

FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

BAP NO. MB 17-036

Bankruptcy Case No. 17-12254-MSH

**KARIN ELIZABETH FLYNN,
Debtor.**

**KARIN E. FLYNN,
Appellant.**

**Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. Melvin S. Hoffman, U.S. Bankruptcy Judge)**

**Before
Lamotte, Cabán, and Finkle,
United States Bankruptcy Appellate Panel Judges.**

Karin E. Flynn, Pro se, on brief for Appellant.

February 26, 2018

Per Curiam.

Karin Flynn (“Debtor”) appeals pro se from the bankruptcy court’s order denying her motion to “reinstate” the automatic stay that had terminated by operation of § 362(c)(3)(A).¹

We **AFFIRM**.

BACKGROUND

In March 2017, the Debtor filed a chapter 13 petition pro se. Thereafter, the bankruptcy court granted the Debtor’s motion to voluntarily dismiss the case, and the case was dismissed on April 12, 2017.

On June 14, 2017, the Debtor filed another chapter 13 petition, again pro se.² Neither the Debtor nor any other party in interest moved for an order extending the automatic stay under § 362(c)(3)(B) within 30 days following the bankruptcy filing. As a result, the automatic stay terminated on July 14, 2017, as provided by § 362(c)(3)(A).³

A few weeks later the Debtor filed a motion entitled “Motion to Stay” (the “Motion”), in which she stated: “I learned today that the automatic stay provided by [the] bankruptcy court may not be in effect, once I completed my [§] 341 meeting, I made a mistake. I would [] respectfully request to reinstate my automatic stay.” She cited no legal authority for the requested relief.

¹ All references to “Bankruptcy Code” or to specific statutory sections are to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. §§ 101, et seq. All references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure.

² On December 21, 2017, the Debtor successfully moved to convert her case to chapter 7.

³ For the full text of § 362(c)(3)(A) and (B), see pp. 4-5.

On August 3, 2017, the bankruptcy court entered an order (the “Order”) denying the Motion, which provided:

Denied. Bankruptcy Code [§] 362(c) requires that any request to extend or impose the automatic stay must be made within 30 days of case commencement. This motion was filed well after that deadline.

The Debtor timely appealed. In her appellate brief, the Debtor points to no error, only stating:

I, Karin E. Flynn filed for Bankrup[t]cy in June, 2017. I understood the “automatic stay may be limited[.]” However, I understood it was still in [e]ffect as I was not notified of an expiration date from the Court. I learned the Automatic Stay had expired during my meeting with the Trustee on August 1, 2017. I responded to the Court and immediately took action, I filed a Motion to Extend my Stay on this same day, August 1, 2017.

The purpose of filing Bankrup[t]cy in June, 2017 was to obtain a Stay and to stop a scheduled auction of my home and to protect my home while in bankruptcy court. I needed to regain my protection that I was entitled to.

I have acted in good faith, to learn the rules and abide by them, I was unaware of the procedural time expiration date, I did what I thought was appropriate and acted immediately to regain my position of protection.

JURISDICTION

“Pursuant to 28 U.S.C. §§ 158(a) and (b), the Panel may hear appeals from ‘final judgments, orders, and decrees,’ § 158(a)(1), or ‘with leave of the court, from interlocutory orders and decrees.’ § 158(a)(3).” Fleet Data Processing Corp. v. Branch (In re Bank of New Eng. Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998); see also Bullard v. Blue Hills Bank, 135 S. Ct. 1686, 1692, 1695 (2015) (discussing the Panel’s jurisdiction to hear bankruptcy appeals under 28 U.S.C. § 158(a)). A bankruptcy court’s denial of a motion to extend or reimpose the automatic stay where the stay has lapsed under § 362(c)(3)(A) is a “final order.” See Thomas v. Fed. Nat’l Mortg. Ass’n (In re Thomas), 469 B.R. 915, 919 (B.A.P. 10th Cir.

2012); see also Genaro v. Wells Fargo Bank, N.A. (In re Genaro), No. AK-06-1358-ZRB, 2007 WL 7535064 (B.A.P. 9th Cir. May 14, 2007) (considering, without discussing finality, appeal of bankruptcy court order confirming automatic stay had terminated pursuant to § 362(c)(3) and denying untimely request to continue stay).

STANDARD OF REVIEW

“We review a bankruptcy court’s findings of fact for clear error and its conclusions of law de novo.” Jeffrey P. White & Assocs., P.C. v. Fessenden (In re Wheaton), 547 B.R. 490, 496 (B.A.P. 1st Cir. 2016) (citation omitted). A bankruptcy court’s determination regarding the status of the automatic stay is a legal issue which is reviewed de novo. See In re Thomas, 469 B.R. at 919.

DISCUSSION

I. Section 362(c) and Continuation or Reinstatement of the Stay

The filing of a bankruptcy petition “operates as a stay, applicable to all entities,” of most actions against a debtor, the debtor’s property, and property of the bankruptcy estate. 11 U.S.C. § 362(a). “The [automatic] stay springs into being immediately upon the filing of a bankruptcy petition[.]” Soares v. Brockton Credit Union (In re Soares), 107 F.3d 969, 975 (1st Cir. 1997). However, for debtors who have had another case pending within the preceding year that was dismissed, § 362(c)(3)(A) limits the duration of the stay. See In re Baldassarro, 338 B.R. 178, 183 (Bankr. D.N.H. 2006). This section provides:

[I]f a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case[.]

11 U.S.C. § 362(c)(3)(A).

Thus, when a debtor commences a second bankruptcy case within a year of the dismissal of a prior case, the stay automatically lapses “with respect to the debtor on the 30th day after the filing of the later case” unless extended as provided in § 362(c)(3)(B). See 11 U.S.C. § 362(c)(3)(A).⁴

Section 362(c)(3)(B) provides:

[O]n the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period 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[.]

11 U.S.C. § 362(c)(3)(B).

This provision authorizes the bankruptcy court to extend the stay beyond the initial 30-day period if four requirements are met: (1) a party in interest files a motion requesting an extension of the automatic stay; (2) there is notice and a hearing on the motion; (3) the bankruptcy court completes the hearing before the expiration of the 30-day period set forth in

⁴ There is a split of authority regarding the *extent* to which the automatic stay terminates after 30 days under § 362(c)(3)(A). The majority view, expressed by the Panel in In re Jumpp, is that the stay terminates only with regard to actions against the debtor personally and the debtor’s non-estate property. See 356 B.R. at 796-97. The opposing view is that the automatic stay terminates “in its entirety.” See, e.g., St. Anne’s Credit Union v. Ackell, 490 B.R. 141, 145 (D. Mass. 2013). We need not address the issue because the Debtor has not argued that the stay remained in effect as to property of the estate.

§ 362(c)(3)(A); and (4) the movant demonstrates the new case was filed in good faith as to the creditors being stayed. In re Bowman, 555 B.R. 918, 921-22 (Bankr. S.D. Ga. 2016). Failure to satisfy any of the conditions of § 362(c)(3)(B) results in the automatic termination of the stay 30 days after the petition date. See Roberts v. Ass'n of Apartment Owners of Liona Kona (In re Roberts), No. 14-00548 SOM/RLP, 2015 WL 7257918, at *4 (D. Haw. Nov. 16, 2015). The bankruptcy court has no discretion to grant a motion to continue the automatic stay where it has lapsed under this provision before the movant filed, and the court completed the hearing on, the motion. In re Lotter, No. 16-10790, 2016 WL 3213348, at *1 (Bankr. D.R.I. June 8, 2016); see also In re Moreno, No. 07-13478-B-13, 2007 WL 4166296, at *1 (Bankr. E.D. Cal. Nov. 20, 2007) (stating that even extending the time for a hearing will not postpone termination of the automatic stay because termination is “mandatory” if the hearing is not held within the 30-day period).

Generally, attempts to “reinstate” the stay once it has expired by operation of § 362(c)(3)(A) are unsuccessful. Several courts have ruled that the automatic stay “cannot be ‘resurrected’ as if it had never terminated.” In re Williams, 346 B.R. 361, 370 (Bankr. E.D. Pa. 2006) (citations omitted); see also In re Daux, No. 16-17865 (JKS), 2016 Bankr. LEXIS 2696 (Bankr. D.N.J. Jul. 22, 2016) (“The stay can be extended if the requirements of [§] 362(c)(3)(B) are met, but once it is terminated pursuant to [§] 362(c)(3)(A) it cannot be ‘resurrected.’”); Whitaker v. Baxter (In re Whitaker), 341 B.R. 336, 346 (Bankr. S.D. Ga. 2006) (“With respect to first-time repeat filers, there is no specific grant of authority to reimpose the stay once it has lapsed under § 362(c)(3)(A).”); In re Berry, 340 B.R. 636, 637-38 (Bankr. M.D. Ala. 2006) (noting once the 30-day period set forth in § 362(c)(3)(A) has expired, “the automatic stay could

not be resurrected by way of a tardy motion [under § 362(c)(3)(B)]”); In re Tubman, 364 B.R. 574, 581 (Bankr. D. Md. 2007) (“Once the stay expires by operation of [§] 362(c)(3)(A), the stay cannot be re-imposed under [§] 362(c)(3)(B) as if it had not been terminated.”); In re Toro-Arcila, 334 B.R. 224, 226 (Bankr. S.D. Tex. 2005) (stating that because “the automatic stay terminated by operation of law under § 362(c)(3)(A), [] no relief c[ould] be granted under § 362(c)(3)(B)”).

Recognizing that the termination of automatic stay by operation of § 362(c)(3)(A) “could subject the bankruptcy estate to irreparable injury,” a number of courts have exercised their equitable powers under § 105(a)⁵ to enjoin creditors from proceeding against a debtor or a debtor’s property. In re Radson, 462 B.R. 911, 913 (Bankr. S.D. Fla. 2011) (citation omitted); see also Lattin v. Midland Mortg. Co. (In re Lattin), 461 B.R. 832, 834 (Bankr. D. Nev. 2011) (stating debtors could not seek reinstatement of stay that had terminated pursuant to § 362(c)(3), but could seek injunctive relief under § 105(a)); In re Williams, 346 B.R. at 371 (determining when the automatic stay “has been terminated by virtue of [§] 362(c)(3), the debtor may seek to enjoin creditors by virtue of [§] 105(a)”); In re Whitaker, 341 B.R. at 346 (stating that the “only authority for reinstating the stay [once it has lapsed under § 362(c)(3)(A)] is to use the equitable powers conferred by § 105(a)”); see also Wedgewood Inv. Fund Ltd. v. Wedgewood Realty Grp., Ltd. (In re Wedgewood Realty Grp., Ltd.), 878 F.2d 693, 701 (3d Cir. 1989) (acknowledging that once the automatic stay terminated by operation of law under analogous 30-day period in § 362(e), the debtor’s only recourse is to seek injunctive relief). Other courts,

⁵ Section 105(a) provides, in relevant part: “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

however, have declined to exercise their equitable powers in such a manner, concluding that the use of § 105(a) under such circumstances would “circumvent” the clear mandates of § 362(c)(3).⁶

A request under § 105(a) to reinstate or reimpose the stay is, in substance, a request for injunctive relief. See In re Lattin, 461 B.R. at 834 (stating that a debtor’s request to reimpose a lapsed stay is one for relief under § 105(a), which is distinguishable from “the operation of the automatic stay”); see also Canter v. Canter (In re Canter), 299 F.3d 1150, 1155 n.1 (9th Cir. 2002) (“[T]he bankruptcy automatic stay is differentiated from a bankruptcy court-ordered injunction, which issues under [] § 105.”)). Although the First Circuit has not addressed the issue, most courts require a party seeking to reimpose the stay after it has lapsed by virtue of § 362(c)(3)(A) to satisfy the traditional standards for injunctive relief.⁷ See, e.g., In re Lattin,

⁶ See In re Martinez, 515 B.R. 383, 386 (Bankr. S.D. Fla. 2014) (“Using § 105(a) to extend the clear statutory deadline or to impose a different yet identical stay, would provide relief directly contrary to the clear text of § 362(c)(3)(A) and § 362(c)(3)(B).”); In re Rodriguez, No. 10-12071-BKT, 2011 WL 503513, at *1 (Bankr. D.P.R. Feb. 14, 2011) (holding that court could not reimpose the stay which had terminated by operation of § 362(c)(3), or “use its equitable power [under § 105(a)] to circumvent Congress[’s] mandate to comply with the statutory deadline imposed”); In re Garrett, 357 B.R. 128, 131 (Bankr. C.D. Ill. 2006) (concluding the court “could not use its general equitable powers under [] § 105(a) to impose a stay Congress has declared must terminate if the requirements of § 362(c)(3) are not met”).

⁷ Typically, these courts also require the party seeking injunctive relief under § 105(a) to file an adversary proceeding. See, e.g., State Bank of S. Utah v. Gledhill (In re Gledhill), 76 F.3d 1070, 1079 (10th Cir. 1996) (“Courts have uniformly held that a request to reimpose the automatic stay under [§] 105(a) constitutes ‘a proceeding to obtain an injunction or other equitable relief’ under [Bankruptcy] Rule 7001(7), which requires the filing of an adversary proceeding.”) (citing cases); In re Bora Bora Inc., 424 B.R. 17, 24 (Bankr. D.P.R. 2010) (“A request for injunctive relief [under § 105(a)] must be brought by adversary proceeding.”) (citations omitted); In re Jarman, No. 03-22430, 2004 Bankr. LEXIS 984 (Bankr. E.D. Ky. Jul. 21, 2004) (ruling that a request for the imposition of a new automatic stay “requires the initiation of an adversary proceeding [pursuant to Bankruptcy Rule] 7001(7), and a showing as to the prerequisites to the entry of an injunction”); Nasco P.R., Inc. v. Chemical Bank (In re Nasco P.R., Inc.),

461 B.R. at 834 (noting that because debtors could not seek reimposition of the stay which had lapsed, they were required to “establish all requirements for traditional injunctive relief”); In re Williams, 346 B.R. at 371 (“In approving the use of [§] 105 to enjoin a creditor . . . , the debtor must meet the traditional standards for injunctive relief.”). Generally, there are four factors that must be satisfied to obtain injunctive relief under § 105(a): “(1) the movant would suffer irreparable injury if the injunction were not granted; (2) the injury outweighs any resulting harm to the opposing party; (3) the movant has exhibited a likelihood of success on the merits; and (4) the public interest will not be adversely affected by the granting of the injunction.” In re Bora Bora Inc., 424 B.R. at 25 (setting forth First Circuit standard for obtaining injunctive relief under § 105(a) where movant was seeking extension of the automatic stay) (citation omitted); see also Planned Parenthood League of Mass. v. Bellotti, 641 F.2d 1006, 1009 (1st Cir. 1981) (articulating the same four criteria movant must demonstrate to obtain a preliminary injunction).

II. Debtor’s Request to Reinstate Lapsed Stay

The Debtor filed her second petition on June 14, 2017, less than one year after her prior case was dismissed. The Debtor did not move to continue the automatic stay pursuant to § 362(c)(3)(B). Thus, the stay automatically lapsed 30 days later—on July 14, 2017—by operation of § 362(c)(3)(A). Indeed, the Debtor acknowledged that it had lapsed when she filed her motion to “reinstate” the stay. Under these circumstances, the bankruptcy court lacked

117 B.R. 35, 38 (Bankr. D.P.R. 1990) (“A party wishing to invoke the Court’s injunctive power under [§] 105(a) must file an adversary proceeding . . . and must follow the traditional standards for the issuance of an injunction.”); but see In re Simonson, No. 06-22833 (MBK), 2007 WL 703542, at *3 n.1 (Bankr. D.N.J. Mar. 2, 2007) (“The Court does not suggest that the filing of an adversary proceeding will always be required to reinstate the automatic stay, and notes that the Court may waive such a requirement when the facts and circumstances so warrant.”) (citing cases).

discretion to extend the automatic stay under § 362(c)(3)(B). See In re Lotter, 2016 WL 3213348, at *1.

Even if the bankruptcy court had liberally construed the Motion as a request for injunctive relief under § 105(a) to reimpose the stay, the Debtor could not have obtained the relief she sought. The Debtor never addressed, let alone attempted to satisfy, any of the four factors necessary for injunctive relief which would warrant the bankruptcy court's enjoining her creditors. See In re Bora Bora Inc., 424 B.R. at 25.⁸

The Debtor's only argument on appeal is that she mistakenly thought the automatic stay was still in effect as she "was not notified of an expiration date from the Court." Although understandable that the Debtor was unaware of the strict time deadlines imposed by § 362(c)(3), this does not change the outcome. Pro se pleadings are subject to "less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations omitted). Nonetheless, "pro se status does not insulate a party from complying with procedural and substantive law." Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997) (citation omitted). Pro se litigants must follow the same rules that govern other litigants. See FDIC v. Anchor Props., 13 F.3d 27, 31 (1st Cir. 1994) ("We have consistently held that a litigant's pro se status [does not] absolve him from compliance with [procedural rules].") (citation omitted) (internal quotations omitted).

⁸ Although in the Motion the Debtor sought to "reinstate" the stay that had already terminated, the bankruptcy court did not err in viewing the request in the context of § 362(c)(3)(B) because the Debtor did not invoke § 105(a), or suggest that she could satisfy the requirements for injunctive relief.

Unfortunately for the Debtor, the bottom line is that under § 362(c)(3)(B), she had only 30 days from the petition date to file a motion to continue the automatic stay and for the motion to be heard. This provision is mandatory, and the Debtor's pro se status does not excuse her failure to comply with it. See In re Roberts, 2015 WL 7257918, at *5 (holding pro se debtor was not excused from requirements in § 362(c)(3)(B) that motion to extend automatic stay be filed and heard within 30 days); In re Genaro, 2007 WL 7535064, at *3 (same). The bankruptcy court did not err in denying the Motion.

CONCLUSION

For the reasons set forth above, we **AFFIRM**.