

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

ENTERED

MAY 31 2006

K. E. P.

FILED

O'clock & min

MAY 31 2006

In re:

Jerry Lewis Hewins
Carolyn Ann Hewins

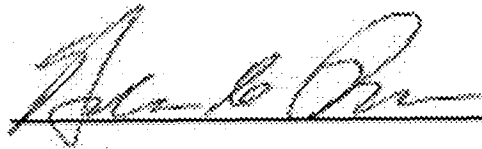
Debtors

Case No. 06-01822
Chapter 13

JUDGMENT

United States Bankruptcy Court
Columbia, South Carolina (11)

Based upon the findings of fact and conclusions of law made in the attached Order, the Motion to Extend Stay filed by Jerry Lewis Hewins and Carolyn Ann Hewins ("Debtors") is denied. Therefore, the Debtors' automatic stay shall terminate on May 31, 2006.



UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
May 31, 2006

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

In re:

Jerry Lewis Hewins
Carolyn Ann Hewins

ENTERED

MAY 31 2006

Debtors

R. E. P.

Case No. 06-01822
Chapter 13

ORDER

FILED
0 clock & min
MAY 31 2006
United States Bankruptcy Court
Columbia, South Carolina (11)

This matter comes before the Court upon the Motion to Extend Stay ("Motion") filed by the debtors pursuant to 11 U.S.C. § 362(c)(3)(B). A hearing on the Motion, after notice to all creditors and the trustee, was completed within the thirty (30) day period following the petition filing date. The Chapter 13 Trustee filed an objection to the Motion. No other party in interest filed or served an objection or appeared.

The debtors were previously debtors in a case pending within the one (1) year period preceding the filing of this case. The automatic stay of § 362(a) will terminate pursuant to § 362(c)(3)(A) on the 30th day after the filing of this case, absent an order extending the stay. On the facts of this case, § 362(c)(3)(C) creates a presumption that this case was not filed in good faith as to all creditors and also as to mortgage creditor National City Mortgage Co. In order to extend the stay, the Debtor must show the court by clear and convincing evidence that this case was filed in good faith.

This is the debtors' third bankruptcy case in three years. The debtors' first bankruptcy case was filed on May 7, 2003 and dismissed for failure to make plan payments on June 30, 2004. The debtors' second bankruptcy case was filed on July 13, 2004 and dismissed with prejudice for 180 days on July 27, 2005 due to the debtors' failure to make plan payments. This case was filed on May 1, 2006, after the 180-day prejudice period from the prior case expired.

To support the contention that the current case was filed in good faith, that the debtors have had a substantial change in circumstances and that the debtors have the ability to confirm and complete a plan in this case, Debtor Carolyn Ann Hewins testified as to the debtors' changed circumstances since the dismissal of their first case.

Ms. Hewins offered testimony indicating that the last case was dismissed due to various financial setbacks caused at least partially by unexpected health issues and job losses during the last case. She testified that although the debtors' income has changed very little since the budget in the last case was filed, they are healthy at this point and expect their income to improve in the near future when both debtors receive anticipated pay increases. In the previous case the debtors scheduled monthly net income of \$3324 and expenses of \$2698 with a confirmed plan payment of \$615, leaving an \$11 cushion. In the current case the debtors originally scheduled net income of \$3067 and expenses of \$2502 with a proposed plan payment of \$565,¹ leaving no cushion. Therefore the debtors' income and disposable income available to fund the plan have actually decreased since the filing of the prior case to the time this case was filed. Although Ms. Hewins testified to a decrease in income *during* that prior case, no motion for a moratorium or amended plan supported by an amended budget showing lower income were filed by the debtors in that case.

Ms. Hewins testified that she and her husband are expecting a post-petition and post-hearing change in gross income at some point in the future that was not reflected in the schedules. Ms. Hewins testified that she expects her increase to begin no later than

¹ Based on the arrearage claimed by National City Mortgage Co. in its Objection to Plan of Reorganization, it appears that the arrearage payment may have to increase, so the exact amount of the plan payment is not yet certain. The debtors' attorney stated that he may object to the claim as excessive.

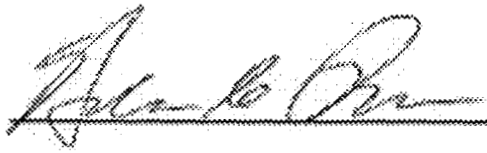
July 1, 2006 when a new position opens, offering "at least a minimum of a dollar an hour more." She testified that her husband "has hit his review point and he will be looking at a minimum of a dollar extra an hour." Even though it appeared from the testimony that this change in circumstances was not in effect at the time this case was filed, the court gave the debtors an opportunity to supplement the record as to the anticipated change in income that they expect in the future. As a result on May 24, 2006 the Debtors filed an amended Schedule I which indicated approximately \$174 more per month in gross income from one debtor's employment and approximately \$52 more per month in gross income from the other debtor's employment. The amended schedule also added an additional \$50 from the debtors' son for monthly rental, increasing that figure from \$200 to \$250 to conform to Ms. Hewins' testimony. However, Ms. Hewins also testified on cross examination that her son had not ever actually paid this rent, but was supposed to begin payment in June of 2006. The addition of the anticipated pay increases and the increase in the contribution from the Debtors' son resulted in net income of \$3300, which is still less than the income scheduled in the prior case. Further, at the hearing the debtors testified that the additional income was not available at the time the case was filed or at the time of the hearing but rather was anticipated in the future. The debtors did not offer any documentary or corroborating evidence to support the increase in wages or the certainty thereof. Contributing to the debtors' income is a figure of \$250 which is a payment from a family member that has never been paid before and the debtors could therefore offer no evidence to guarantee payment or support their testimony of the reliability of this payment. The only other change to the budget is a decrease of \$196 in expenses due only to the filing of a very tight budget.

From the evidence offered, the court cannot find any clear and convincing evidence regarding any substantial change in the financial or personal circumstances of the debtors either at the time this case was filed or at the time the hearing was held. Further, due to the uncertainty of both the availability and amount of the wage increases and due to the fact that the debtors' son has no history of paying rent and without corroboration of this testimony, the evidence of any *subsequent or anticipated* substantial change is not clear and convincing. The evidence was merely too speculative, uncertain and unsupported.

Finally, the debtors assert that the equity in their house supports their request for an extension of the stay. The debtors' schedules in the current case indicate a value of \$175,000 and the debtors affirmed that value. The claim filed by the creditor indicates a mortgage balance of approximately \$143,000 and the debtors' schedules indicate an estimate of \$146,000, which would indicate equity in the property that may assist the debtors in completing the plan. However, in the debtors' bankruptcy case filed in this court in 2004, they scheduled the value of the house as only \$83,400. In the debtors' first case, filed in this court in 2003, the value of their house was listed at \$117,500. No explanation as to the reason for supplying widely differing values to this court was offered. In light of this credibility issue, the court finds the debtors' evidence of substantial equity in their house to be unclear and unconvincing and the debtors did not offer any proof other than their unsubstantiated testimony to support a finding of equity in the house.

The Court therefore finds that the Debtors have not met their burden of proof under § 362(c)(3)(B) and orders that the automatic stay shall not be extended.

IT IS SO ORDERED

A handwritten signature in black ink, appearing to read "John L. Brown", is written over a horizontal line.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
May 31, 2006