

FILED

at _____ O'clock & _____ min. _____ M

JAN 30 2006

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (30)

IN RE:

Rebecca M. Squire,

Debtor.

C/A No. 06-00030-JW

Chapter 13

JUDGMENT

ENTERED

JAN 30 2006

D.L.L.

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 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, 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 30, 2006

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Chapter 13

ORDER

ENTERED

JAN 3 0 2006

D.L.L.

This matter comes before the Court upon a Motion to Extend Stay ("Motion") that was filed by Rebecca M. Squire ("Debtor") pursuant to 11 U.S.C. § 362(c)(3)(B).¹ The Motion and Notice of Hearing on the Motion was served on all creditors, but none filed an objection. The Chapter 13 Trustee filed a response to the Motion.

Ms. Squire was a debtor in a previous bankruptcy case (C/A No. 05-05046-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 submit certain documents to the Chapter 13 Trustee 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. 06-00030-jw).

Debtor's previous case was dismissed for a failure to submit documents to the Chapter 13 Trustee in a timely manner. Prior to filing her first bankruptcy case, Debtor suffered an on-the-job injury. After suffering the injury, Debtor's doctor did not clear her to work during the administration of her first case. Therefore, Debtor was unable to earn sufficient income to fund her plan because she was not medically cleared to work. By letter, Debtor's counsel advised Debtor that the Chapter 13 Trustee required an amended

¹ 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.

Schedule I that demonstrated sufficient income to fund Debtor's proposed Chapter 13 plan.

However, because Debtor was not medically cleared to work, Debtor could not document any income on the amended Schedule I required by the Chapter 13 Trustee. Under the circumstances, the injury that prevented Debtor from maintaining employment in the first case was the primary reason Debtor failed to submit the required amended Schedule I. Therefore, a substantial excuse for Debtor's failure to provide a document exists in this case. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). Accordingly, Debtor must demonstrate that she filed her case in good faith by a preponderance of the evidence.

In order to demonstrate that she filed this current bankruptcy case in good faith, Debtor asserts (1) that she has obtained new employment since the dismissal of her case; (2) that a credit insurance policy is paying the balance on her automobile loans; and (3) that financial contributions from her brother, sister, and son. Taken as a whole, Debtor concludes that the three circumstances described demonstrate a substantial change in circumstances which indicate that the Chapter 13 plan in this case will be confirmed and fully performed.

Debtor has obtained new and regular employment as a child care provider to a six (6) month old child. With the new employment, Debtor now earns approximately \$360.00 per week which equates to approximately \$1,440.00 per month.² Debtor's new employment appears stable and demonstrates a change in circumstances. Furthermore, the fact that Debtor's credit insurance policy is alleviating Debtor's obligation to make

² Debtor's counsel indicated that she would submit a revised Schedule I in order to show the income that Debtor earns through her child care services. As of the petition date, Debtor's Schedule I showed that Debtor earned only \$340.00 per month in disability without the financial assistance of her family.

car payments is another factor in her favor. Given the totality of the circumstances attendant in this case, it appears that Debtor has filed this case in good faith.³

Despite finding that Debtor has filed this case in good faith, it appears that a realization of additional income may be necessary for Debtor to make her proposed plan payments. Debtor cites to contributions from family as additional sources of income to fund her plan. However, the Court cautions against simply listing financial contributions from third parties on Schedule I to demonstrate good faith or plan feasibility.

In order for the Court to consider the financial contributions that Debtor discloses, Debtor must demonstrate either that the contributing third-party is legally obligated to make certain contributions to debtor *or* that the contributing third party has a history of making regular and reliable contributions. See In re Bigby, C/A No. 05-45006-JW, slip op. at 3-4 (Bankr. D.S.C. Dec. 7, 2005) (citing cases). Despite the affidavit provided, Debtor did not prove that the third parties making the financial contributions are legally obligated to do so or that they have a history of providing Debtor with regular financial contributions. In light of these concerns, the Court shall condition the extension of the automatic stay on the confirmation of Debtor's proposed 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 on or before April 14, 2006. As a further condition for

³ 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).

extending the automatic stay, it is ordered that should this case be dismissed for any reason, 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,
1/30, 2006