

FILED

at \_\_\_\_\_ M.

DEC 7 2005

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court  
Columbia, South Carolina (20)

IN RE:

C/A No. 05-45030-W

**ENTERED**

Rhonda Leigh Adams,

**JUDGMENT**

DEC 7 2005

Debtor.

Chapter 13

**D.L.L.**

---

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Motion to Extend the Automatic Stay is granted.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
December 7, 2005.

FILED

at \_\_\_ O'clock & \_\_\_ min. \_\_\_ M

DEC 7 2005

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court  
Columbia, South Carolina (30)

IN RE:

C/A No. 05-45030-W

ENTERED

Rhonda Leigh Adams,

ORDER

DEC 7 2005

Debtor.

Chapter 13

D.L.L.

---

THIS MATTER comes before the Court upon motion of Rhonda Leigh Adams ("Debtor") requesting an order extending the automatic stay as to all creditors pursuant to 11 U.S.C. § 362(c)(3)(B).<sup>1</sup>

Debtor was a debtor in a case number 05-08588, which was a case pending within the one (1) year period preceding the petition of this case. The previous case was dismissed on motion of Debtor before Debtor's scheduled and statements were due. The stay under § 362(a) will terminate pursuant to § 362(c)(3)(A) on the 30<sup>th</sup> day after the filing of this case, absent an order extending the stay.

A hearing on the motion 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. Debtor served all creditors in this matter with the motion and the notice of the hearing on the motion, including the attorneys for the foreclosing mortgage creditor.

In order for the Court to continue the automatic stay, it must find that the filing of this case was in good faith. The Bankruptcy Code places the burden on the moving party to demonstrate that the current case was filed in good faith. In motions under § 362(c)(3)(B), an issue arises as to whether the current case was presumptively filed in bad faith. Section

---

<sup>1</sup> Hereinafter references to the Bankruptcy Code (11 U.S.C. § 101 et. seq.), as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, shall be made by section number only.

362(c)(3)(C) sets forth the following situations under which a presumption of bad faith arises as to all creditors:

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to--

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded--

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed

See 11 U.S.C. § 362(c)(3)(C)(i).

In this case, neither § 362(c)(3)(C)(i)(I) or (II) are implicated to create a presumption that the current case was filed in bad faith; however, the Court must also consider whether § 362(c)(3)(C)(i)(III) creates a presumption of bad faith. Debtor testified to the following at the hearing on this motion:

1. Debtor's first case was filed *pro se* on the advice of Mortgage Default Services, an entity that gave Debtor legal advice and represented to Debtor that it would assist Debtor in remedying the default in her mortgage payments after she filed the petition in her first case. Debtor now believes that she was defrauded by Mortgage Default Services and testified that the company and its principal are no longer doing business and cannot be found; and
2. Debtor has changed employment and will earn approximately \$20,000.00

more per year than she was earning with her previous employer.

After reviewing the amended schedules, statements and other documents filed, and considering the testimony of Debtor, the Court finds that Debtor's current case was filed after Debtor experienced a substantial change in Debtor's financial circumstances. Since her previous case was dismissed, Debtor is expected to earn substantially more income and it appears that Debtor's plan will be confirmed and fully performed. No presumption of bad faith arises under § 362(c)(3)(C)(i)(III) because of this substantial change in Debtor's financial circumstances.

Even though no presumption of bad faith arises under § 362(c)(3)(C)(i), Debtor still must demonstrate that the current case was filed in good faith pursuant to § 362(c)(3)(B). It appears that Debtor's first filing and voluntary dismissal were caused by misrepresentations from Mortgage Default Services. Debtor also filed her first case *pro se* and dismissed it voluntarily upon the advice of counsel. In the current case, Debtor is represented by counsel. She has verified her employment and salary. Debtor is also current on payments under her proposed plan and appears to have the intent and the ability to complete the proposed plan. The Court finds that Debtor's current case was filed in good faith and therefore orders that the automatic stay is extended as to all creditors listed by Debtor in this case pursuant to § 362(c)(3)(B).

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
December 7, 2005