADJUDGED and DECREED that the automatic stay of 11 U.S.C. § 362(a) is hereby reimposed and all creditors are **ENJOINED** from taking any action inconsistent with the provisions of 11 U.S.C. § 362(a); and it is further

ORDERED, ADJUDGED and DECREED that the Debtor shall pay the amount of \$6,057.00 to the Trustee by October 14, 2006 and shall thereafter make monthly plan payments in the amount of \$4,038.00 to the Trustee on the fourteenth day of each month; and it is further

ORDERED, ADJUDGED and DECREED that in the event the Debtor defaults on her plan payment obligations the automatic stay shall immediately terminate.

Dated this 8th day of September, 2006.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge