

**Stay Alert Creditors: There May Be Some Recourse
When Dealing with a Repeat Bankruptcy Filer**
By Camille J. Iurillo and Gina M. Pellegrino

Scenario: A Debtor files for Chapter 13 bankruptcy and the case is dismissed a few months later because the Debtor is unable to make the required monthly payments to the Chapter 13 Trustee, who in turn pays the Debtor's creditors on a pro rata basis. Two months after the dismissal, the Debtor files for Chapter 13 bankruptcy a second time and the second case is also dismissed for non-payment to the Chapter 13 Trustee. Two months after the second dismissal, the Debtor files a third Chapter 13 bankruptcy case. In this scenario, does a creditor of the Debtor have any recourse in proceeding against the Debtor, as the creditor is not being paid by the Debtor, and in fact, the payments due to the creditor are long past due?

According to 11 U.S.C. § 362(c)(3)(A), if a debtor files a Chapter 13 bankruptcy case, which is then dismissed, and then within one year files another Chapter 13 bankruptcy case, the automatic stay terminates with respect to the debtor on the 30th day after the filing of the later case. Thus, in our scenario, a creditor of the Debtor is only required to wait thirty (30) days from the date that the Debtor files the second Chapter 13 bankruptcy case before proceeding against the Debtor to collect past due monies, presuming that the first case was filed and dismissed within one year of the filing of the second case. This is true unless the Debtor files a Motion to Extend the Automatic Stay ("Motion") during that thirty (30) day period, in which case the creditor would be prohibited from proceeding against the Debtor to collect past due monies, presuming that the Debtor's Motion was granted by the Court as to all creditors and an Order was entered to that effect.

Pursuant to 11 U.S.C. § 362(c)(3)(B), in order for the Debtor to obtain such an extension of the automatic stay, the Debtor must demonstrate in the Motion that the filing of the second Chapter 13 bankruptcy case was "in good faith as to the creditors to be stayed." Thereafter, if the creditor wishing to proceed against the Debtor for payment is aware of the Motion filed by the Debtor, seeking to extend the automatic stay, that creditor may file with the Court an opposition to the Debtor's Motion, possibly arguing that the second Chapter 13 bankruptcy case was not filed in good faith because the Debtor had a prior Chapter 13 case (the first Chapter 13 bankruptcy case) pending within the previous year, which was dismissed for non-payment to the Chapter 13 Trustee. *See*, 11 U.S.C. § 362(c)(3)(C)(i)(II).

Furthermore, 11 U.S.C. § 362(c)(3)(C)(ii) provides that a bankruptcy case is presumptively filed not in good faith as to any creditor that filed a motion for relief from stay in a debtor's previous case if, as of the date of dismissal of the previous case, the motion for relief from stay was still pending or had been resolved. Thus, with respect to our scenario, the creditor could argue that the Debtor's second Chapter 13 bankruptcy case was not filed in good faith if the creditor had filed a Motion for Relief from Stay in the Debtor's first Chapter 13 bankruptcy case.

Moreover, 11 U.S.C. § 362(c)(4)(A)(i) provides that if a Chapter 13 bankruptcy case is filed, and if two or more Chapter 13 bankruptcy cases filed by the debtor were pending within the previous year but were dismissed, then the automatic stay shall not go into effect upon the

filing of the third case. Therefore, in our scenario, if the first and second Chapter 13 bankruptcy cases that were filed by the Debtor were pending within the one-year period prior to the Debtor filing the third Chapter 13 bankruptcy case, then the automatic stay would not be in effect in the third case and the creditor would be allowed to proceed against the Debtor for payment, despite the third bankruptcy filing.

In conclusion, recourse does exist for a creditor wishing to proceed against a repeat bankruptcy filer; however, it is imperative that the creditor monitor the bankruptcy case carefully, keeping apprised of the applicable filing deadlines and all pleadings filed by the debtor.

Iurillo & Associates, P.A., located in downtown St. Petersburg, is comprised of **Camille J. Iurillo**, Shareholder, **Gina M. Pellegrino**, Associate, and **Sabrina C. Beavens**, as Of Counsel. **Ms. Iurillo** has been active in the St. Petersburg Bar Association for several years, and she is on the Executive Committee of The Florida Bar's General Practice Solo and Small Law Firm Section. **Ms. Pellegrino** joined the Firm in 2006 and is an active member of the St. Petersburg Bar Association Young Lawyers Section.

The primary areas of practice of **Iurillo & Associates, P.A.** are Commercial and Bankruptcy Litigation and Debtors' and Creditors' Rights.