

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

IN RE:

Terrence D. Jenkins and Francis M.
Jenkins,

Debtors.

C/A No. 05-45334-JW

ENTERED

JAN 13 2006

K. E. P.

Chapter 13

JUDGMENT

FILED

O'clock & _____ M

JAN 13 2006

United States Bankruptcy Court
Columbia, South Carolina (11)

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Debtors' Motion to Extend the Automatic Stay is granted and the automatic stay is extended as to all creditors pursuant to 11 U.S.C. § 362(c)(3)(B). The automatic stay shall terminate on April 15, 2006, without further order, if Debtors do not have a plan confirmed in this case on or before April 14, 2006. Should this case be dismissed for any reason, dismissal will be with prejudice to bar a re-filing by either Debtor for a period of one (1) year as to Chapters 11, 12, and 13 of the Bankruptcy Code.

John E. Whites

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
January 13, 2006

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ORDER

United States Bankruptcy Court
Columbia, South Carolina

This matter comes before the Court upon a Motion to Extend the Automatic Stay ("Motion") filed by Terrence D. Jenkins and Francis M. Jenkins ("Debtors") pursuant to 11 U.S.C. § 362(c)(3)(B).¹ The Motion and the Notice of Hearing were served on all creditors. Wells Fargo Bank, N.A. ("Wells Fargo"), a creditor holding a security interest and mortgage in Debtors' residence, objected to the Motion. The Chapter 13 Trustee filed a response to the Motion.

Debtors were debtors in a previous case before this Court. In their first bankruptcy case, Debtors filed for relief under Chapter 13 on January 4, 2005. Debtors' first case was dismissed on August 1, 2005 for failing to make payments due under the confirmed plan. Wells Fargo also obtained relief from the automatic stay in Debtors' previous case.

On December 14, 2005, Debtors again sought bankruptcy relief under Chapter 13. The automatic stay in the current case expires thirty (30) days after the petition date. 11 U.S.C. § 362(c)(3)(B). Debtors timely moved to extend the automatic stay as to all creditors. Debtors have also filed a proposed plan, schedules, and a statement of financial affairs.

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.

To extend the automatic stay, Debtors must demonstrate that they filed the current case in good faith; however, in this case, Debtors are presumed to have not filed in good faith because Debtors' first case was dismissed for failure perform the terms of a confirmed plan. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). Debtors are also presumed to not have filed in good faith as to Wells Fargo because it obtained relief from stay in Debtors' previous case. 11 U.S.C. § 362(c)(3)(C)(ii).

Debtors resolved the objection of Wells Fargo. With its counsel appearing at the hearing, Wells Fargo agreed to an extension of the automatic stay.

Debtors have otherwise met their burden of proof. Mr. Jenkins testified that he lost his job, which paid him approximately \$13,000.00 per year, in the previous case and that the loss of this job resulted in him being unable to make the required plan payments. Since the dismissal of the previous case, Mr. Jenkins testified that he has found new and stable employment, which is paying him approximately \$50,000.00 per year and is verified by his pay stubs.² Debtors' proposed plan also provides a plan payment of approximately \$200.00 more per month to creditors than the plan in Debtors' previous case. The Chapter 13 Trustee indicates that the proposed plan appears feasible and Debtors appear to have the intent and the ability to complete the proposed plan. All of these facts indicate that Debtors filed in good faith. Based upon the totality of the

² Debtors' Schedules indicate that Mr. Jenkins' new employment began approximately eight months prior to the petition date. If this were the case, then Mr. Jenkins would have started his new employment several months prior to the dismissal of Debtors' previous bankruptcy case. The Court assumes that Debtors will amend their Schedules to correct any errors, given Mr. Jenkins' testimony that his employment began after the dismissal of the previous case. Debtors also claim social security benefits that they receive on behalf of their grandchildren support their change in circumstance. This benefit was previously paid to Debtors' daughter who was living with Debtors during the previous bankruptcy and is now deceased. Although Debtors may receive this benefit, Debtors are in error to claim that this income supports a change in circumstance as Debtors listed this same benefit in their previous bankruptcy.

circumstance, the Court finds that Debtors have met their burden of proof and finds that this case was filed in good faith.

Despite finding that Debtors have filed this case in good faith and the subsequent increase in Mr. Jenkins' income, it appears that a realization of additional family income may be necessary for Debtors to meet their proposed plan payments. Accordingly, the Court is conditioning the extension of the automatic stay on Debtors' plan being confirmed on or before April 14, 2006.

It is therefore ordered that the automatic stay is extended as to all creditors pursuant to § 362(c)(3)(B). As a condition of extending the stay, it is further ordered that the automatic stay shall terminate April 15, 2006, without further order, if Debtors do not have a plan confirmed in this case on or before April 14, 2006. As a further condition for extending the automatic stay, it is ordered that should this case be dismissed for any reason, that the dismissal will be with prejudice to bar a re-filing by either Debtor 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 13, 2006