



## I

In 1996 the debtor, James Daniel Kilgore, an attorney, gave a deed of trust to secure a loan from Powell Valley National Bank (the “Bank”). In 1999 the debt became delinquent and the Bank began foreclosure proceedings. The debtor filed in the bankruptcy court a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. The case was dismissed and the bank reinstated foreclosure. Days before the sale, the debtor filed another petition under Chapter 13. Thereafter, on motion of the debtor, the case was converted to Chapter 7 and an order of discharge entered. The Bank obtained relief from the automatic stay and rescheduled a sale of the property. Before this sale was held, the debtor filed another petition under Chapter 13.

The United States Trustee moved to dismiss the latest Chapter 13 petition on the ground that since the Chapter 7 case was still pending, the debtor had violated the local rule prohibiting the maintenance of more than one petition under any chapters of the Bankruptcy Code at the same time. *See* W.D. Va. Bankr. R. 1017-2. The bankruptcy court granted the motion and dismissed the case by order entered on April 19, 2001. Thereafter the debtor noted an appeal of the order to this court. The United States Trustee has moved to dismiss the appeal for failure to designate a record on appeal, which motion is pending.

The debtor has now filed a motion reciting that the Bank is again proceeding to foreclosure and seeking an injunction against the sale on the ground that it violates the automatic stay. Oral argument on the motion was held by conference telephone call on July 18, 2001, the day before the scheduled sale date, and this opinion memorializes the court's opinion announced at the conclusion of the argument.

## II

The automatic stay afforded by the Bankruptcy Code against lawsuits and lien enforcement continues only until the case is dismissed. *See* 11 U.S.C.A. § 362(c)(2) (West 1993 & Supp. 2001). When the bankruptcy court dismissed Kilgore's latest Chapter 13 case, the automatic stay that applied to that case terminated. No stay of the bankruptcy court's order of dismissal was ever requested or obtained, and thus no automatic stay is in effect which would be violated by the scheduled foreclosure sale.

While this court has the power in extraordinary cases to grant a stay on appeal even where a motion for such relief has not first been presented to the bankruptcy court, *see* Fed. R. Bankr. P. 8005, I decline to grant such a stay of the order of dismissal, which would have the effect of reestablishing the automatic stay. Considering the matter in the light of the factors prescribed for evaluating requests for

injunctive relief, *see Blackwelder Furniture Co. of Statesville v. Seilig Mfg. Co.*, 550 F.2d 189, 195 (4th Cir. 1977), I find that it would not be proper to grant the stay.

Reviewing the record on appeal, it is clear that no “grave or serious questions” are presented by the debtor’s appeal. *Id.* at 196. The local rule is plain and the dismissal of the Chapter 13 case was likely within the bankruptcy court’s discretion. Moreover, the appellant’s failure to designate the record is a further impediment to any success in this appeal.

In addition, the fact that the motion for injunctive relief was filed only days before the scheduled sale, together with the history of the prior frustrated sales, further militates against equitable relief. Under these circumstances, I cannot say that the “balance of hardship” analysis favors the appellant. *Id.* at 198.

### III

For the foregoing reasons, it is **ORDERED** that the motion (Doc. No. 6) is denied.

ENTER: July 23, 2001

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United States District Judge