

**The United States Bankruptcy Court for the District of Maryland held that the automatic stay imposed by §362(c)(3) applies to the property of the estate and further denied an extension of the automatic stay when it found that Debtor filed in bad faith.**

***In re Ekaette Tom Akwa*, 2016 Bankr. LEXIS 27 (Bankr. D. Md. January 5, 2016).**

Summary by Marissa K. Lilja, Tydings & Rosenberg LLP

In *In re Ekaette Tom Akwa*, the Honorable Judge S. Martin Teel, Jr. considered a Motion to Extend Automatic Stay Against All Creditors as to Debtor Pursuant to 11 U.S.C. §§ 105(a), 362(c)(3)(A), (B) and to Recognize Continued Existence of Automatic Stay as to Property of the Estate. Judge Teel denied the relief requested by Ekaette Tom Akwa (the “Debtor”) in the motion and clarified the Court’s position as to the automatic stay under §362(c)(3).

The Court first addressed whether or not the termination of the automatic stay imposed by 11 U.S.C. § 362(c)(3) applies to property of the estate. The Debtor sought a declaration that the provision, which imposes a loss of the automatic stay, does not apply to the property of the estate. *In re Ekaette Tom Akwa* at \*1. The Court found a decision from the Bankruptcy Court for the Northern District of Illinois, *In re Daniel*, 404 B.R. 318 (Bankr. N.D. Ill. 2009), to be persuasive on this issue. *Id.* at \*2. The Court held that the language of this provision is ambiguous, but that in evaluating the context of § 362(c)(3) as a whole the only reasonable interpretation is that the provision applies to the property of the estate. *Id.* at \*3.

The Court next reviewed the Debtor’s request to extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). *Id.* After a hearing, the Court determined that the Debtor’s financial circumstances have worsened since the petition date and that the Debtor would be unable to cure the arrearages on her home.<sup>1</sup> *Id.* at \*3-\*4. Accordingly, the Court determined there was no possibility of a confirmable plan. *Id.* at \*4. Based on these facts, the Court found that there was a presumption of bad faith under § 362(c)(3)(C) and that the Debtor did not meet her burden to overcome that presumption by clear and convincing evidence. *Id.* at \*5. The Court therefore declined the requested relief.

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<sup>1</sup> This is not the Debtor’s first bankruptcy filing. In an adversary proceeding to her prior filing, this Court held that the Debtor cannot modify the mortgage on her home.. The Court found that decision to be binding on this bankruptcy proceeding. *Id.* at \*4.