

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

FILED
U.S. BANKRUPTCY COURT
2010 APR -5 AM 8:56
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN RE:

JOHN T. FARINA,

Debtor.

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* CASE NUMBER 10-40768
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* CHAPTER 13
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* HONORABLE KAY WOODS
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ORDER DENYING MOTION FOR EXTENSION OF THE AUTOMATIC STAY

This cause is before the Court on Motion for Extension of the Provisions of the Automatic Stay ("Motion to Extend") (Doc. # 6) filed by the Debtor John T. Farina on March 10, 2010, in which Debtor seeks an extension of the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). The Court held a hearing on the Motion to Extend on April 1, 2010 ("Hearing").

Debtor filed a chapter 13 petition ("Prior Case") on December 22, 2009.¹ Debtor voluntarily dismissed the Prior Case on February 22, 2010. Fifteen days later, on March 9, 2010, Debtor filed the instant chapter 13 petition.

At the Hearing, Debtor's counsel represented that Debtor dismissed the Prior Case and filed the instant case to circumvent the effect of the "hanging paragraph" in 11 U.S.C. § 1325(a). Because the filing date of the Prior Case was less than 910 days after Debtor had purchased a motor vehicle for his personal use, Debtor would have been prohibited in the Prior Case from bifurcating

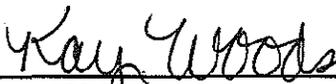
¹ Case No. 09-44769

the secured claim on such motor vehicle under 11 U.S.C. § 506. Debtor's counsel stated that he had miscalculated the 910 day period when he filed the Prior Case. Debtor's proposed plan in the instant case is substantially identical to the plan in the Prior Case. Debtor failed to present any change in circumstances.

Because the Prior Case was dismissed within one year of filing the instant case, 11 U.S.C. § 362(c)(3) provides for termination of the automatic stay with respect to the Debtor 30 days after the filing of the this case unless the Court finds that the instant case was filed in good faith. "[A] case is presumptively filed not in good faith . . . (i) as to all creditors, if . . . (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 chapter 7, 11, or 13 . . ." 11 U.S.C. § 362(c)(3)(C)(i)(III) (LexisNexis 2010).

Under the circumstances described at the Hearing, this Court cannot find that the instant case was filed in good faith. Accordingly, the Motion to Extend is hereby denied.

IT IS SO ORDERED.



KAY WOODS
UNITED STATES BANKRUPTCY JUDGE