

U.S. BANKRUPTCY COURT  
District of South Carolina

Case Number: 06-02327

ORDER ON MOTION TO EXTEND THE AUTOMATIC STAY

The relief set forth on the following pages, for a total of 4 pages including this page,  
is hereby ORDERED.

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**FILED BY THE COURT**  
**06/26/2006**



Entered: 06/28/2006

A handwritten signature in black ink, appearing to read "S. R. O.", written over a horizontal line.

US Bankruptcy Court Judge  
District of South Carolina

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF SOUTH CAROLINA**

IN RE:

William Grady Shealy  
D/b/a Shealy's Concessions,

Debtor.

C/A No. 06-02327-DD

Chapter 13

**ORDER**

This matter is before the Court on William Grady Shealy's ("Debtor") Motion to Extend Stay ("Motion") pursuant to 11 U.S.C. §362(c)(3)(B) as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").<sup>1</sup> The Motion and Notice of Hearing on the Motion were served on all creditors, but none filed an objection. The Chapter 13 Trustee filed a response to the Motion.

Debtor was previously a debtor in a Chapter 13 bankruptcy case (04 -14910) that was pending within a one (1) year period preceding the filing of this case. Therefore, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) is scheduled to terminate on July 3, 2006, the thirtieth day (30<sup>th</sup>) day after Debtor filed the present bankruptcy case. Pursuant to § 362(c)(3)(C)(i)(II)(cc), a presumption that Debtor did not file the present bankruptcy case in good faith exists because Debtor's previous case was dismissed for failure to make timely payments under the confirmed plan. In light of the presumption of a lack of good faith, Debtor is required to demonstrate, by clear and convincing evidence, that the current case was filed in good faith. 11 U.S.C. § 362(c)(3)(C).

In order to demonstrate that Debtor filed the current bankruptcy case in good faith Debtor points to several factors. First, Debtor testified that his last case was dismissed after he was laid off from his employment and remained unemployed for close to eight (8) months beginning May 8, 2005, which caused him to fall behind on his plan payments. This fact weighs in favor of the debtor because the loss of his job was presumably not

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<sup>1</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.

within the Debtor's control.<sup>2</sup> Second, Debtor's amended Schedules<sup>3</sup> I and J indicate that his net disposable income has risen from \$999.61 in the previous case to \$1,335.05 in the present case. The additional income can be contributed to three occurrences. First, Debtor received a 7% raise at his place of employment. Debtor and his wife operate a "side business"(i.e., concession stand) that produces \$1,700.00 of income per month. Also, Debtor's adult son now collects social security disability adding \$402.00 monthly to the household income. Debtor as guardian for his disabled son collects the disability benefits. I will consider the social security funds in my analysis because I find them to be a reliable source of funds for the household. See In re Bell, C/A No. 06-01781-JW, slip op. (Bankr. D.S.C. May 26, 2006); In re Bigby, C/A No. 05-45006-JW, slip op. (Bankr. D.S.C. Dec. 7, 2005); In re Williams, C/A No. 97-08824-W, slip op. (Bankr. D.S.C. Jan. 13, 1998) (Voluntary contributions should not be considered as part of debtors' income unless there is a sound reason to determine that the payments are reliable and will continue to be made throughout the life of the plan). This increase in Debtor's disposable income is a factor that weighs in favor of extending the stay. Debtor has consented to a wage order. The use of a wage order makes it more likely that Debtor will make required trustee payments, and this factor weighs in Debtor's favor. A fourth factor considered is the proposed payout to unsecured creditors. Debtor's plan in his previous case allowed only 1% to unsecured creditors while the proposed plan in the present case has a 100% payout to unsecured creditors. The final factors I considered in this case are the Trustee's recommendation and feasibility of the proposed plan. The income and expenses stated in the amended schedules seem to be reasonable, and there is a net disposable income of \$1,335.05 for proposed plan payments of

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<sup>2</sup> Motions to extend the stay require this Court sitting as finder of fact to determine the weight and credibility of the evidence offered. The Court can only assess evidence before it, so if there is uncontradicted evidence (testimonial or otherwise), the motion must be decided based solely on the reliability and credibility of that evidence. In the instant case the Court found the testimony of the Debtor to be credible, and there was no contrary evidence.

<sup>3</sup> When hearing motions to extend the stay pursuant to § 362(c)(3)(B) it is imperative that debtors' schedules and other relevant documents filed with the Court (e.g., plan) are complete, accurate, and up-to-date. There has been a tendency by debtors and their counsel to offer evidence at the hearing inconsistent with the schedules, and then inform the Court that the schedules will later be amended. This practice should not continue. All amendments should be made sufficiently in advance of the hearing to give the Court, creditors, and Trustee time to adequately prepare. In fact, failure to do so may be an indication of the absence of good faith.

\$1,075.00, thus the plan appears feasible. The Trustee indicated to the Court that she recommended extending the stay. While I am not required to nor will I always follow the recommendation of the Trustee, I do consider the recommendation of the trustee to carry substantial weight.

Based on the totality of the circumstances in this case, the Court finds that Debtor has met his burden of proof that this case was filed in good faith,<sup>4</sup> and that the equities of the case support granting the Motion.

It is therefore,

**ORDERED** that the automatic stay is extended as to all creditors pursuant to § 362(c)(3)(B); and it is further

**ORDERED** that the automatic stay shall terminate sixty (60) days from the date of this order, without further order, if a plan is not confirmed in this case on or before that time; and it is further

**ORDERED** that should this case be dismissed for any reason such dismissal shall be with

prejudice for a period of one-hundred and eighty (180) days as to any subsequent filing by Debtor under Chapter 11, 12, or 13 of the Bankruptcy Code.

**AND IT IS SO ORDERED.**

Columbia, South Carolina  
June 26, 2006

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<sup>4</sup> The Court's findings are limited to the context of this Motion and nothing in this Order shall be construed as *res judicata* to prevent Debtor, the trustee, or any party in interest from challenging or establishing that this case or plan was filed or proposed in good faith for purposes of 11 U.S.C. §§ 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.)