

FILED
at _____ O'clock & _____ min. _____ M

JAN 24 2006

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (05)

IN RE:

Darlene Helen Simmons,

Debtor.

C/A No. 05-45460-JW

Chapter 13

JUDGMENT

ENTERED

JAN 24 2006

D.L.L.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Debtor's 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 Debtor 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 24, 2006

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
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IN RE:

C/A No. 05-45460-JW

ENTERED

Darlene Helen Simmons,

Chapter 13

JAN 24 2006

Debtor.

ORDER

D.L.L.

This matter comes before the Court upon a Motion to Extend the Automatic Stay ("Motion") filed by Darlene Helen Simmons ("Debtor") 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 and, at the hearing on the Motion, recommended that the Court grant the Motion.

Debtor was a debtor in a previous case before this Court. In her first bankruptcy case, Debtor filed for relief under Chapter 13 on February 2, 2004. Debtor's first case was dismissed on October 12, 2005 for failing to make payments due under the confirmed plan.

On December 29, 2005, Debtor 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). Debtor timely moved to extend the automatic stay as to all creditors. Debtor has also filed a proposed plan, schedules, and a statement of financial affairs.

To extend the automatic stay, Debtor must demonstrate that she filed the current case in good faith, for purposes of this Motion;² however, in this case, Debtor is presumed to have not

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 Court's findings are limited to the context of the Motion and nothing in this Order shall be construed as *res judicata* to prevent Debtor, the trustee, or a party in interest from challenging or establishing that this case or a plan was filed or proposed in good faith for purposes of § 1307 or § 1325. See *In re Charles*, 332 B.R. 538, 542 (Bankr. S.D. Tex. 2005) (Holding that Congress, by enacting § 362(c)(3), intended the Courts to conduct an early triage of a case and determine whether a case is doomed to fail or whether a case has a reasonable likelihood of success).

filed in good faith because Debtor's first case was dismissed for failure perform the terms of a confirmed plan. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

Debtor has met her burden of proof. Debtor testified that she lost her job with the State of South Carolina during the previous case due to a reduction in force. Debtor was granted a moratorium and obtained new employment with the State of South Carolina during the moratorium period; however, Debtor's new job paid Debtor less income and Debtor was unable to make the plan payments. In this case, Debtor's proposed plan payments are less than the plan payments in the previous case; however, Debtor's plan nevertheless proposes to pay unsecured creditors one-hundred (100%) percent of their allowed claims. Debtor is also being reimbursed for an automobile purchased in Debtor's name but utilized by her adult son. Debtor was not reimbursed by her son for this automobile in the previous bankruptcy. Debtor states that her new employment with the State of South Carolina is stable because she is employed in a different area and has been assured that this employment will continue. Debtor expects the employment to continue for the duration of her bankruptcy. For purposes of this initial examination required by the Motion, it appears at this time that her current employment will enable her to meet her living expenses and make her plan payments. The Court considers this to be a substantial change in Debtor's circumstances from the previous case in which Debtor experienced a period of unemployment and had insufficient income to make her plan payments and her living expenses. Debtor's proposed plan appears feasible and Debtor appears to have the intent and the ability to complete the proposed plan. Based upon the totality of the circumstances, the Court finds that Debtor has filed this case in good faith for the purposes of the Motion.

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 ordered that should this case be

dismissed for any reason, that the dismissal will be with prejudice to bar a re-filing by 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 24, 2006