

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
TYRONE L. SOLES,) Case No. 17-02104
)
Debtor.)

ORDER

This case is before the Court on debtor’s motion to extend the automatic stay (doc. 8) and the objection filed by Trustmark National Bank (“Trustmark”) (doc. 30).

Debtor lives in Dallas County, which is in the Southern District of Alabama. He had a prior Chapter 13 bankruptcy case in this district, no. 15-03286, which was dismissed on March 6, 2017. Debtor then filed this Chapter 13 case in the Middle District of Alabama on May 8, 2017. The same day, debtor filed a motion to extend the automatic stay, which would otherwise expire thirty days after filing pursuant to Bankruptcy Code § 363(c)(3). The Middle District bankruptcy court transferred the case to the Southern District on June 6, 2017, and this Court set the motion to extend stay on its next Selma docket, which was June 22, 2017.

Bankruptcy Code § 362(c)(3)(B) provides that the court may extend the automatic stay only after “notice and a hearing completed before the expiration of the 30-day period after the filing of the later case.” [Emphasis added.] The hearing here did not take place before the 30 day period expired, so under the terms of the statute the automatic stay expired. See In re Berry, 340 B.R. 636, 637 (Bankr. M.D. Ala. 2006).

However, this Court, following the majority of courts across the country and in the Eleventh Circuit, finds that the stay has terminated only “with respect to the debtor” but not with respect to property of the bankruptcy estate. See Keith M. Lundin & William H. Brown, Chapter

13 Bankruptcy § 432.2 (4th ed. 2017). The Court adopts Judge Sawyer's reasoning and holding in In re Roach, 555 B.R. 840 (Bankr. M.D. Ala. 2016). Trustmark argues that Congress intended for there to be no stay whatsoever in effect after expiration of the thirty days. But the U.S. Supreme Court continually reminds lower courts that they should presume Congress says what it means and means what it says and that the proper role of the judiciary is to apply, not amend, the work of the legislature. Henson v. Santander Consumer USA, __ U.S. __, 2017 WL 2507342 (2017).

The Court thus denies the debtor's motion to extend the stay and finds that there is no stay in effect as to debtor. However, the automatic stay remains in effect as to property of the estate, including Trustmark's real estate collateral.

Dated: July 11, 2017


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE