

**ENTERED**  
APR 28 2006  
K.R.W.

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

**FILED**  
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APR 28 2006  
U.S. Bankruptcy Court  
District of South Carolina (13)

IN RE: ) C/A No. 06-01241  
)  
Larry D. Craddock, ) Chapter 13  
)  
)  
Debtor ) **ORDER**

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This matter comes before the Court upon a Motion to Extend Stay (“Motion”) filed by Larry D. Craddock (“debtor”) pursuant to 11 U.S.C. § 362(c)(3)(B).<sup>1</sup> The debtor served the Motion and a Notice of Hearing on all creditors and a hearing on the Motion was completed within the thirty (30) day period following the petition date. The Chapter 13 trustee filed a response to the Motion. Ocwen Loan Servicing, LLC (“Ocwen”), a party in interest as servicing agent for the debtor’s mortgage holder, filed an objection to the Motion.

The debtor in this case was also a debtor in a prior Chapter 13 bankruptcy case that was pending within a one (1) year period preceding the filing of the current case. Therefore, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) is scheduled to terminate on the thirtieth day (30<sup>th</sup>) day after the debtor filed this bankruptcy case. The debtor’s prior case was dismissed on February 14, 2006 for non-payment before confirmation of the plan and therefore, §362(c)(3)(C)(I) does not apply. However, pursuant to §362(c)(3)(C)(ii) there is a presumption that the debtor did not file this case in good faith as to Ocwen because Ocwen commenced an action in the previous case seeking relief under 11 U.S.C. § 362(d). That action by Ocwen resulted in a Consent Order modifying the automatic stay. In light of the presumption that the

<sup>1</sup> 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 filed this case with a lack of good faith as to this party in interest, the debtor must demonstrate, by clear and convincing evidence, that he filed this case in good faith in order to extend the stay.

The debtor testified that after this case was filed but since the dismissal of his first case he has obtained a new job with increased pay, as compared to his pay at the time of dismissal of his previous case. He has filed an amended schedule I evidencing this change and testified that at the time he filed this case that he was aware of this job prospect. Comparison of schedules filed in the previous case and those recently updated in the present case reveal that the debtor's monthly take home pay in his new position is significantly higher than his monthly take home pay at the time of the dismissal of his previous case. In addition, debtor testified that he is now in good health after several heart surgeries and anticipates uninterrupted employment. At the hearing Ocwen and the Trustee cross-examined the debtor regarding his employment history to attempt to call into question his ability to sustain his current employment. However, in light of the debtor's testimony and weighing his credibility as a witness and considering the substantial change in income combined with his current good health, the court is convinced that the debtor deserves an opportunity and has shown the ability to move to confirmation of a plan in this case.

The court therefore finds that the debtor has met his burden of proof and finds that this case was filed in good faith. 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 automatic stay, it is further ordered that, should the Trustee request it, the debtor will be subject to a wage deduction order to assist the debtor in complying with the plan. As a further condition of extending the stay, should this case be dismissed for any reason, said dismissal shall be with prejudice as to any subsequent

filing by the debtor under Chapters 11, 12, and 13 of the Bankruptcy Code for a period of one (1) year.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "John L. Brown", is written over a solid horizontal line.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
April 28, 2006