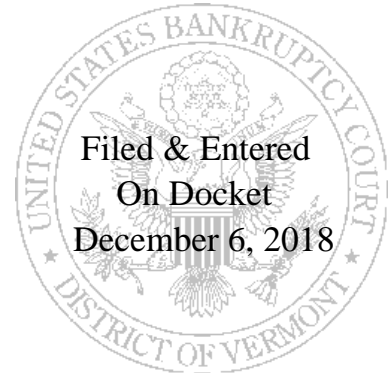


Formatted for Electronic Distribution

Not for Publication

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**Sheryl L. Vuley,
Debtor.**

**Chapter 13
Case # 18-10466**

*Appearances: Todd Taylor, Esq.
Law Offices of Todd Taylor
Colchester, Vermont
For the Debtor*

*Martin Mooney, Esq.
Schiller Knapp Lefkowitz & Hertzell
Latham, New York
For Citizens Bank NA*

*Jan M. Sensenich, Esq.
Office of the Chapter 13 Trustee
Norwich, Vermont
As the Standing Trustee*

ORDER

GRANTING DEBTOR'S MOTION TO CONTINUE THE AUTOMATIC STAY

Sheryl Vuley (the "Debtor") filed a motion to continue the automatic stay in this case, pursuant to § 362(c)(3)(B) of the Bankruptcy Code (doc. # 5, the "Motion").¹ The Debtor filed this chapter 13 bankruptcy case on November 9, 2018, within one year of the date this Court dismissed her prior chapter 13 case. Since this is her second chapter 13 case within one year, the Debtor is subject to the stay limitations of § 362(c)(3)(A) (the "Controlling Statute"), under which the automatic stay would, absent the instant motion, terminate 30 days after the filing of the second petition. Neither the United States trustee, nor the chapter 13 trustee, nor any creditor filed an objection to the Motion.

¹ In this Order, the Court refers to Title 11 of the United States Code as the Bankruptcy Code, and all statutory citations refer to the Bankruptcy Code, unless otherwise indicated.

The Debtor filed her first chapter 13 bankruptcy case on July 31, 2017 (case # 17-10319, the “Prior Case”). The record shows the Debtor filed the Prior Case because she had been unable to secure title to her deceased mother’s residence at 114 Belair Drive, Colchester, Vermont (the “Property”) through probate proceedings. While the Prior Case was pending, the Debtor attempted to work out an arrangement to cure the mortgage arrearage on the Property owed to Citizens Bank NA (“Citizens Bank”), while simultaneously seeking new financing to refinance the mortgage loan (see, e.g., case # 17-10319, doc. ## 33, 37). Unfortunately, neither of those approaches were successful.

During the Prior Case, the Debtor first sought to compel Citizens Bank to engage in loss mitigation / mortgage modification mediation. Citizens Bank opposed that motion based on the Debtor’s lack of an ownership interest in the Property and the bank’s policy prohibiting the substitution of mortgagors. The Court sustained the bank’s objection and entered an order denying the Debtor’s motion (case # 17-10319, doc. # 38). Soon thereafter, Citizens Bank agreed to permit the Debtor to remain in the Property as long as she (i) made adequate protection payments, (ii) remained current on plan payments, and (iii) was actively seeking a refinancing of the mortgage debt; the parties entered into a conditional relief from stay order premised on that agreement (case # 17-10319, doc. # 45). The Debtor made the required payments for one month. When the Debtor defaulted on her plan payment and adequate protection obligations, Citizens Bank filed an uncontested affidavit attesting to that default and, on April 10, 2018, the Court entered an order granting relief from stay to Citizens Bank, to pursue its rights against the Property (case # 17-10319, doc. # 51).

Next, the Debtor and Citizens Bank reached an agreement whereby the Debtor would voluntarily dismiss her case and Citizens Bank would defer taking any action against the Property, in its state court foreclosure case, until July 31, 2018. The Court approved that agreement, and entered an order of dismissal including those terms, on April 16, 2018 (case # 17-10319, doc. # 60). This gave the Debtor some additional time to obtain title to the Property and a refinancing of the mortgage debt. However, once again, the Debtor was unable to accomplish either of those goals prior to the scheduling of a foreclosure sale of the Property.

On November 9, 2018, nearly seven months after the Court dismissed her previous case, the Debtor filed the instant bankruptcy case (doc. ## 1, 17).² The Debtor filed the instant Motion to continue the automatic stay on November 16, 2018, and noticed it for hearing on December 5, 2018, within the

² Unless otherwise indicated, references pertain to documents filed in case # 18-10466, which is the Debtor’s current bankruptcy case.

statutorily required 30-day timeframe. See § 362(c)(3)(B). On December 4, 2018, the Debtor and Citizens Bank filed three versions of a joint stipulation purporting to, inter alia, conditionally extend the automatic stay in the Debtor’s current case through May of 2019, require the Debtor to make adequate protection payments to Citizens Bank, require the Debtor to obtain confirmation of a plan by January 15, 2019, and require the Debtor to sell or successfully refinance the Property by May 30, 2019 (doc. ## 21, 23, 24, the “Agreement”). The Court did not approve the Agreement because the Debtor and Citizens Bank cannot stipulate to extend the automatic stay to all creditors. This is a determination only the Court may make under § 362(c)(3), and only after the Debtor has met her burden of proof under the statutory mandates. See In re Fisher, No. 18-10343, 2018 Bankr. LEXIS 3623 (Bankr. D. Vt. Nov. 20, 2018).³

The Court held a hearing on the Motion on December 5, 2018, within the required 30-day period following the filing of the petition, at which Todd Taylor, Esq., appeared on behalf of the Debtor, Jan Sensenich, Esq., appeared by telephone in his role as chapter 13 trustee, and Martin Mooney, Esq., appeared by telephone on behalf of Citizens Bank.

At the hearing, the Debtor testified credibly about all essential facts. She described her efforts to obtain a deed to the Property in her own name, through the Probate Court process, after her mother (the former owner of the Property) passed away. She specified the circumstances leading to the dismissal of the Prior Case, namely, her inability to obtain title to the Property or secure a refinancing of the mortgage debt, and the mounting costs of proceeding in both her bankruptcy case – with its concomitant plan and adequate protection payments – and the Probate Court action. The Debtor stated that, since the dismissal of the Prior Case, she has obtained title to the Property in her own name, through the Probate Court, and she has obtained full time employment, which has resulted in a significant increase in her income (more than \$600 per month). She also affirmed she filed this bankruptcy case to rescue the Property from a foreclosure auction.

The Debtor testified she is confident she will be able to make all required plan payments in the current case and refinance the mortgage debt on the Property. She pointed out she anticipates receiving a tax refund this spring, of between \$3,000 and \$5,000, which she is willing to devote to plan payments, or refinance closing costs, if necessary.

The Debtor testified she has approximately \$100,000 of equity in the Property, in that she owes Citizens Bank approximately \$93,000, owes property taxes of approximately \$17,000, and the Property is

³ At the December 5, 2018 hearing on the Motion, the Court explained its inability to approve the Agreement. The parties indicated they would amend the Agreement, and refile it as a proposed conditional relief from stay order, separate and apart from the automatic stay extension sought in the Motion.

worth approximately \$217,000. She also explained her commitment to pursue two avenues simultaneously in this case: she will continue her efforts to refinance the debt to Citizens Bank and she will list the Property for sale so she can pay Citizens Bank even if her refinancing efforts fail. The Debtor also confirmed she will file an amended plan that will pay all allowed general unsecured claims in full (as compared to the proposed plan in the Prior Case, which would have paid this class of creditors, at most, a 19% dividend) (case # 17-10319, doc. # 32).

There was no other testimony presented, and the Motion is now fully submitted.

This Court recently articulated the analysis it employs, based on the language of § 362(c)(3)(A), when adjudicating motions brought under the Controlling Statute. See In re Goodrich, No. 17-10500, 2018 Bankr. LEXIS 2894 (Bankr. D. Vt. Sept. 24, 2018). Applying that analysis here requires the Court to consider five potentially relevant inquiries:

- (1) Does § 362(c)(3)(A) apply in this case and trigger a possible termination of the automatic stay, as to all creditors, on the 30th day after the case was filed?
- (2) Did the Debtor timely move to extend the stay, and timely present evidence at a hearing, as required by § 362(c)(3)(B)?
- (3) Does a presumption arise that the Debtor filed this case not in good faith, under § 362(c)(3)(C)?
- (4) If so, has the Debtor rebutted the “not filed in good faith presumption,” by clear and convincing evidence, in satisfaction of § 362(c)(3)(C)?
- (5) If the Debtor has met that burden of proof and established she filed this case in good faith, what, if any, conditions on the extension of the stay are warranted, under § 362(c)(3)(B)?

Based upon the Debtor’s testimony, the arguments made at the hearing held on the Motion on December 5, 2018, and controlling law, THE COURT FINDS:

- (1) The filing of the instant bankruptcy case, occurring within one year of the Court’s dismissal of the Debtor’s Prior Case, triggers the termination of the automatic stay, as to all of the Debtor’s creditors, pursuant to § 362(c)(3)(A), on the thirtieth day after this case was filed.
- (2) The Debtor timely moved to extend the stay, and timely testified at a hearing, within the statute’s 30-day timeframe, thus satisfying the timeliness requirements of § 362(c)(3)(B).
- (3) The presumption arose that the Debtor did not file the instant bankruptcy case in good faith, because the Court dismissed the Prior Case (# 17-10319) after the Debtor failed to provide adequate protection, as the Court had ordered. See § 362(c)(3)(C)(i)(II)(bb).
- (4) The Debtor has met her burden of rebutting that presumption, by demonstrating with clear and convincing evidence that she filed this bankruptcy case in good faith, according to the multi-factor test employed by this Court in In re Goodrich, No. 17-10500, 2018 Bankr. LEXIS 2894, **15–16 (Bankr. D. Vt. Sept. 24, 2018) because the Debtor has shown,
 - (a) the instant chapter 13 case has a significant probability of success,
 - (b) the Prior Case was dismissed for reasons beyond the Debtor’s control,


- (c) she filed the instant bankruptcy case for good faith reasons with a belief that the case will succeed,
 - (d) neither a creditor nor the chapter 13 trustee filed an objection to the Motion,
 - (e) the filing of this case does not significantly prejudice any creditors since the Debtor's plan proposes to either refinance or pay (from sale proceeds) the full amount owed to the only secured creditor and pay the allowed claims of unsecured creditors in full, and
 - (f) there is no evidence or allegation in the record that the Debtor has failed to comply with her obligations under the Bankruptcy Code.
- (5) In light of the record in both the Prior Case and the instant bankruptcy case, generally and with regard to her interactions with Citizens Bank, it is not necessary to impose any conditions on the extension of the automatic stay in this case.

Based on the arguments presented at the December 5th hearing and the foregoing findings, THE COURT CONCLUDES the Debtor has established, by clear and convincing evidence, that she filed the instant bankruptcy case in good faith, and there is cause to extend the stay.

Therefore, IT IS HEREBY ORDERED that the Debtor's Motion is granted, and the automatic stay is extended as to all creditors,⁴ pursuant to 11 U.S.C. § 362(c)(3)(B).

SO ORDERED.

December 6, 2018
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge

⁴ Based on the filings in this matter, it was unclear whether the Debtor was seeking to extend the automatic stay as to all creditors or only as to Citizens Bank. The Motion did not specify the scope of stay the Debtor was seeking to continue, and the attached certificate of service stated the Motion was served upon "the entire mailing matrix," thus suggesting the Debtor sought to extend the stay as to all creditors (doc. # 5). In the Agreement, however, the Debtor stated "[t]he extension of the stay shall only apply as to Citizen's [sic] Bank, NA and not to any other creditors or parties in interest since Debtor was only concerned with the loss of her home and only gave notice to Citizen's [sic] Bank, NA and not to any other creditors" (doc. # 24). At the December 5th hearing, the Debtor's attorney declared he could not state with certainty that his office had served the Motion on all creditors and needed to investigate that issue before he could answer the Court's inquiry as to the relief the Debtor was seeking. After reviewing the question with his office staff, the Debtor's attorney filed an affidavit, signed by a staff member, affirming she had indeed served the Motion on all creditors, as originally indicated. With that representation, and because the Debtor met the required burden of proof, the Court extends the automatic stay as to all creditors.