

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-00937

ORDER GRANTING MOTION TO EXTEND AUTOMATIC STAY

The relief set forth on the following pages, for a total of 5 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
03/27/2007



Entered: 03/28/2007


US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Jeremiah Twiggs and
Wendy L. Twiggs,

Debtors.

C/A No. 07-00937-DD

Chapter 7

**ORDER GRANTING MOTION TO
EXTEND AUTOMATIC STAY**

This matter comes before the Court upon a Motion to Extend Stay filed by chapter 7 Debtors Jeremiah Twiggs and Wendy L. Twiggs. The Motion and Notice of Hearing were timely filed and served on all creditors and parties in interest. As the Debtors' prior chapter 13 case was dismissed within the past year for failure to comply with a confirmed plan, pursuant to § 362(c)(3)(A) the automatic stay provided by § 362(a) is scheduled to terminate on March 28, 2007, unless the Debtors can show that they filed this case in good faith.

Under § 362(c)(3)(C)(i)(II)(cc), there is a presumption that Debtors did not file this case in good faith and therefore they must meet their burden of proof and rebut this presumption by clear and convincing evidence to obtain the requested relief.

Findings of Fact

Debtors filed their first case under chapter 13 on January 23, 2006 and a plan was confirmed. Mr. Twiggs operated a business, but his income was insufficient and unstable and he fell behind on plan payments. Debtors made arrangements with the Trustee to cure the delinquency over time, but were unable to do so, and the case was dismissed for non-payment on December 8, 2006. Prior to that dismissal Mr. Twiggs closed his business and obtained employment to stabilize the family's income.

The current chapter 7 case was filed on February 26, 2007. Debtors' schedules list over \$100,000 in general unsecured debt owed to numerous creditors and disclose real property valued by Debtors at \$230,000. The realty is heavily encumbered. The chapter 13 plan proposed

to retain this property, but the Statement of Intention herein indicates that the Debtors will surrender it in this proceeding. Debtors have three children and their income is under the median income for a family of five in South Carolina. Debtors' schedules do not indicate ownership or retention of any extravagant items and they have very few assets. Debtors own two vehicles, a 1992 Cadillac and a 1998 Chevrolet Astro van. As the prior case was dismissed before the plan was completed, Debtors have never received a discharge in bankruptcy.

Mr. Twiggs stated that he and his wife filed the present chapter 7 case seeking "a fresh start." Debtors have special-needs children in their household, and Mr. Twiggs testified that creditor calls and collection efforts would cause unnecessary strain on the family. Further, the Court notes that any collection efforts by a creditor during the time between the expiration of the stay and the time a discharge is granted would be futile and inconsistent should Debtors ultimately receive a discharge of that debt. Debtors testified that after discussing the matter with their attorney, they are not aware of any conduct on their part that would cause any potential roadblock to discharge.

In the Motion, Debtors are merely requesting an extension of stay to prevent creditor collection efforts after the stay terminates but before entry of their discharge. No creditor or party in interest objected in writing to the Motion and no opposition was voiced at the hearing. There is no indication that this second filing and the requested extension of the stay will cause undue hardship to any creditor.

Discussion and Conclusions of Law

Debtors in chapter 7 cases do not frequently request an extension of the stay. They generally defer to the chapter 7 trustee to protect property for the benefit of the estate as needed, and rarely seek further protection. However, these Debtors have filed a timely motion for an

extension of the stay and are therefore entitled to the requested relief if they meet their burden of proof as to good faith.

To define “good faith” for purposes of § 362(c)(3)(B) in chapter 13 cases, this District has adopted the totality of circumstances test. “[T]he legislature’s failure to define the phrase ‘good faith,’ leads this Court to employ the term ‘good faith’ with the judicial gloss that has developed and evolved in other contexts.” *In re Thomas*, 352 B.R. 751, 756 (Bankr. D.S.C. 2006), citing *Neufeld v. Freeman*, 794 F.2d 149 (4th Cir. 1986). Chief Judge Waites has adopted the *Neufeld* factors for motions to extend,¹ adding his own analysis of good faith when there are subsequent filings:

The Court has also considered the following additional factors in determining whether a debtor’s subsequent filing was in good faith: 1) Debtor’s past bankruptcy filings, which includes a determination of whether Debtor experienced a change in circumstances warranting another filing; 2) the period of time that elapsed between Debtor’s filings; 3) Debtor’s pre-petition behavior; and 4) the effect of Debtor’s repeated filings on creditors. *In re Brown*, C/A No. 03-07515-W, slip op. at 4 (Bankr. D.S.C. Sept. 26, 2003). Certainly many of these factors are relevant in determining whether Debtor’s case was filed in good faith for purposes of § 362(c)(3)(B) based upon the totality of the circumstances surrounding the filing of the case. *In re Bigby*, C/A No. 05-45006-W, slip op. at 4 (Bankr. D.S.C. Dec. 7, 2005).

In re Goodwin, C/A No. 05-45110-jw, slip op. at 2-3 (Bankr. D.S.C. Dec. 19, 2005). “The determination of good faith is necessarily fact intensive and must be conducted on a case-by-case basis. The Court should consider the totality of the circumstances including the *Goodwin* factors, evidence of a substantial change in circumstances following previous filed cases, and any other relevant evidence offered by the debtor in making its decision.” *Thomas*, 352 B.R. at 757.

Based upon the findings of fact set forth above, considering the totality of the circumstances, the Court finds that Debtors have met their burden of proof and demonstrated by

¹ These factors deal primarily with an analysis of good faith in a bankruptcy reorganization context rather than a liquidation and discharge scenario.

clear and convincing evidence that this chapter 7 case was filed in good faith.² Debtors do not have a long history of bankruptcy filings, they have demonstrated to the Court that they have made significant changes to their financial situation warranting and consistent with the relief requested in this chapter 7, and their pre-petition conduct indicates nothing other than a desire to surrender property, receive a chapter 7 discharge and obtain a fresh start. The Court found Debtors' testimony credible that they are proceeding in good faith and likely to receive a discharge in this proceeding. There was no indication in the record or testimony of any improper conduct or motivation on the part of Debtors. While Debtors proactively met their burden of proof, the Court also notes that no party objected, nor presented any evidence of any prejudice to creditors in the event that the stay is extended.

IT IS THEREFORE, ORDERED:

That the automatic stay is extended as to all creditors pursuant to § 362(c)(3)(B) until the earlier of: (1) the entry of Debtors' discharge, (2) the time the case is closed, or (3) until modified by further order of this Court, with the condition that any pending foreclosure proceedings are excepted from this stay extension for so long as they are for the recovery of property and do not seek in any way to establish any personal liability of Debtors resulting from any pre-petition debt.

AND IT IS SO ORDERED.

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 any party from challenging the Debtors' discharge or taking any other action on good faith or any other grounds.