

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

IN RE: DAVID MURPHY, Debtor

**3:05-bk-40217 E
CHAPTER 7
(converted)**

ORDER DENYING MOTION TO EXTEND AUTOMATIC STAY

Now before the Court is the *Debtor's Motion to Extend the Automatic Stay* (“**Motion to Extend**”) filed on January 3, 2006. The Debtor filed bankruptcy under Chapter 13 on December 2, 2005. The Debtor previously filed bankruptcy under Chapter 7 on October 14, 2005. That case was dismissed on November 22, 2005, due to the Debtor's failure to timely pay the filing fee. Pursuant to 11 U.S.C. § 362(c)(3)(A), if a debtor has had a pending case dismissed in the one-year period prior to filing the current case, the automatic stay terminates with respect to such debtor on the 30th day after the filing of the later case with respect to a debt or property securing such debt (unless the prior case was dismissed under 11 U.S.C. § 707(b)). Upon motion of a party in interest, the automatic stay may be extended “after notice and a hearing *completed before the expiration of the 30-day period*” if certain conditions are met. 11 U.S.C. § 362(c)(3)(B) (emphasis added).

In this case, the 30th day after the Debtor's current bankruptcy case was filed fell on Sunday, January 1, 2006. Monday, January 2, 2006, was a legal holiday as defined in Federal Rule of Bankruptcy Procedure 9006(a). Accordingly, the automatic stay expired as provided by § 362(c)(3)(A) on January 3, 2006,¹ which is the same day Debtor's counsel filed the Motion to

¹Rule 9006(a) provides, in part,:

In computing any period of time prescribed or allowed by these rules or . . . by any applicable statute, the day of act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included,

Extend. Debtor's counsel did not notify the Court of the motion or otherwise request an emergency hearing be held that day,² and therefore, the automatic stay expired without a hearing on the Debtor's motion. Because the Court may only extend the automatic stay after notice has been provided and a hearing completed *before* the expiration of the automatic stay, and the Motion to Extend was filed the same day that the automatic stay (as limited by § 362(c)(3)(A)) expired, the Debtor's Motion to Extend must be **DENIED**.

IT IS SO ORDERED.



HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE: January 10, 2006

cc: Jean Madden, attorney for debtor
Chapter 7 Trustee
U.S. Trustee
all creditors per matrix

unless it is a Saturday, Sunday, or a legal holiday, . . . in which event the period runs until the end of the next day which is not one of the aforementioned days.

²The Court does not intend to imply that a request for an emergency hearing would have necessarily been appropriate; noticing such a hearing would create an almost insurmountable problem. However, the Court would have considered any such request if it met the noticing requirement and alleged circumstances justifying such a request.