

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

IN RE:

Shervin T. Williams,

ENTERED

FEB 24 2006

Case No. 06-00306-JW

Chapter 13

Debtor **K. E. P.**

JUDGMENT

FILED
O'clock & min
FEB 24 2006
United States Bankruptcy Court
Columbia, South Carolina

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 to all creditors pursuant to § 362(c)(3)(B). Should this case be dismissed for any reason, 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
February 24, 2006

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

IN RE:

Shervin T. Williams,

Debtor **K. E. P.**

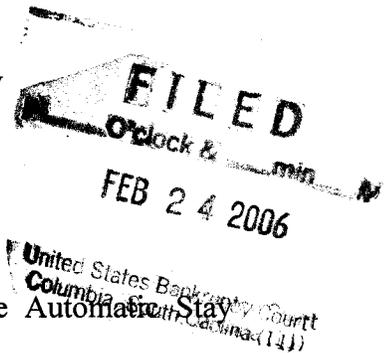
Case No. 06-00306-JW

Chapter 13

ORDER

ENTERED

FEB 24 2006



This matter comes before the Court upon a Motion to Extend the Automatic Stay (“Motion”) filed by Shervin T. Williams (“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.

Debtor was a debtor in a previous case before this Court. Debtor previously filed for relief under Chapter 13 on July 31, 2003. On December 27, 2005, the Court dismissed Debtor’s first case because of he failed to make payments due under the confirmed plan.

On January 30, 2006, 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. Debtor has also filed a proposed plan, schedules, and a statement of financial affairs.

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

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).

Debtor is a truck driver. Debtor was in the previous plan for over two years and made payments due under the plan until Debtor's truck and trailer were damaged by a tree, which fell on Debtor's truck during heavy wind. As a result of the damage to Debtor's truck, he was out of work for six weeks, which caused him to become behind on plan payments. Debtor's truck was repaired and Debtor was employed prior to the dismissal of the previous case; however, his period of unemployment caused him to be unable to catch up on plan payments after he resumed employment. Although Debtor's employment began prior to the dismissal of the previous case, the Court recognizes that under certain circumstances a debtor's unemployment may result in a debtor being forced to decide between making a plan payments and living expenses. Due to no fault of Debtor, he became unemployed and was unable to make and catch up on his plan payments after his employment resumed. He is now fully employed and able to perform under the terms of the proposed plan. Debtor expects his employment to continue for the duration of this case. Debtor's non-filing wife, who was unemployed for the majority of the previous case, is also employed and contributing income to Debtor's household. For purposes of this initial examination required by the Motion, it appears Debtor has experienced a substantial change in circumstances because his employment is stable. See In re Simmons, C/A No. 05-45460-W, slip op. (Bankr. D.S.C. Jan. 24, 2006), In re Phillips, No. 05-87019, ___ B.R. ___, 2006 WL 91311 (Bankr E.D. Okla. 2006) (holding debtor experienced a substantial change in circumstances when debtor lost job in previous case and then became fully employed prior to current case). The fact that Debtor performed in the previous case for over two years and that his wife is contributing income to the household also weighs in his favor. 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 to all creditors extended 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,
February 24, 2006