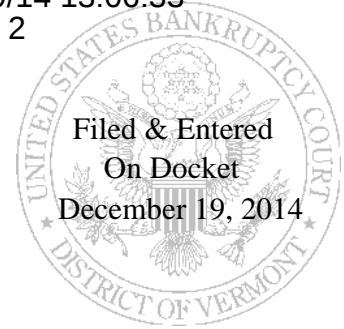


UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

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In re:

Lillian E. Billewicz  
Debtor.

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Chapter 13 Case  
# 14-10674

**ORDER**  
**GRANTING CREDITOR'S MOTION AND**  
**DECLARING STAY NOT IN EFFECT, PURSUANT TO 11 U.S.C. § 362(c)(4)**

On December 19, 2014, Phoenix Financial Corp. ("Phoenix") filed a motion for an order confirming the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(c)(4).

That subsection of § 362 of the Bankruptcy Code states:

- (4) (A) (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707 (b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and
- (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;
- (B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, 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;
- (C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and
- (D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—
- (i) as to all creditors if—
- (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
- (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
- (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7,

with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

- (ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

11 U.S.C. § 362(c)(4) (emphasis added).

Pursuant to § 362(c)(4)(A)(i), the automatic stay did not go into effect upon the filing of this case on December 18, 2014, because the Debtor had two prior cases pending in the year prior to the filing of this case and both of those cases were dismissed: On July 11, 2014, the Debtor filed Chapter 13 case # 14-10403 which was dismissed on August 25, 2014 (based upon the Debtor's failure to cure filing deficiencies despite several extensions of time to do so); and on August 25, 2014, the Debtor filed Chapter 13 case # 14-10475 which was dismissed on November 10, 2014 (again due to uncured filing deficiencies).<sup>1</sup> Under these circumstances, the Court is bound to "promptly enter an order confirming no stay in effect" upon the request of a party interest.

Phoenix has filed documents in support of its motion evidencing that it holds a claim against the Debtor, and the Debtor has listed Phoenix on the Schedule D and matrix she has filed in this case. Therefore the Court finds that Phoenix is a party in interest and entitled to make a request for an order under § 362(c)(4)(A)(ii).

Accordingly, the Court finds the stay was not imposed upon the filing of this case and Phoenix is entitled to the order it seeks. Therefore, the Court enters this Order to confirm that no stay is in effect in this case.

December 19, 2014  
Burlington, Vermont



Colleen A. Brown  
United States Bankruptcy Judge

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<sup>1</sup> The Debtor has paid only a portion of the filing fee owed in each of these three cases. As of this date the Debtor owes filing fees in the amount of \$622, arising as follows:

- from Chapter 13 case # 14-10403, \$234;
- from Chapter 13 case # 14-10475, \$232;
- from the current Chapter 13 case (# 14-10674), \$232.