



The relief described hereinbelow is SO ORDERED.

Signed November 27, 2006.

A handwritten signature in cursive script that reads "Robert D. Berger".

ROBERT D. BERGER
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

GREGORY MILTON COGGS,
Debtor.

Case No. 06-21629
Chapter 13

ORDER DENYING MOTION FOR IMPOSITION OF THE AUTOMATIC STAY¹

Debtor moves for imposition of the automatic stay pursuant to 11 U.S.C. §362(c)(3)(B).²

Creditor XACT Funding LLC objects because this is the Debtor's sixth filing in seven years.

The Court denies Debtor's motion.

Debtor filed his Chapter 13 petition on October 11, 2006, and contemporaneously filed the Motion for Imposition of the Automatic Stay. Debtor had a previous case dismissed within one year of this filing; thus, the automatic stay would terminate by operation of law 30 days after the filing of this case.³ Section 362(c)(3)(B) provides for continuation of the stay; however, the

¹ Debtor appears pro se. XACT Funding LLC is represented by John L. Waite III.

² Doc. No. 4.

³ 11 U.S.C. §362(c)(3)(A).

notice and hearing on the motion must be completed before the expiration of the 30-day period.⁴ Accordingly, a debtor must notice the hearing early enough in the case to provide time for the required evidentiary hearing. In this case, Debtor did not request a timely hearing date, but rather filed a notice for a nonevidentiary hearing set for November 14. Accordingly, the hearing could not be held timely. The stay terminated on November 10. The statute does not provide for retroactive relief.

However, a creditor's relief under 11 U.S.C. §362(c)(3)(A) is limited. Most cases interpreting the statute conclude termination of the stay is limited to the debtor and property of the debtor. Section 362(c)(3)(A) does not terminate the stay as to property of the estate.⁵ Relief is further limited to any formal judicial action against the debtor commenced prior to the instant filing.⁶ This Court agrees with the emerging majority. Accordingly, creditors seeking to take post-petition action against property of the estate shall be required to file a motion seeking relief from stay.

Conclusion

The motion is denied; however, relief is limited as above described.

###

ROBERT D. BERGER
U.S. BANKRUPTCY JUDGE
DISTRICT OF KANSAS

⁴ 11 U.S.C. §362(c)(3)(B).

⁵ See, e.g., *In re Pope*, 351 B.R. 14 (Bankr. D.R.I. 2006); *In re Jones*, 339 B.R. 360 (Bankr. E.D.N.C. 2006); *In re Moon*, 339 B.R. 668 (Bankr. N.D. Ohio 2006); *In re Bell*, 2006 WL 1132907, at *2 (Bankr. D. Colo. 2006).

⁶ *In re Paschal*, 337 B.R. 274, 277 (Bankr. E.D.N.C. 2006).