

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

IN RE:

C/A No. 14-00904-HB

Harold L Farmer,

Chapter 13

Debtor(s).

**ORDER AND JUDGMENT
DENYING MOTION TO EXTEND
AUTOMATIC STAY**

THIS MATTER came before the Court pursuant to a Motion to Extend Automatic Stay filed by Harold L. Farmer (“Debtor”). Debtor filed a previous bankruptcy case that was pending within the one year period preceding the current case,¹ therefore pursuant to 11 U.S.C. § 362(c)(3)² a hearing was held to consider whether Debtor could meet his burden of demonstrating his good faith in filing this second case. Absent an extension, pursuant to 11 U.S.C. § 362(c)(3)(A)³ the automatic stay in this case will expire thirty days after the case was filed.

Debtor appeared at the March 18, 2014 hearing with his counsel, David Gaffney. The Court’s records reflect that Debtor filed a previous case on February 13, 2012 under Chapter 13. At the time that case was filed, Branch Banking and Trust Company (“BB&T”) had initiated a foreclosure proceeding to recover its collateral, Debtor’s residence. Debtor’s schedules reflect

¹ See C/A No. 12-00879-hb.

² 11 U.S.C. 362(c)(3) states: [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, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) – (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 (subject to such conditions or limitations as the court may then impose) 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; and (C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) — (i) as to all creditors, if – . . . (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded . . . if a case under chapter 11 or 13, with a confirmed plan that will be fully performed.

³ Further reference to Title 11 U.S.C. § 101, *et seq.*, will be by section number only.

that the residence was deeded in the names of Debtor and his non-filing spouse. Debtor proposed a plan to cure the arrearages on his mortgage debt and agreed to make regular post-petition contract payments directly to BB&T. The plan was confirmed on April 19, 2012. On November 1, 2012, BB&T filed a Motion for Relief from Stay and from the Co-Debtor Stay to recover its collateral, citing a default in post-petition payments and therefore in the confirmed plan. An order was entered on December 5, 2012, memorializing an agreement between Debtor and BB&T to cure the post-petition arrearages. That order provided that should Debtor default, relief from stay would be granted without further notice or hearing. On April 26, 2013, after a request from BB&T citing a default, the Court entered an order lifting the automatic stay to allow BB&T to pursue the property. On August 20, 2013, Debtor requested dismissal of his Chapter 13 case. This set of facts rendered Debtor ineligible to file for Chapter 13 protection for a period of 180 days from the date of dismissal.⁴

BB&T resumed foreclosure proceedings and scheduled a sale. The sale of Debtor's residence was held in February of 2014 and Debtor was the high bidder. Debtor provided ten percent of his \$210,000.00 bid, funded by a withdrawal or loan from his wife's retirement account. BB&T waived any claim for a deficiency and it appears that the bid amount, if paid, would have been sufficient to satisfy the mortgage.

Counsel for Debtor acknowledged during the hearing that at the time Debtor placed the winning bid on the property he knew he could not satisfy the bid price and had no intention of doing so. Instead, Debtor intended to place the high bid in order to retain an interest in the property until he was eligible to file a second bankruptcy case following the 180 day bar on

⁴ Pursuant to 11 U.S.C. 109(g) “. . . no individual . . . may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if – . . . (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.”

filing set pursuant to § 109(g). When the 180 days expired, Debtor again filed for Chapter 13 relief on February 20, 2014. At that time he had not paid the remainder of the sale price. Despite the foreclosure decree, sale and bid, Debtor's current plan recognizes BB&T as a mortgage creditor and provides that he will cure any arrearage on the mortgage debt through the plan and maintain regular payments outside the plan directly to BB&T beginning in March of 2014.⁵ Debtor advised that he had made the most recent payment. BB&T filed a claim in this case on March 14, 2014, in the amount of \$206,242.71, listing an arrearage of \$31,479.43. BB&T did not object to the Motion to Extend Stay. As of the date of the hearing plan objections were not yet due. Debtor's plan proposes a payment of \$930.00 per month for sixty months and BB&T is the only creditor listed by name in the plan.

At the hearing the Chapter 13 Trustee's office pointed out that Debtor may have lost his right to cure the arrearage under Chapter 13 because the foreclosure sale has been conducted.⁶ Although the Debtor scheduled the residence as property owned jointly by him and his spouse, the nature of his ownership interest may also be in question after the foreclosure decree and sale. Most importantly, it appears that Debtor, by bidding at a foreclosure sale when his only goal was delay, has intentionally prevented BB&T from completing its foreclosure within the 180 day window provided by § 109(g).

To gain an extension of the automatic stay, the burden is on Debtor to demonstrate good faith in filing a second bankruptcy case. Section 362(c)(3)(C) includes certain presumptions of a

⁵ See 11 U.S.C. § 1322(b)(2) ("...the plan may— . . . modify the rights of holders of secured claims, other than a claim secured only by security interest in real property that is the debtor's principal residence[.]"); *see also* 11 U.S.C. § 1322(b)(3) ("a plan may— . . . "provide for the curing or waiting of any default"); 11 U.S.C. § 1322(b)(5) ("notwithstanding paragraph (2) of this subsection, [the plan may] provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any . . . secured claim on which the last payment is due after the date on which the final payment under the plan is due").

⁶ See 11 U.S.C. § 1322(c)(1) (stating that "a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law").

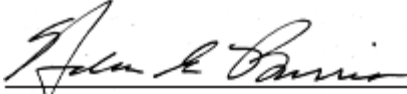
lack of good faith that may be applicable to this case.⁷ However, even without a presumption, Debtor's conduct here shows bad faith. In addition to the numerous defaults on the mortgage obligation that are evidenced by the Court's records in the prior case, the Debtor intentionally and unreasonably delayed the creditor's actions by making a bid at the foreclosure sale in bad faith to buy time to file a second bankruptcy proceeding. As a result of this scheme, Debtor has not demonstrated that the filing of this case was in good faith as to any creditor. The Motion to Extend Automatic Stay is hereby **DENIED** and the automatic stay shall terminate on March 20, 2014 pursuant to § 362(c)(3)(A).

AND IT IS SO ORDERED.

**FILED BY THE COURT
03/19/2014**



Entered: 03/19/2014


US Bankruptcy Judge
District of South Carolina

⁷ See 11 U.S.C. §§ 362(c)(3)(C)(i)(II)(cc), (III)(bb) and (c)(3)(C)(ii).