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JAN - 3 2006

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court  
Columbia, South Carolina

IN RE:

Fred Davis and Marguerite A. Davis,  
Debtors.

C/A No. 05-45232-W

**ENTERED**

**JUDGMENT**

JAN - 3 2006

Chapter 13

**S. R. P.**

Based upon the findings of fact and conclusions of law made in the attached Order, the Motion to Extend Stay filed by Fred Davis and Marguerite A. Davis is granted. The automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B). Should this case be dismissed for any reason, 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.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
January 3, 2006

**FILED**

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court  
Columbia, South Carolina (7)

IN RE:

Fred Davis and Marguerite A. Davis,  
Debtors.

C/A No. 05-45232-W

**ORDER**

Chapter 13

**ENTERED**

JAN - 3 2006

**S. R. P.**

This matter comes before the Court upon a Motion to Extend Stay ("Motion") filed by Fred Davis and Marguerite A. Davis ("Debtors") pursuant to 11 U.S.C. § 362(c)(3)(B).<sup>1</sup> A hearing on the Motion, after notice to all creditors, was completed within the thirty (30) day period following the petition date.

The Chapter 13 Trustee filed a response but did not oppose Debtor's Motion at the hearing.

CitiFinancial, Inc., a creditor, objected to the Motion on grounds that Debtors have not had a change in financial circumstances since their previous bankruptcy and Debtors fail to treat the debt of CitiFinancial in Debtors' proposed Chapter 13 plan. CitiFinancial, Inc. requested that the Court deny Debtors' Motion and dismiss this case with prejudice for a period of one-hundred eighty (180) days. CitiFinancial, Inc. withdrew its objection at the hearing on the Motion because Debtors' and the Chapter 13 Trustee entered into a consent order to lift the automatic stay with regard to property known as 627 Chester Avenue, Great Falls, South Carolina ("Property").

Debtors filed this case on December 4, 2005. Debtors were debtors in a case pending within a one (1) year period preceding the filing of this case. The automatic stay of § 362(a) will

<sup>1</sup> Hereinafter 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.

terminate on the 30th day after the filing of this case, absent an order extending the stay. 11 U.S.C. § 362(c)(3)(A).

Confirmation of Debtors' previous case was conditioned on Debtors providing certain documents to their Chapter 13 Trustee pursuant to Local Rule. The Court dismissed Debtors' previous case because Debtors failed to provide the required documents. Pending at the time of dismissal was a motion by CitiFinancial, Inc. to lift the automatic stay as to Property. Sections 362(c)(3)(C)(i)(II)(aa) and (III) may be implicated to create a presumption of bad faith in the filing of this case as to all creditors. Section 362(c)(3)(C)(ii) is implicated to create a presumption that Debtors filed this case in bad faith as to CitiFinancial, Inc.

In support of the Motion, Debtors assert the following:

1. Debtors' previous case was dismissed because Debtors failed to provide an appraisal of the Property to the Chapter 13 Trustee.
2. The Property is titled in the name of Debtor Fred Davis's ex-wife, who occupies the Property.
3. Debtor Fred Davis and his ex-wife signed a promissory note held by CitiFinancial, Inc. The note is secured by a mortgage on the Property.
4. Debtors assert that the Property was not property of the estate because Debtor Fred Davis does not have legal or equitable interest in the Property and therefore the Property should not have been listed on Schedule A of their previous bankruptcy.
5. Debtors are willing to abandon all interest, if any exists, that may have in the Property and have proposed to abandon the Property in their Chapter 13 plan.
6. Debtors assert that their failure to provide the appraisal requested by the Trustee

in their previous case was caused by a failure to cooperate with Debtors by the ex-wife in obtaining the appraisal.

7. Debtors have obtained documents indicating the ownership and value of the Property and have provided the same to their current Chapter 13 Trustee.
8. The Chapter 13 Trustee is satisfied that Debtors have no interest in the Property.

Section 362(c)(3)(C)(i)(II)(aa) provides that if a debtor's previous case is dismissed based upon a failure to file or amend documents required by the Court or Title 11, then a debtor must present clear and convincing evidence that debtor's current case was filed in good faith in order to extend the automatic stay. This section does not apply if Debtor presents a "substantial excuse" for failing to file or amend the required documents. In re Wells, C/A No. 05-45311-W (Bankr. D.S.C. Jan. 3, 2006). It appears the failure to provide the document at issue in Debtors' previous case was beyond their control. Debtors attempted but were unable to obtain the required document due to the acrimonious relationship between Debtor Fred Davis and his ex-wife. Debtors have provided a substantial excuse for not providing the required document and the Court finds there is not a presumption that this case was filed in bad faith pursuant to § 362(c)(3)(C)(i)(II)(aa).

A presumption that this case was not filed in good faith may nevertheless arise pursuant to § 362(c)(3)(C)(i)(III). Comparing Debtors' schedules in Debtors previous case and this case reveals that Debtors have decreased their monthly living expenses and increased their disposable income, which will result in Debtors paying an additional \$5,800.00 into their proposed Chapter 13 plan in this case. Debtors are also not valuing the claim of the creditor holding a security interest in Debtors' vehicle. Debtors proposed plan appears feasible and Debtors appear to have the intent and the ability to complete their proposed Chapter 13 plan. All of these facts indicate

that Debtors have had a substantial change in their financial circumstances and it appears that Debtors will complete their proposed Chapter 13 plan, thus the presumption under § 362(c)(3)(C)(i)(III) does not arise. There is a presumption that this case was not filed in good faith as to CitiFinancial, Inc.; however, CitiFinancial, Inc. withdrew its objection to the Motion and Debtors have agreed to abandon all interest they may have in the Property.<sup>2</sup>

Given the totality of these circumstances, the Court finds that Debtors have met their burden of proof and that Debtors filed this case in good faith. It is therefore ordered that the automatic stay is extended 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,  
January 3, 2006

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<sup>2</sup> By separate order, Debtor and CitiFinancial have also agreed to lift the automatic stay as to the Property.