Opinion Title: 12/07/2005 PUBLISHED In re Galanis, et al, 05-80037, 2005 WL 3454411 (Bankr. D. Utah Dec. 7, 2005), Judge Thurman.

Body: Under § 362(c)(3) of the BAPCPA, a debtor who had a prior case pending within one year of filing the present case receives an automatic stay lasting for thirty days only, unless the debtor shows that he or she filed the present case in good faith. Each debtor in these cases had a prior case pending within one year of filing their present cases. They each argued that the Court should extend the stay because they filed in good faith. The Court determined that a debtor's good faith under § 362(c)(3) should be governed by a totality of the circumstances test, and looked to some of the factors historically used to determine a debtor's good faith under § 1307(c), as applied in In re Geir , 986 F.2d 1326 (10th Cir. 1993). The Court also considered three additional factors, not traditionally part of the Gier factors: 1) why the debtor's prior case was dismissed; 2) the likelihood that the debtor will be able to fund a chapter 13 plan; and 3) whether the Trustee or any creditors objected to the motion. Under this analysis, the Court determined that each debtor met their burden under § 362(c)(3) to show they filed in good faith, and accordingly, the Court granted the motions in this case.

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Judge: Judge William T. Thurman [2]

Date: Wednesday, December 7, 2005

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