

## WHEN SHOULD A CREDITOR OBJECT TO A MOTION TO EXTEND OR IMPOSE THE AUTOMATIC STAY - RECENT CASE DEVELOPMENT

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By now, all creditors have seen numerous motions in one form or the other requesting the court to “extend” or “impose” the automatic stay in situations where a debtor has filed multiple cases. Upon receipt of one of these motions, a creditor must decide if they want to object to the motion. In most cases, if the creditor chooses not to object, these motions are routinely granted and the debtor gets the benefit of the automatic stay, which otherwise may not have been available. Many courts will routinely extend or impose this stay for the life of the plan.

A recent case styled *In re: Earl Masuca* entered by a Bankruptcy Court in the Northern District of Alabama, Southern Division, (not published as of yet) addressed many of the complicated legal issues involved when a request to impose or extend the automatic stay is filed and objected to by a creditor in the case. In this particular case, the debtor had filed several prior cases. Motions to lift the automatic stay had been filed in each of these cases on behalf of the mortgage creditor. The debtor filed a “Motion to Extend Stay” or, in the alternative, “Motion to Impose Stay.” This motion was timely objected to by the mortgage creditor, a hearing was held and the court entered a fourteen page opinion setting out all of the legal issues involved with such a motion and objection.

The court found that there were four steps to determine whether to extend a stay pursuant to section 362(c)(3) of the Bankruptcy Code:

**Step One-** Determine if there was in fact a limitation of the stay under Subsection 362(c)(3)(A) when the case was filed.

**Step Two-** Determine if the case was filed in “good faith” as required by Subsection 362(c)(3)(B).

**Step Three-** Determine the parameters for determining “good faith” and the related burdens of proof and presumptions.

**Step Four-** Determine the criteria for determining “good faith.”

“MANY COURTS WILL ROUTINELY EXTEND OR IMPOSE THIS STAY FOR THE LIFE OF THE PLAN.”

The court found that when the case is presumed to have not been filed in “good faith” that the burden of proof is by “clear and convincing” evidence, a much stronger burden than the previous standard “preponderance of the evidence” burden. The court also found that it can find lack of “good faith” pertaining to an individual creditor in the case while finding “good faith” as to the rest of the creditors. This allows the court to refuse to extend or impose the stay for an individual creditor while allowing the extension of the stay for all others.

The practical application of this is that a Creditor will have a much better chance of prevailing when they object to these motions if the case is presumed to have not been filed in “good faith” under Subsection 362 (c)(3)(C)(i) of the Bankruptcy Code. What “good faith” means varies from jurisdiction to jurisdiction. Each local counsel is in the best position to help make that determination.



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