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DEC 19 2005

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

United States Bankruptcy Court
Columbia, South Carolina (26)

IN RE:

Carter Scott Wallace,

Debtor.

C/A No. 05-45119-JW

Chapter 13

JUDGMENT

Based upon the findings of fact and conclusions of law made in the attached Order, the Motion to Extend Stay filed by Carter Scott Wallace is granted, as conditioned by the Order, and the automatic stay is extended as to all creditors until it otherwise terminates by order of the Court or by statute. The automatic stay shall terminate under the attached Order if Debtor does not have a plan confirmed in this case by February 28, 2006. Should Debtor's case be dismissed for any reason, the dismissal shall be with prejudice for a period of one (1) year as to Chapters 11, 12, and 13.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 19, 2005

ENTERED

DEC 19 2005

L. G. R.

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Chapter 13

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ORDER

This matter comes before the Court upon a Motion to Extend the Automatic Stay (“Motion”) filed by Carter Scott Wallace (“Debtor”) pursuant to 11 U.S.C. § 362(c)(3)(B).¹ The Notice of Hearing and the Motion were served on all creditors. No creditor objected to the Motion or appeared at the hearing. The Chapter 13 Trustee filed a response to the Motion but did not oppose the Court granting the Motion.

Prior to the petition date, Debtor filed for relief under Chapter 13 on April 24, 1998. Debtor received a discharge in his first case on August 19, 2003. On June 16, 2005, Debtor filed a second case under Chapter 13.² Debtor dismissed his second case voluntarily on November 9, 2005 before confirmation of his proposed plan.³

Debtor filed this case on November 22, 2005. Pursuant to § 362(c)(3)(A), the automatic stay expires on December 22, 2005 because this case is Debtor’s second case pending within a one year period. No presumption of bad faith arises under § 362(c)(3)(C)(i)(I) or (II). Debtor urges this Court to extend the automatic stay pursuant to § 362(c)(3)(B) on grounds that he filed this case in good faith. Debtor states that the proposed plan in this case is feasible and that Debtor has experienced a substantial change in his financial circumstances so that no presumption of bad faith arises under

¹ Internal 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.

² The trustee in Debtor’s second case is the same as the trustee in Debtor’s current case.

³ Debtor appears to have dismissed his second case because the trustee was requiring debtor to make a plan payment higher than debtor was able to afford. Debtor’s Schedule J indicates that Debtor was attempting to deduct \$1,100.00 per month from Debtor’s disposable income for payment to non-filing wife’s creditors in the second case. The trustee would not allow the expense and instructed debtor to amend the proposed plan to pay a higher dividend to creditors in the case or face a petition for dismissal.

§ 362(c)(3)(C)(i)(III). Debtor argues that his non-filing wife has obtained a part-time job and is now contributing income to the household. Debtor also states that he is not deducting payment to his wife's creditors from his disposable income so that he is paying more to creditors than under his first proposed plan in his second case. Comparing Schedule J in this case to Schedule J in Debtor's second case reveals that Debtor has reduced his monthly living expenses and appears to have more disposable income. The Court is concerned that this change alone does not constitute a "substantial" change in the financial affairs of Debtor. However, given the increase in disposable income and Debtor's reduction of living expenses, since the dismissal of the previous case, the representation that Debtor can and will complete the proposed plan, and Debtor's previous successful completion of a five year Chapter 13 plan, the Court finds that no presumption arises under § 362(c)(3)(C)(i)(III).

Though there is no presumption that this case was not filed in good faith, Debtor still must demonstrate that this case was in fact filed in good faith. 11 U.S.C. § 362(c)(3)(B). With some reservation, the Court finds Debtor filed this case in good faith. Debtor in this case is similar to Debtor in Goodwin in that Debtor has a history as a debtor in this Court, the short lapse of time between filings, and Debtor's financial situation is not much better than Debtor's financial situation in Debtor's previous case. See In re Goodwin, C/A No. 05-45110, slip op. at 1-3 (Bankr. D.S.C. Dec. 19, 2005) (Debtor had three previous bankruptcies pending within the previous two years and received a discharge under Chapter 7 in 2004). However, unlike the debtor in Goodwin, no presumption of bad faith arises in this case under § 362(c)(3)(C). Debtor completed payments under his first case and appears to have the intent and ability to complete the proposed plan in this case. Given the totality of these circumstances, the Court shall extend the automatic stay as to all creditors with the condition that Debtor must have a plan confirmed

by February 28, 2006 and should this case be dismissed for any reason Debtor will be barred from filing bankruptcy for a period of one (1) year under Chapters 11, 12, or 13.

Therefore, the Court grants the Motion and the automatic stay is extended as to all creditors, except as conditioned by this Order, until it otherwise terminates by another Court order or by statute. The automatic stay shall terminate under this Order if Debtor does not have a plan confirmed in this case by February 28, 2006. The Court further orders that should Debtor's case be dismissed for any reason that the dismissal shall be with prejudice for a period of one (1) year as to Chapters 11, 12, and 13.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 19, 2005

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