

ENTERED

DEC 14 2007

K.R.W.

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

FILED
at _____ O'clock & _____ min. _____

DEC 14 2007

United States Bankruptcy Court
Columbia, South Carolina (17)

IN RE:

C/A No. 07-05198-JW

Marius Roosevelt Robinson and Patricia
Robinson,

Chapter 13

JUDGMENT

Debtor(s).

Based on the findings of fact and conclusions of law as set forth in the attached Order of the Court, Debtors' Motion to Extend or Impose the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3) is denied.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 14, 2007

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

United States Bankruptcy Court
Columbia, South Carolina (07)

IN RE:

C/A No. 07-05198-JW

Marius Roosevelt Robinson and Patricia
Robinson,

Chapter 13

ORDER

Debtor(s).

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This matter comes before the Court upon a Motion to Extend or Impose the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3) ("Motion") filed by Marius Roosevelt Robinson and Patricia Robinson ("Debtors"). The Motion and Notice of Hearing on the Motion were served on all creditors, but no creditors have filed an objection. The Chapter 13 Trustee filed a response to the Motion.

Debtors were debtors in a previous bankruptcy case, C/A No. 06-02609, that was pending within the one (1) year period preceding the filing of this case. Their previous case was dismissed for non-payment on September 13, 2007. Debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code on September 27, 2007. Accordingly, pursuant to 11 U.S.C. § 362(c)(3)(A), the automatic stay provided by § 362(a) was scheduled to terminate on October 27, 2007, the thirtieth (30th) day after the filing of their second bankruptcy petition. On October 23, 2007, Debtors filed a motion to extend the automatic stay and a motion to convert their case to a case under Chapter 13 of the Bankruptcy Code. On October 31, 2007, the Court entered an order granting Debtors' motion to convert their case to a case under Chapter 13 of the Bankruptcy Code. A hearing on Debtors' Motion was held on November 27, 2007, sixty-one (61) days after the filing of their petition.

Although Debtors may have grounds to extend the stay under previous precedent, § 362(c)(3)(B) does not permit the Court to extend the stay after the stay is terminated under § 362(c)(3)(A) if a hearing is not conducted before the expiration of the stay. In re Cartledge, C/A No. 06-00119-JW, 2006 WL 3068829, slip op. (Bankr. D.S.C. Feb. 15, 2006). Section 362(c)(3)(A) & (B) provide:

[I]f a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, ...

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease ***shall terminate with respect to the debtor on the 30th day after the filing of the later case;***

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, ***the court may extend the stay in particular cases as to any or all creditors ... after notice and a hearing completed before the expiration of the 30-day period*** only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed....

The unambiguous language of § 362(c)(3)(B) limits the Court's authority to extend the automatic stay to situations where the hearing on a motion for an extension of the automatic stay is conducted prior to the expiration of the 30-day period following the filing of the case. Furthermore, the Motion is not in technical compliance with SC LBR 4001-1(b) in that Debtors failed to file their Motion with their bankruptcy petition and they also failed to schedule the hearing on the Motion on a date prior to the expiration of thirty (30) days following the filing of the case. LBR 4001-1(b)(1)(F) provides that "failure to properly select a hearing date, or selection of a hearing date that is more than 30 days following the filing of the case pursuant to 11 U.S.C. § 362(c)(3), may be considered a waiver."

Debtors assert that because the case was initially filed as a case under Chapter 7 of the Bankruptcy code, they did not foresee a need to extend the stay and therefore did not file a motion to extend the automatic stay at the time the case was filed. Within a week of filing the Chapter 7 case, Mr. Robinson found a job earning more income, which made Debtors unable to proceed in good faith in their Chapter 7 case. Debtors were able to file the motion to extend the automatic stay before the expiration of the stay, but did not timely schedule a hearing. Debtors could have requested an expedited hearing on the Motion under LBR 9014-1(d), but made no attempt to do so.

Debtors ask the Court to consider the conversion date of their case to a Chapter 13 as the date of the filing of the case. However, the Court is unable to consider the conversion date as the date of the filing of Debtors' case because § 348(a) provides:

Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

None of the exceptions enumerated in § 328 (b) and(c) appear to apply in this case.

The Court finds that Debtors' selection of the November 27, 2007 hearing date, which is thirty-one (31) days after the termination of the automatic stay, fails to satisfy the requirements of the Bankruptcy Code. The Court cannot extend the automatic stay because there has not been a hearing on Debtors' Motion before the expiration of the stay. 11 U.S.C. § 362(c)(3)(B). See In re Cartledge, C/A No. 06-00119-JW, 2006 WL 3068829, slip op. at 3 (Bankr. D.S.C. Feb. 15, 2006)(denying debtors motion to extend the stay because the hearing date scheduled for the motion was after the expiration of the automatic stay); In re Glover, C/A No. 05-45233-B, slip op. at 2 (Bankr. D.S.C. Jan. 6,

2006)(same); In re Norman, 346 B.R. 181, 183 (Bankr. N.D.W.Va. 2006)(denying a motion to extend the automatic stay filed on the 28th day after the petition date because debtors failed to provide sufficient time for notice and a hearing); In re Garrett, 357 B.R. 128, 131 (Bankr. C.D. Ill. 2006)(holding that the stay could not be reimposed where debtors filed a motion to extend the automatic stay on the 19th day after the petition date and did not have a hearing prior to the expiration of the stay). Accordingly, in light of Debtors' failure to comply with § 362(c)(3)(B) and the Court's local rules, Debtors' Motion is denied.

AND IT IS SO ORDERED.

Columbia, South Carolina
December 14, 2007


UNITED STATES BANKRUPTCY JUDGE