Opinion Title: 03/08/2006 PUBLISHED In re Tomasini, 05-80115, Judge Thurman.

Body: The Court was presented with the issue of whether a Debtor who failed to show that his case was filed in good faith at a hearing on a motion to extend the stay under section 362(c)(3)(B) could obtain confirmation of a chapter 13 plan under 1325(a)(7) by showing good faith for confirmation purposes. The Debtor had a bankruptcy case pending and dismissed within one year of filing the present case. The Debtor moved to extend the automatic stay in this case under section 362(c)(3)(B), arguing that he filed the present case in good faith as to all creditors. The Court denied that motion, finding that the Debtor failed to carry his burden under section 363(c)(3)(B) to show that he filed the present case in good faith as to all creditors by clear and convincing evidence.At the hearing on confirmation of the debtor's chapter 13 plan, the Chapter 13 Trustee argued that the case could not be confirmed because the Court had already found the case was not filed in good faith. The Court determined that the good faith determinations under sections 362(c)(3)(B) and 1325(a)(7) are both governed by a totality of the circumstances analysis, as discussed by the Court's ruling in In re Galanis, 334 B.R. 658 (Bankr. D. Utah 2005) and that a lack of finding of good faith at a motion to extend does not bar the Court's good faith determination at confirmation. The application and focus of the Galanis factors is different when determining good faith at confirmation. The focus of motion to extend must be on creditors, whereas the focus of the Court's good faith determination for purposes of confirmation must be on the debtor.In considering good faith under section 1325(a)(7), the Court determined that it will look first to the debtor's stated motivation in filing from the debtor's perspective. If the debtor's motivation is considered a good faith motivation, the Court will then consider the remaining Galanis factors.

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Judge: Judge William T. Thurman [2]

Date: Wednesday, March 8, 2006

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