

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

FILED
at _____ O'clock & _____ min _____ M
MAY - 5 2006
United States Bankruptcy Court
Columbia, South Carolina (4)

IN RE:)
Stephan Khachatryan)
Debtor)

C/A No. 06-01432

Chapter 13

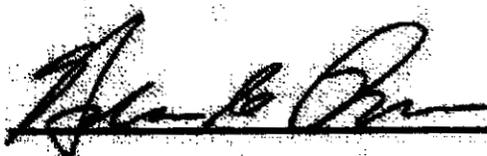
JUDGMENT

ENTERED

MAY - 5 2006

B. R. M.

Based upon the findings of fact and conclusions of law made in the attached Order, the Motion to Extend Stay filed by Stephan Khachatryan ("debtor") is denied. Therefore, the debtor's automatic stay shall terminate on May 6, 2006.



UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
May 5, 2006

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IN RE:)	C/A No. 06-01432
)	
Stephan Khachatryan)	Chapter 13
)	
)	ORDER
Debtor)	

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B. R. M.

This matter comes before the Court upon a Motion to Extend Stay ("Motion") filed by Stephan Khachatryan ("debtor") pursuant to 11 U.S.C. § 362(c)(3)(B) requesting an extension of the stay of § 362 as to all creditors.¹ 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. As the debtor in this case was also a debtor in a prior Chapter 13 bankruptcy case that was pending within a one year period preceding the filing of this current case, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) is scheduled to terminate on the thirtieth day (30th) day after the debtor filed this case. The debtor has filed a motion pursuant to § 362(c)(3)(B) asking that the stay be extended.

To prevail the debtor must present clear and convincing evidence to this court to rebut the presumption set forth in § 362(c)(3)(C), which provides that there is a presumption that this case was not filed in good faith. Examples of cases in which this court has found that a debtor presented clear and convincing evidence to rebut the presumption include:

In re Davis, C/A No. 05-45232-W, slip op. at 3 (Bankr. D.S.C. Jan. 3, 2006)(debtors decreased monthly living expenses and increased disposable income, resulting in additional \$5,800 paid into proposed plan); In re Miller, C/A No. 05-45175-W, slip op. at 2 (Bankr. D.S.C. Jan. 5,

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.

2006)(debtor unemployed during first case, now has stable employment with income increase of \$600 per month); In re Weans, C/A No. 06-00598-JW, slip op. at 2 (Bankr. D.S.C. Mar.13, 2006)(income increased by \$1,000 per month and substantial equity in real property improves likelihood that plan will be performed and creditors paid); In re Pringle, C/A No. 06-00577-JW, slip op. at 2-3 (Bankr. D.S.C. Mar. 14, 2006)(equity in property of \$15,000 sufficient to pay unsecured creditors in full); In re Wright, C/A No. 05-45335-JW, slip op. at 2 (Bankr. D.S.C. Jan. 13, 2006) (debtors who lost employment during prior case now operating own business and presented four contracts they were servicing; proposed plan pays unsecured creditors twenty-eight (28%) of allowed claims, compared to twelve (12%) in previous bankruptcy).

The debtor in this case presents as his evidence of good faith the fact that he has abandoned a vehicle to the betterment of his financial situation, and thus has had changed circumstances sufficient to enable him to confirm and complete the plan in this case. According to his motion and testimony, the debtor alleges that one of his creditors mistakenly repossessed and sold the debtor's vehicle. The creditor offered to rectify the mistake by offering the debtor another, more expensive vehicle. The debtor testified that as a result he was unable to make his plan payments in his last case. However, in the last case the debtor eventually abandoned this vehicle and amended his plan to reduce his plan payments from \$570 to \$200 per month. Despite this change, his case was dismissed for failure to make plan payments. In this case, the debtor's plan payment is \$89 and of course the budget and plan no longer include the costs associated with the abandoned vehicle. The debtor asserts that the decrease in overall expenses caused by the relinquishment of the vehicle and a reduction in his plan payment from the last case constitutes a substantial change in his financial circumstances. The debtor's amended Schedules I and J (amended July 13, 2005) from his first case show monthly income of \$3,272 and expenses of

\$3,127 for a difference of \$145. Schedules I and J in the present case show income of \$3,052 and expenses of \$2,963 for a difference of \$89. Therefore, the debtor's income and his net excess income available to fund the plan have both decreased. In the first case, the debtor was \$55 short on his budget after considering the \$200 plan payment, and in this case he breaks even.

As additional evidence that the case was filed in good faith, the debtor asserts that all creditors are adequately protected in this case as required by 11 U.S.C. § 362 and asserts that unsecured creditors are being treated well under the plan. In the prior case, the debtor's plan proposed a minimum payment to unsecured creditors of 1% of their general unsecured claims. In this case the debtor also proposes a minimum payment of 1% of general unsecured claims. According to the debtor's Schedule F, general unsecured creditors are owed a total of \$147,069. If the debtor completes his proposed plan of paying \$89 monthly for 60 months, he will pay a total of \$5,340 to the trustee. After deducting the debtor's attorney's fees, the trustee's commission and payments to one secured creditor, scheduled general unsecured creditors will in fact only receive the minimum distribution of approximately 1% under the plan payable in installments over the next five years.² This minimal proposal does not weigh in the debtor's favor in meeting his burden of rebutting the presumption of a lack of good faith.

Pursuant to § 362(c)(3)(C)(i)(II)(cc) there is a presumption that the debtor did not file this case in good faith because the debtor's previous case was dismissed for failure to make timely plan payments pursuant to a confirmed plan. A presumption also arises if the debtor cannot show that there has been a substantial change in the financial or personal affairs of the debtor since the dismissal of the prior case or any other reason to conclude that the current case will be concluded with a confirmed plan that will be fully performed. § 362(c)(3)(C)(i)(III)(bb). In order for the

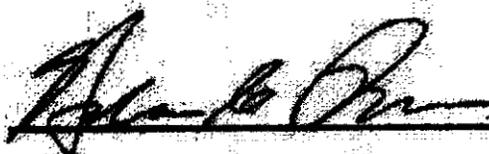
²The plan proposes payment of \$100 plus interest to a secured creditor, \$3000 in attorney's fees, and is subject to a chapter 13 trustee fee of up to 10% of funds disbursed, which would actually leave approximately \$1700 for other creditors with scheduled claims of \$147,069.

Court to extend the stay as requested, the debtor must demonstrate, by clear and convincing evidence, that he filed this case in good faith. The lack of a substantial change in financial or personal circumstances since the dismissal of a previous bankruptcy case gives rise to a presumption that a subsequent bankruptcy case is not filed in good faith. See In re Bigby, C/A 05-45006-W, slip op. at 3 (Bankr. D.S.C. Dec. 7, 2005).

After considering the testimony of the debtor, the schedules filed with the court and the arguments of counsel, the Court concludes that the debtor has failed to meet the burden of proof necessary to rebut the presumption of a lack of good faith in the filing of this case. The debtor's evidence of a substantial change in circumstances was neither substantial nor clear nor convincing. The change in circumstances asserted by the debtor – the surrender of the car and lowering of the plan payment – was not conclusively shown to have a *substantial* impact on his financial situation *since the dismissal of the last case*. The court is not convinced that the changes were substantial, but even if they were, the timing of the change does not warrant a finding for the debtor. § 362(c)(3)(C)(i)(III) (“a case is presumptively filed not in good faith . . . if . . . (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case. . .”)(emphasis added). See In re Jenkins, C/A No. 05-45334-JW, slip op. at 2 (Bankr. D.S.C. Jan. 13, 2006) (income from social security benefit does not support change in circumstance where it was listed in previous bankruptcy); In re Bigby, C/A No. 05-45006-JW, slip op. at 3 (Bankr. D.S.C. Dec. 7, 2005)(financial contribution from debtors' son was not substantial change in circumstance because contribution began during previous case.) No further evidence was offered to convince the court of a substantial change in circumstances nor any other reason to conclude that the current case, unlike the last, will be concluded with a confirmed plan that will be fully performed.

Therefore, the debtor's Motion to Extend Stay is denied and the stay will expire on May 6, 2006 pursuant to § 362(c)(3)(A) without further order.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John P. [unclear]", is written over a horizontal line.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
May 5, 2006