The document below is hereby signed.

Dated: April 20, 2012.

S. Martin Teel, Jr.
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
SUSAN MARIE VERES,	)	Case No. 12-00213
	)	(Chapter 13)
Debtor.	)	Not for Publication in
	)	West's Bankruptcy Reporter

MEMORANDUM DECISION AND ORDER
RE MOTION TO EXTEND/IMPOSE AUTOMATIC STAY

The court held a hearing on the debtor's *Motion for Emergency Hearing and to Extend/Impose Automatic Stay* on April 20, 2012, and issued an oral decision to deny the request to extend or impose the automatic stay. It may have been error to assume in that oral decision that the stay would terminate under 11 U.S.C. § 362(c)(3) on Sunday April 22, 2012, as the 30th day after commencement of the case. *See* Fed. R. Bankr. P. 9006(a)(1)(C) (rule regarding deadlines falling on a weekend or legal holiday being extended to the next business day); *Bartlik v. United States Dept. of Labor*, 62 F.3d 163, 166 (6th Cir. 1995) (overruling a prior decision holding that Fed. R. Civ. P. 6(a), the analog of Rule 9006(a)(1), being *a rule*, could not change a deadline date set by *a statute*). Putting aside the findings and

conclusions that rested on that assumption, however, the remaining findings and conclusions still require that the automatic stay ought not be extended. The debtor was unable to be present on April 20, 2012, to testify, and might have been able to testify if the hearing (as she requested) had been held on April 23, 2012, instead, but she was allowed to proffer the evidence that she believed supported her motion. Even if the debtor's proffers of evidence are accepted as though they were testimony received into evidence, the record does not warrant extending the automatic stay. Supplementing the oral decision, I add the following.

Because the debtor's prior case was dismissed for failure to file required documents, the debtor bears the burden of proving by clear and convincing evidence that she has proceeded in good faith. 11 U.S.C. § 362(c)(3)(C)(i)(aa). Even if subjectively the debtor has proceeded in good faith, it is not clear that objectively the debtor has proceeded in good faith, and, in any event, the decision whether to extend the automatic stay is discretionary.

By reason of the earlier case and the debtor's failure to make monthly payments in the prior case and during the pendency of this case, creditors are worse off, with no evidence that the debtor could reasonably promptly restore the status quo regarding the amount of arrears that existed when she commenced the prior

case. That would have been a basis for lifting the stay in the earlier case had the earlier case not been dismissed and if it were still pending. That weighs heavily in favor of not extending the automatic stay in this new case.

The debtor's conduct and circumstances evidence an inability to attend to this case in a way that it will succeed. The debtor failed timely to file papers in the preceding case, leading to delay of the case to the prejudice of creditors, and when her delinquency reached 45 days, that led to a dismissal under 11 U.S.C. § 521(i). She has not timely filed a statement of financial affairs in this case. She has proposed a plan that provides for a level of plan payments to cure arrears:

- that is inadequate in amount to pay the arrears (calculated based on the debtor's proffer of evidence) that need to be cured under the plan, and
- that is plainly not feasible at this juncture based on her net disposable income.

Even after being warned when her prior case was dismissed that she would need to promptly file any motion to extend the automatic stay in any new case, she filed her emergency motion only the last business day before the day on which the stay would terminate under § 362(c)(3). The court would have been justified to decline to hear her motion at all on such short notice to

creditors. The debtor's failure to make monthly payments to her secured creditors in this case is evidence that the plan calling for maintaining monthly payments is not feasible. She is unable to afford counsel, and has been unable to pay the filing fee in this case other than via installment payments, again raising doubts that a plan would be feasible.

To propose a feasible plan would require the debtor to obtain employment that she has been unable to obtain since July of last year, and her proffer regarding her hope of obtaining employment in September 2012 is quite speculative. In any event, if she obtained employment in September, that would still leave her unable to pay even one-half of one-sixtieth[1] of the arrears owed her secured creditors (plus the trustee's commission and amounts required to be paid monthly on priority claims) during each of the months leading up to her obtaining employment, raising a serious doubt that any plan calling for such minimal cure payments during those months could be viewed as providing for a cure within a reasonable period of time as required by 11 U.S.C. § 1322(b)(5).

Accordingly, it is

[1] Sixty months is the maximum duration of a plan. The point is that the debtor is unable to commence paying even one-sixtieth of the arrears each month, assuming that a 60-month cure would be reasonable.

ORDERED that the *Motion for Emergency Hearing and to Extend/Impose Automatic Stay* is granted in part as to the request to hold an emergency hearing (by holding an emergency hearing on April 20, 2012, but not on April 23, 2012, as requested by the debtor) and is otherwise denied, with the consequence that the request to extend or impose the automatic stay is denied.

[Signed and dated above.]

Copies to: Debtor; recipients of e-notification.