

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

IN RE: VICKI D. LaSPINA, Debtor

**No. 4:16-bk-12888
Ch. 13**

ORDER DENYING MOTION TO RECONSIDER

Before the Court is the debtor's *Motion to Reconsider Order Denying Motion to Impose Automatic Stay* filed on October 5, 2016. To understand the Court's denial of the debtor's motion, a history of this case and the prior filings by the debtor is instructive. The first case filed by the debtor that is relevant was case 4:12-bk-17183. That case was dismissed by the Court on April 13, 2015, and closed on July 23, 2015. The second case filed by the debtor that is relevant was case 4:15-bk-11878. That case was dismissed by the Court on May 10, 2016, and closed on July 18, 2016. The third case, which is the present case, was filed on June 1, 2016.

Despite filing the present case on June 1, 2016, the debtor waited until June 30, 2016, to file her *Motion to Impose Automatic Stay*. In her motion, she acknowledges that "[t]he debtor have filed one previous Chapter 13 cases pending in the prior 12 months." [sic] Under 11 U.S.C. § 362(c)(3), the automatic stay under § 362(a) terminates with respect to the debtor on the 30th day after the filing of the present case if the debtor had one previous case pending within the 12 months prior to the filing of the present case. The debtor can file a motion to extend the automatic stay, which the court can extend "after notice and a hearing completed before the expiration of the 30-day period" 11 U.S.C. § 362(c)(3)(B). Now, in contradiction to her motion in which she acknowledges one prior case pending in the prior twelve months, the debtor argues in her motion to reconsider the Court's October 4, 2016 ruling that § 362(c)(4) is the applicable subsection, not § 362(c)(3). Under § 362(c)(4), there is no § 362(a) stay upon the filing of the present case if the debtor had two or more cases pending within the twelve months prior to the filing of the present case. A debtor can, however, ask the court to impose a stay by motion filed within the first 30 days of the case.

In making this new argument, the debtor would like the Court to find that the date the previous cases were *closed*, not merely dismissed, should be the appropriate date from which to calculate the number of previous cases in the prior twelve months. Using the dates the prior cases were closed would allow the debtor to now argue that she had two previous cases pending within the prior twelve months. As such, the debtor continues, her motion to impose the stay was timely filed within the allowed 30 days from the date the petition was filed. The Court does not agree. Even though a case “pending” is not defined in the bankruptcy code, the closing of a case is simply an administrative act over which the debtor has no control. *See In re Bartels*, 449 B.R. 355, 357 (W.D. Wis. 2011). The date a debtor’s case is dismissed is the determinative date for purposes of § 362(c). *In re Lundquist*, 371 B.R. 183 (Bankr. N.D. Tex 2007); *In re Moore*, 337 B.R. 79 (Bankr. E.D.N.C. 2005). As correctly stated by the debtor in her motion to impose the stay, the debtor had only one previous case pending within the twelve months prior to her present case. As such, the Court finds that 11 U.S.C. § 362(c)(3) is the applicable subsection.

As stated earlier, despite filing the present case on June 1, 2016, the debtor waited until June 30, 2016—29 days after filing her petition—to file her motion to extend the automatic stay. Included with her motion was a notice of opportunity to object, giving creditors an additional 21 days to file an objection to her request. According to the debtor’s notice, “[i]f Objections to the Motion are filed, they will be set for hearing by subsequent notice.” In this case, Nissan Motor Acceptance Corporation filed an objection within the 21-day objection period and, pursuant to the debtor’s notice, the Court set the motion and objection for hearing *by subsequent notice*. At no time did the debtor request an emergency hearing by the Court. Now, the debtor argues that “since the Motion was filed on the 28th day [sic] after Debtor filing her petition [sic] it would be unlikely that the Court would be able to hold a hearing within 30 days of filing the petition as required under § 362(c)(3)(B).” That is true not only because the debtor waited until the 29th day to file her motion, but also because the Court would have had to wait for the debtor’s 21-day objection period to run before holding a hearing. Had the debtor timely filed a motion to extend the stay when her case was filed and given creditors a reasonable time

to file an objection—a 14-day objection period would be reasonable—the Court would have had ample time to schedule a hearing.

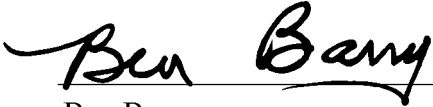
The debtor's prior actions in this case also belie the debtor's sincerity in her current motion to reconsider the Court's ruling. On the date the motion and objection were first set for hearing, September 8, 2016, counsel for the debtor appeared at the hearing and requested a continuance to the Court's next divisional day, October 4, 2016. The Court granted the debtor's request. When the case was called on October 4, neither the debtor, the debtor's counsel, or the creditor appeared. Instead, the attorney for the chapter 13 trustee appeared and announced that the parties requested that he announce to the Court that the motion would be "granted on conditions." Because granting the motion would be contrary to § 362(c)(3) and beyond the Court's authority, the Court had questions concerning the parties' ability to announce a settlement that would grant the motion. Understandably, the attorney for the chapter 13 trustee was not able to answer the Court's questions. Because no other party appeared before the Court, even though the matter was set for hearing, the Court denied the debtor's motion.

Now, in her motion for reconsideration, the debtor argues that the Court can impose a stay under § 362(c)(4) in the alternative. In support, she would like the Court to adopt the holding of either *In re Beasley*, 339 B.R. 472 (Bankr. E.D. Ark. 2006) or *In re Toro-Arcila*, 334 B.R. 224 (Bankr. S.D. Tex. 2005). In those cases, the courts held that § 362(c)(4) can apply in cases in which the automatic stay has expired under § 362(c)(3). However, "the reasoning of those courts has been criticized by other bankruptcy courts." *Capital One Auto Fin. v. Cowley*, 374 B.R. 601, 607-08 (W.D. Tex. 2006) (citing *In re Whitaker*, 341 B.R. 336, 343-44 (Bankr. S.D. Ga. 2006), *In re Norman*, 346 B.R. 181, 183-84 (Bankr. N.D.W.V. 2006)). The applicability and scope of the two subsections are different. Subsection (c)(3) applies to a debtor that, in addition to the current case, has "had a single or joint case . . . pending within the preceding 1-year period" Subsection (c)(4) applies to a debtor that, in addition to the current case, has "had 2 or more single or joint cases . . . pending within the previous year" Additionally, the

scope of the stay that is discussed in each subsection is different. Subsection (c)(3) states that the stay under subsection (a) *with respect to the debtor* terminates after 30 days unless otherwise extended by the court. Subsection (c)(4) states that the stay under subsection (a) shall not go into effect, without limiting the relief with the phrase “with respect to the debtor.” The Court declines the debtor’s invitation to disregard the plain wording of the statute.

For these reasons, the Court denies the debtor’s *Motion to Reconsider Order Denying Motion to Impose Automatic Stay* and finds as a matter of law there is no stay in this case *with respect to the debtor*.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 10/07/2016

cc: Christian W. Frank, attorney for the debtor
John B. Buzbee, attorney for Nissan Motor Acceptance Corporation
Vicki D. LaSpina, debtor
Joyce B. Babin, chapter 13 trustee