

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

**FILED**  
at \_\_\_\_\_ O'clock & \_\_\_\_\_ min \_\_\_\_\_ M  
JAN 13 2006

IN RE:  
Shellie Eugene Wright, III and Fe Wright,  
Debtors.

C/A No. 05-45335-JW

United States Bankruptcy Court  
Columbia, South Carolina (33)

Chapter 13

**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 USDA 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.

Columbia, South Carolina,  
1/13, 2006

  
UNITED STATES BANKRUPTCY JUDGE

**ENTERED**

JAN 13 2006

**KPD**

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IN RE:

C/A No. 05-45335-JW

Shellie Eugene Wright, III and Fe Wright,

Chapter 13

Debtors.

**ORDER**

**ENTERED**

JAN 13 2006

**KPD**

This matter comes before the Court upon a Motion to Extend Stay ("Motion") filed by Shellie Eugene Wright, III, and Fe Wright (hereinafter the Wrights shall be referred to as "Debtors" or "Wright") pursuant to 11 U.S.C. § 362(c)(3)(B).<sup>1</sup> Debtors served the Motion and a Notice of Hearing on all creditors; however, the Motion and Notice are only directed to USDA. USDA did not file an objection to the Motion. The Chapter 13 Trustee filed a response to the Motion.

The Wrights were debtors in a previous bankruptcy case (C/A No. 04-04068-wb) that was pending within a one (1) year period preceding the filing of this case. Pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) is scheduled to terminate on January 13, 2006, the thirtieth (30th) day after Debtors filed their second bankruptcy case (C/A No. 05-45335-jw).

Pursuant to § 362(c)(3)(C)(i)(II)(cc), there is a presumption that Debtors did not file their second bankruptcy case in good faith because Debtors' previous case was dismissed for failure to perform under the terms of a confirmed plan. In light of the presumption of a lack of good faith, Debtors are required to demonstrate, by clear and

<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.

convincing evidence, that their current case was filed in good faith. 11 U.S.C. § 362(c)(3)(C).

In order to demonstrate that they filed this current bankruptcy case in good faith, Debtors assert that their operation of a new business venture indicates a substantial change of circumstances since the dismissal of their previous case because the business provides a more stable stream of income than their prior employment. Mr. Wright testified that he was laid-off by his employer during the administration of the prior case. Mrs. Wright subsequently quit her employment and Debtors began operating their business, Wright's Electrical Services, out of their home after the dismissal of their previous bankruptcy. In order to demonstrate the stability of their business, Debtors provided copies of four contracts that Debtors were currently servicing.

The Chapter 13 Trustee indicated that Debtors' proposed chapter 13 plan required payments of \$602.00 per month, which is higher than the payments scheduled by Debtors in their proposed plan. Upon discovery of the higher plan payments, Mr. Wright testified that he and his wife had the ability to make such payments.<sup>2</sup> Debtors are also proposing to pay their unsecured creditors twenty-eight (28%) percent of their allowed claims, whereas this class of creditors was only receiving twelve (12%) percent in Debtors' previous bankruptcy.

In light of the totality of the circumstances attendant in this case, the Court finds that Debtors have met their burden of proof and demonstrated that they filed this case in

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<sup>2</sup> The Chapter 13 Trustee noted that Debtors' plan may be feasible but she could not determine the feasibility of the plan without Debtors providing various documents to support the income and expenditures listed in their Schedules I and J. Nothing in this order should be construed as preventing the Chapter 13 Trustee from recommending dismissal of Debtors' case for failure to provide documents or a confirmable plan.

good faith. The automatic stay is extended but only as to USDA.<sup>3</sup> See In re Charles, 332 B.R. 538, 541 (S.D. Tex. 2005) (providing a hearing on a motion to extend the automatic stay as to the only creditor that received notice of the motion). See also In re Collins, No. 05-39711, 2005 WL 3163962 at \*3 (Bankr. D. Minn. Nov. 29, 2005) (denying a motion to extend stay as to all creditors on procedural grounds because debtor failed to provide notice to any creditors). However, since the Chapter 13 Trustee has not made a determination that Debtors' proposed plan is feasible, the Court is conditioning the extension of the automatic stay on the confirmation of Debtors' plan.

It is therefore ordered that the automatic stay is extended as to USDA pursuant to § 362(c)(3)(B). As a condition of extending the stay, it is further ordered that the automatic stay shall terminate on April 15, 2006, without further order, if Debtors fail to have a plan confirmed in this case by 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 Mr. Wright or Mrs. Wright 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,  
1/13, 2006

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<sup>3</sup> In Charles, 332 B.R. 538, 541 (S.D. Tex. 2005), the court provided debtor an opportunity to replead his motion to extend stay in order to make it effective against all creditors because the amended motion to extend could be made and noticed prior to the expiration of the stay. In this case, however, Debtors' counsel scheduled the hearing on the Motion one day prior to the expiration of the stay; therefore, an amendment to the notice and motion is not possible because the Court could not hold a hearing on any amended motion before the expiration of the stay.