

**ENTERED**

APR 28 2006

**K.R.W.**

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

IN RE: ) C/A No. 06-01341  
)  
Josiella Robinson McWhite ) Chapter 13  
)  
)  
Debtor )  
\_\_\_\_\_ )

**ORDER**

**FILED**  
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APR 28 2006  
United States Bankruptcy Court  
Columbia, South Carolina (5)

This matter comes before the Court upon a Motion to Extend Stay ("Motion") filed by Josiella Robinson McWhite ("debtor") pursuant to 11 U.S.C. § 362(c)(3)(B).<sup>1</sup> 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.

The debtor in this case was also a debtor in a prior Chapter 13 bankruptcy case that was pending within a one (1) year period preceding the filing of this current case. Therefore, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) is scheduled to terminate on the thirtieth day (30<sup>th</sup>) day after the debtor filed this current bankruptcy case. 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. In light of the presumption that the debtor filed this case with a lack of good faith, the debtor must demonstrate, by clear and convincing evidence, that she filed this case in good faith in order to extend the stay.

This is the debtor's fourth bankruptcy case. Her first case was filed over five years ago in

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<sup>1</sup> 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.

November of 2000 in Georgia. Her second case was filed as a chapter 13 case in this district in August of 2002 and dismissed for non-payment in July of 2003. The debtor filed a third case in September of 2003. As a detriment to the filing of an additional serial case, the debtor in her third case agreed to an order providing that should her case be dismissed for any reason that said dismissal would be with prejudice for 180 days. That third case was in fact dismissed for non-payment with prejudice on June 16, 2005. The current fourth case was filed on April 2, 2006, long after that 180 day period had expired but still within a year of the dismissal of the third case.

The debtor presented evidence that her counsel in her third case was suspended while that case was pending. She testified that as a result she had to expend additional funds to hire a new attorney and in her opinion she did not receive advice from her prior counsel to allow her to understand and complete her plan. Particularly, she stated that her budget was not prepared correctly in that case in that many necessary expense items listed no amount (\$0) for such expenses and that this issue has been corrected by new counsel in this case. The allegations of budget errors are supported by the record in this and the third case. The court's records further indicate that the two founding partners of the firm representing the debtor in the third case were placed on interim suspension by order of the South Carolina Supreme Court effective March 18, 2004.<sup>2</sup> The debtor did obtain substitute counsel in the prior case in August of 2004 but was not able to salvage that case.

The debtor also testified as to her changed circumstances since the dismissal of her third case. The debtor received a pay raise at the beginning of 2006 and now has a contract for a part time job as well. Her income has increased substantially since the dismissal of the last case and she has

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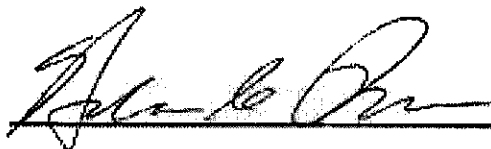
<sup>2</sup>While 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa) can affect a debtor's ability to extend the stay when there are allegations of ineffective counsel in a case that was dismissed for failure to file or amend the petition or other documents, that is not the case here as the third case was dismissed for failure to make payments under a confirmed plan. However, the fact that prior counsel was not available to the debtor at a pivotal moment in her case and the fact that she now has new counsel were considered by the court in determining whether the debtor has demonstrated changed circumstances.

filed a more realistic schedule of her expenses. The debtor also testified that she has made a significant reduction in her mortgage arrearage since the last case and the trustee confirmed this fact. The chapter 13 trustee advised the court that the debtor made her first payment early in this case, that her current plan appears to be confirmable at this point in time and that the debtor has a small amount of equity in property. All schedules and statements have been filed and the debtor's schedules, statements and documentation filed with the court support the debtor's testimony.

The chapter 13 trustee has requested and the debtor has agreed to a wage deduction order to assist the debtor in complying with the plan. Based on the evidence presented the court finds that the debtor appears to have the intent and ability to complete the proposed plan. Although there is concern over the fact that this is the debtor's fourth case, those cases span a number of years and she was penalized in the third case via a prohibition against filing a fourth case for a period of 180 days and that penalty period has now passed and the debtor has demonstrated substantial changed circumstances. Based on all of these factors, the court finds that the debtor has met her burden of proof and that this case was filed in good faith.

It is therefore ordered that the automatic stay is extended as to all creditors pursuant to § 362(c)(3)(B). 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.**

A handwritten signature in black ink, appearing to be "John B. Brown", written over a horizontal line.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
April 28, 2006