

**ENTERED**

JAN 30 2006

**K.R.W.**

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Evelyn Williams,

Debtor.

C/A No. 06-00031-JW

Chapter 13

**JUDGMENT**

Based upon the findings of fact and conclusions of law made in the attached Order, 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 on April 15, 2006, without further order, if Debtor does 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 Debtor for a period of one (1) year as to Chapters 11, 12, and 13 of the Bankruptcy Code.

Columbia, South Carolina,

January 30, 2006

  
UNITED STATES BANKRUPTCY JUDGE

**FILED**  
at \_\_\_ O'clock & \_\_\_ min \_\_\_ M  
JAN 30 2006  
United States Bankruptcy Court  
Columbia, South Carolina (5)

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**ORDER**

**FILED**  
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United States Bankruptcy Court  
Columbia, South Carolina

This matter comes before the Court upon a Motion to Extend Stay (“Motion”) that was filed by Evelyn Williams (“Debtor”) pursuant to 11 U.S.C. § 362(c)(3)(B).<sup>1</sup> The Motion and Notice of Hearing were served on all creditors, but none filed an objection. The Chapter 13 Trustee filed a response to the Motion.

Ms. Williams was a debtor in a previous bankruptcy case (C/A No. 03-08054-jw) that was pending within the one (1) year period preceding the filing of this case. Debtor’s previous case was dismissed because she failed to pay her chapter 13 plan obligations in a timely manner. Therefore, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) is scheduled to terminate on February 2, 2006, the thirtieth (30th) day after Debtor filed her second bankruptcy case (C/A No. 06-00031-jw).

Pursuant to § 362(c)(3)(C)(i)(II)(cc), a presumption that Debtor did not file her second bankruptcy case in good faith exists because Debtor’s previous case was dismissed for failure to make timely payments under her confirmed plan. In light of the presumption of a lack of good faith, Debtor must demonstrate that her current case was filed in good faith by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C).

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<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.

Debtor's failure to pay during her first chapter 13 case was caused by being laid-off by her employer, the "Country Store." Prior to losing her employment, Debtor made fourteen (14) plan payments to the Chapter 13 Trustee. Apparently, after Debtor's case was dismissed on March 2, 2005, Debtor was re-employed by the "Country Store" later that month. After being rehired, Debtor's employment continues, and she has also received a raise in pay. Debtor currently earns \$1,516.67 per month and incurs \$1,341.52 in monthly expenditures. Netting Debtor's current monthly expenditures against her current monthly income yields \$175.15 for Debtor's plan which at the moment appears feasible. Debtor's employment appears stable. Furthermore, Debtor appears to have the intent and ability to complete the proposed plan. Based upon the totality of the circumstances, the Court finds that Debtor has carried her burden of proof and demonstrated that this case was filed in good faith.<sup>2</sup>

The Court notes, however, that Debtor makes no deductions for payroll taxes and social security withholdings on her Schedule I. Under the circumstances of this case, Debtor will need to realize additional income to make her plan payments because the remaining income of \$175.15 after Debtor pays her monthly living expenses is not sufficient to fund her \$175.00 plan payments if any amount of Debtor's income is set aside for payroll taxes and social security withholdings. The Court recognizes that Debtor may amend her schedules or procure additional sources of income to make her

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<sup>2</sup> 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).

plan feasible prior to confirmation. Therefore, the Court is conditioning the extension of the automatic stay upon confirmation of Debtor's plan.

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 on April 15, 2006, without further order, if Debtor does 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 Debtor for a period of one (1) year as to Chapters 11, 12, and 13 of the Bankruptcy Code.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
1/30, 2006

  
UNITED STATES BANKRUPTCY JUDGE