

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
O'clock & min
DEC 02 2005

IN RE:

Michael Andrews,

C/A No. 05-44994-W

ENTERED

Debtor. DEC 02 2005

ORDER

Chapter 13

United States Bankruptcy Court
Columbia, South Carolina (11)

K. E. P.

This matter comes before the Court upon a Motion to Extend Stay as to All Creditors (the Motion") filed by Michael Andrews (the "Debtor") pursuant to 11 U.S.C. § 362(c)(3)(B).

Debtor was a debtor in a case pending within a one (1) year period preceding the filing of this case. The previous case was dismissed because Debtor failed to provide documents to the Chapter 13 Trustee and therefore the stay under § 362(a) will terminate on the 30th day after the filing of this case, absent an order extending the stay.

The provisions of § 362(c)(3)(C)(i)(II) are implicated to create a presumption of bad faith in the filing of this case. Debtor carries the burden of rebutting the presumption of bad faith. To rebut this presumption and to establish good faith required for an extension of the automatic stay, Debtor asserts the following:

1. His previous failure to provide documents was associated with his failure to provide a copy of an order requiring Debtor to pay child support. In fact, no such order ever existed. Debtor's payment of child support, which was approximately \$700.00 per month, was pursuant to an agreement with his wife, not a court order. According to his testimony, Debtor is no longer obligated to pay child support.
2. In the previous case, Debtor sought to retain certain rental properties on which Branch Banking and Trust ("BB&T") held a lien and had received relief from stay. In this case, Debtor proposes to abandon those properties, therefore eliminating the

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obligation for payment of the secured portion of BB&T's claim.

3. Debtor was unable to meet his plan payments in the previous case due to a loss of employment in July 2005. Debtor is now employed full-time as a mortgage broker with Mid-Atlantic Mortgage Co. He has previously worked part-time for that company for five (5) years, averaging locating at least one (1) loan a month with a commission of between \$1,000 - \$1,500 per month. Debtor projects full-time employment should produce an average monthly salary of at least \$3,200.00.
4. Debtor agrees that any dismissal of this case be with prejudice to bar a re-filing under chapters 11, 12 or 13 of the Bankruptcy Code for a period of one (1) year from any dismissal of the case.

A hearing on the Motion, after notice to all creditors, was completed within the thirty (30) day period following the petition date. No party, other than the Chapter 13 Trustee in the case, filed any objection or response to the Motion.

After reviewing the schedules, statements and other documents filed, and considering the testimony of Debtor, the Chapter 13 Trustee recommends that the stay be extended.

After considering the evidence, the arguments of counsel, and the totality of the circumstances before the Court, it is ordered that the automatic stay is extended as to all creditors listed by Debtor in this case pursuant to § 362(c)(3)(B). It is further ordered that should this case be dismissed for any reason, that the dismissal will be with prejudice to bar a re-filing for a period of one (1) year as to Chapters 11, 12, and 13 of the Bankruptcy Code.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
December 2, 2005