

IN THE UNITED STATES BANKRUPTCY COURT

FILED

FOR THE DISTRICT OF SOUTH CAROLINA

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JAN 20 2006

IN RE:

ENTERED

No. 05-45414-JW

Carl E. Council and Isolina Council,

JAN 20 2006

Chapter 13

United States Bankruptcy Court
Columbia, South Carolina (13)

Debtors. **K. E. P.** JUDGMENT

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 § 362(c)(3)(B). 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.

John E. Waites

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
January 20, 2006

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FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Carl E. Council and Isolina Council,

Debtor **K. E. P.**

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Case No. 05-45414-JW

Chapter 13

ORDER

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United States Bank
Columbia, South Carolina

This matter comes before the Court upon a Motion to Extend the Automatic Stay ("Motion") filed by Carl E. Council and Isolina Council ("Debtors") pursuant to 11 U.S.C. § 362(c)(3)(B).¹ The Motion and the Notice of Hearing were served on all creditors. 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 June 25, 2002. Debtors' first case was dismissed on August 15, 2005 for failing to make payments due under the confirmed plan.

On December 22, 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.

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).

It appears that Debtors were in their previous case for three years but the case was dismissed as a result of Mr. Council losing his job. Mr. Council testified that he and his wife

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.

attempted to sustain the previous bankruptcy by making plan payments for a year following his loss of employment but were eventually unable to meet the payment requirements. On or about the time that the previous case was dismissed, Mr. Council began his current employment. Since this case was filed, Mr. Council has received one pay increase and was recently promoted, which will entitle him to another pay increase in March, 2006. Ms. Council has also received several pay raises since their previous case was filed and the dismissal of the previous case. Thus it appears that Debtors have experienced a substantial change in circumstances since their previous case because, in this case, both Debtors are employed full time and they expect their employment to continue for the duration of this case. See In re Phillips, No. 05-87019, 2006 WL 91311, *2 (E.D. Okla. Jan. 6, 2006) (holding debtor's loss of employment in previous case was beyond debtor's control and extending the automatic stay where debtor obtained stable full time employment prior to filing the current case). Debtors' proposed plan also appears to be feasible and Debtors appear to have the intent and ability to complete their proposed plan. Therefore, based upon the totality of the circumstances, Debtors have met their burden of proof and the Court finds that Debtors filed this case in good faith.

It is therefore ordered that the automatic stay is extended as to all creditors pursuant to § 362(c)(3)(B). As a 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 2, 2006