

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

IN RE:

Barbara L. Pratt,

Debtor.

C/A No. 06-00148-JW

Chapter 13

**SUPPLEMENTAL  
ORDER<sup>1</sup>**

**FILED**  
at ..... O'clock & ..... min ..... W  
**FEB 15 2006**  
United States Bankruptcy Court  
Columbia, South Carolina (6)

This matter comes before the Court upon matters concerning procedural defects associated with the filing of a motion to extend stay under 11 U.S.C. § 362(c)(3)(B).<sup>2</sup>

On January 16, 2006, Barbara L. Pratt ("Debtor") filed a Chapter 13 bankruptcy petition with the Court. Because Debtor had a previous bankruptcy case pending within the one year preceding her January 16, 2006 filing, the automatic stay was set to expire on February 15, 2006 pursuant to § 362(c)(3)(A).<sup>3</sup> Thus, in order to extend the stay, Debtor was required to file a motion to extend stay, and demonstrate by evidence that she filed the recent bankruptcy case in good faith.

Before the Court can extend the automatic stay, the Bankruptcy Code requires the filing of a motion and completion of a hearing before the expiration of the 30-day period prescribed by § 362(c)(3)(A). See 11 U.S.C. § 362(c)(3)(B) ("[O]n motion of a party in

<sup>1</sup> This order supplements a February 14, 2006 order that addressed the merits of a separately filed motion to extend stay.

<sup>2</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.

<sup>3</sup> Section 362(c)(3)(A) of the Bankruptcy Code provides as follows:

[I]f a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refilled under a chapter other than chapter 7 after a dismissal under section 707(b)-

the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate on the 30th day after the filing of the later case....

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interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors. . . after notice and a hearing *completed before the expiration of the 30-day period* only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. . . .”).

In order to meet the requirements of the Bankruptcy Code, the Court promulgated local rules specifically designed to address the filing of motions to extend stay and the scheduling of hearings on such motions. See SC LBR 4001-1(b) et seq. In this case, Debtor’s counsel failed to comply with this Court’s local rules in two material ways.

First, with respect to the first motion to extend stay (“First Motion”) filed in this case, Debtor’s counsel failed to file the First Motion with Debtor’s petition in accordance with SC LBR 4001-1(b)(2). Instead, Debtor’s counsel filed the First Motion fourteen (14) days after the filing of the petition. Debtor’s counsel also failed to select a hearing date that provided at least fifteen (15) days notice of the hearing on the motion. See SC LBR 4001-1(b)(2) (requiring a motion to extend stay to be served on creditors sought to be stayed, the United States Trustee, and any trustee serving in the case *at least fifteen (15) days before* the scheduled hearing). In light of the deficiencies, the Court denied, without hearing, the First Motion without prejudice.

Second, Debtor’s counsel scheduled a hearing on a second motion to extend stay (“Second Motion”) on a date *after* the expiration of the automatic stay. Scheduling a hearing on the Second Motion on a date after the day the automatic stay terminated under § 362(c)(3)(A) is a clear violation of SC LBR 4001-1(b)(1), which explicitly provides that “[m]otions pursuant to § 362(c)(3) shall be scheduled to be heard *prior to the*

*expiration of thirty (30) days following the filing of the case.”* (emphasis added). Furthermore, SC LBR 4001-1(b)(1)(F) states that “[f]ailure to properly select a hearing date, or selection of a hearing date that is more than 30 days following the filing of the case pursuant to 11 U.S.C. § 362(c)(3), may be considered a waiver.” Accordingly, in light of the improper scheduling of the hearing, the Court denied the Second Motion without a hearing and without prejudice.

Debtor’s counsel then filed a third motion to extend stay (“Third Motion”) and requested a hearing on the Third Motion on an expedited basis. Despite initial problems regarding how the Third Motion was filed and scheduled for hearing,<sup>4</sup> the Court scheduled an expedited hearing on the Third Motion in order to conduct the hearing before the date of the termination of the stay. However, the Court notes that scheduling a hearing for a motion to extend stay on an expedited basis frustrates the purpose of the local rules promulgated by the Court.

The local rules for selecting a hearing date for a motion to extend stay are designed to give interested parties and the Court ample time to prepare for the issues associated with determining whether to extend the stay. Furthermore, since debtors bear a high burden of proof in rebutting the presumption that their case was filed with a lack of good faith, the local rules seek to ensure the allowance of sufficient time to carefully examine the evidence presented, and issue a written order. Failure to properly schedule a hearing on a motion to extend stay undermines the Court’s efforts to carefully consider the totality of circumstances of a given debtor’s case. Furthermore, failing to file a

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<sup>4</sup> The Court notes that Debtor’s counsel initially failed to properly seek an expedited hearing by having a non-lawyer subscribe the certification of necessity associated with the Motion for Expedited Hearing. Debtor’s counsel also failed to file a proper certificate of service indicating that the Chapter 13 Trustee assigned to Debtor’s case had been properly served. After extensive discussion with Court staff, Debtor’s counsel remedied the deficiencies.

timely motion to extend stay or properly notice or schedule it may impact the due process rights of those parties affected by the motion and their opportunity to object and be heard.

With these concerns in mind, the Court strongly urges counsel filing motions to extend stay and the bar in general to maintain compliance with the Court's local rules as they are designed for the timely resolution of motions to extend stay pursuant to the provisions of the Bankruptcy Code. Failure to comply with the requirements of the Court's local rules, including the filing and scheduling requirements therein, may result in denial of the motion, prejudice to parties, and a consideration of sanctions.

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
February 15, 2006