

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**

IN RE:

at \_\_\_\_\_ o'clock & \_\_\_\_\_ min. )

C/A No. 06-02356

**ENTERED**

Joe Anthony Peake,

JUN 29 2006 )

Chapter 13

JUN 29 2006

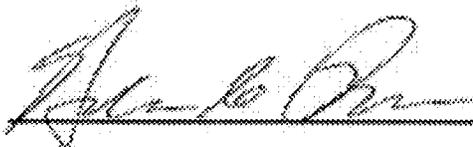
United States Bankruptcy Court  
Columbia, South Carolina (11)

**JUDGMENT**

**K. E. P.**

Based on the findings of fact and conclusions of law set out in the Order entered herein, Debtor's Motion to Extend the Automatic Stay is conditionally granted and the automatic stay is extended as to all creditors pursuant to § 362(c)(3)(B). The automatic stay will be temporarily extended until September 15, 2006, and shall be extended throughout the duration of the case should the Debtor be successful in confirming a plan by that date. If no plan is confirmed on or before September 15, 2006, the automatic stay will automatically expire on that date. 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.**



UNITED STATES BANKRUPTCY JUDGE

Spartanburg, South Carolina  
June 29, 2006

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

IN RE: ) C/A No. 06-02356  
)  
Joe Anthony Peake, ) Chapter 13  
)  
)  
Debtor )  
ORDER

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United States Bankruptcy Court  
Columbia, South Carolina (11)

ENTERED  
JUN 29 2006  
K. E. P.

This matter comes before the Court upon a Motion to Extend Stay ("Motion") filed by Joe Anthony Peake ("Debtor") pursuant to 11 U.S.C. § 362(c)(3)(B). 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.

Mr. Peake was a debtor in a previous bankruptcy case (C/A No. 06-00437-jw) that was pending within a one (1) year period preceding the filing of this case. The Debtor's previous case was dismissed on March 6, 2006 because he failed to file timely lists, schedules, statements and other documents. Therefore, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) will terminate on July 4, 2006, thirty (30) days after the Debtor filed the current case. Pursuant to § 362(c)(3)(C)(i)(II)(aa), a presumption that the Debtor did not file the current case in good faith exists because the Debtor's previous case was dismissed for failure to file documents without substantial excuse. In the previous case, after filing his petition and some required documents, the Debtor was given an extension of time to file numerous missing schedules and statements. However, nothing further was ever filed, and the case was dismissed. The only explanation offered for this failure was that the Debtor came to his attorney "at the

eleventh hour” to file bankruptcy in order to save his house from foreclosure. Thereafter, the Debtor’s attorney determined that the Debtor did not make enough money to fund a Chapter 13 plan, and the Debtor therefore did not complete the filings with the court. This is not a satisfactory excuse because this determination should have been made before a petition was ever filed. Therefore, the presumption of a lack of good faith due to a failure to file documents arises in this case, and the Debtor must demonstrate that his current case was filed in good faith by clear and convincing evidence.

11 U.S.C. § 362(c)(3)(C).

In In re Goodwin, C/A No. 05-45110-jw (Bankr. D.S.C. Dec. 19, 2005), this court set forth a number of factors which may be considered in determining whether a case is filed in good faith. These factors include the following: the percentage of proposed repayment; the debtor’s financial situation; the period of time payment will be made; the debtor’s employment history and prospects; the nature and amount of unsecured claims; the debtor’s honesty in representing facts; the nature of debtor’s pre-petition conduct that gave rise to the case; whether the debts would be dischargeable in a Chapter 7 proceeding; any unusual or exceptional problems the debtor faces; debtor’s past bankruptcy filings, including whether debtor experienced a change in circumstances warranting another filing; the period of time that elapsed between debtor’s filings; and the effect of debtor’s repeated filings on creditors. In re Goodwin, slip op. at 2-3.

In order to demonstrate that he filed the current bankruptcy case in good faith, the Debtor asserts that he has completed his schedules and statements in this case and filed a plan that proposes a 50% repayment to general unsecured creditors. He acquired part-time employment to supplement his stable full-time employment income to meet the plan

requirements.<sup>1</sup> Paycheck stubs on file with the court substantiate the Debtor's testimony that he began working at Sugar-N-Spice, Inc., in late March or early April of 2006. This job is in addition to his full-time employment with Southern States Packaging Company, where earning statements on file indicate he has worked since December 31, 2002. The Debtor was credible during his testimony before the court and has provided documentary evidence of his income. Both the amount and nature of the Debtor's scheduled unsecured claims appears to be unremarkable and there does not appear to be any evidence of extravagant spending on luxury items. As for the Debtor's pre-petition conduct which gave rise to the case, like many debtors who appear before the court, this Debtor has represented that he filed bankruptcy to save his house from foreclosure. The court does have some concern over the Debtor's prior conduct in failing to follow through with the prior bankruptcy case for the reasons given, but no evidence was presented as to any *extraordinary* negative conduct which might have precipitated the foreclosure or the prior case or this case. No creditor objected to the requested relief by alleging any hardship resulting from the Debtor's repeated filings. The Debtor also mitigated his lack of success in the prior case to some degree by eventually recognizing the problem (insufficient income), and taking action to obtain additional income. The Debtor contends that these facts constitute a substantial change in his financial circumstances, that he will be able to achieve a confirmed plan that will be fully performed and that this case was filed in good faith. It appears that the application of the factors set forth above allow a finding that this case was filed in good faith.

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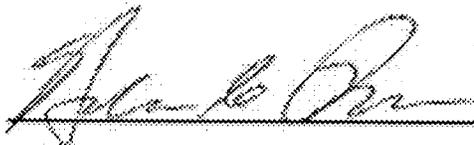
<sup>1</sup> According to Debtor's Schedule A, he has \$8000 equity in his house, which improves the likelihood that his plan will be performed and creditors paid.

The trustee has expressed a concern that the Debtor's budget is very "tight" and confirmation is not a certainty. The trustee expressed support for going forward at this point, however, to determine in the future if the Debtor can confirm and fund a plan.

IT IS THEREFORE, ORDERED:

That the automatic stay will be temporarily extended until September 15, 2006, and shall be extended throughout the duration of the case should the Debtor be successful in confirming a plan by that date. If no plan is confirmed on or before September 15, 2006, the automatic stay will automatically expire on that date. 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.**



UNITED STATES BANKRUPTCY JUDGE

Spartanburg, South Carolina  
June 29, 2006