

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-03016

ORDER EXTENDING STAY

The relief set forth on the following pages, for a total of 4 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
07/03/2007



Entered: 07/03/2007

US Bankruptcy Court Judge
District of South Carolina

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

IN RE:

Wanda Burris,

Debtor(s).

C/A No. 07-03016-DD

Chapter 13

**Order Granting Debtor's Motion to
Extend Stay**

THIS MATTER is before the Court on Wanda Burris's ("Debtor") Motion to Extend Stay ("Motion") pursuant to 11 U.S.C. § 362(c)(3)(B).¹ Based upon the record in this case, the evidence presented, and the arguments of counsel, this court makes the following findings of fact and conclusions of law.

Findings of Fact

1. This is the Debtor's second filing of Chapter 13 bankruptcy.
2. The Debtor's previous case, C/A No. 07-00581-HB, was dismissed pursuant to a form order of this Court. The trustee objected to the Debtor's plan on feasibility grounds. A hearing was held and the Debtor failed to appear to prosecute her plan. Confirmation was denied and the case was dismissed.
3. The present case, C/A No. 07-03016-DD, was filed on June 4, 2007, approximately two months after the dismissal of the Debtor's previous case.
4. The automatic stay provided by § 362(c)(3)(A) expires on July 4, 2007.
5. The Debtor is single with four dependents, two sons and two daughters ranging in age from 1 to 11 years old. The Debtor earns \$1,202.32 after deductions from her employment. She receives \$380.00 from food stamps and the remainder of her schedule I income (\$1000.00) comes from her live-in boyfriend, the father of one of the children.

¹ Further reference to the Bankruptcy Code, 11 U.S.C. § 101 et. seq., will be by section number only.

6. The Debtor's plan proposes to pay 100% of unsecured creditor claims.

Conclusions of Law

A debtor who had a previous case pending under chapter 7, 11, or 13 and seeks to extend the 30-day automatic stay provided by § 362(c)(3)(A) must (1) file a motion with the court, (2) notify other parties in interest, (3) complete a hearing on the matter before the expiration of the 30-day period, and (4) prove that the filing of the new case is in good faith as to the creditors to be stayed. *In re Thomas*, 352 B.R. 751, 753 (Bankr. D.S.C. 2006) *citing*, *In re Ball*, 336 B.R. 268, 273 (Bankr. M.D. N.C. 2006). Resolution of this case turns on the standard of proof. In this case none of the factors provided in § 362(c)(3)(C)(i) are implicated in or from the previous case and thus, the Debtor only need prove by a preponderance of the evidence that the present case was filed in good faith. There is no presumption of an absence of good faith in this case and the clear and convincing standard does not apply.

This Court has considered the following factors in determining whether a debtor's subsequent filing was in good faith²:

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 Thomas, 352 B.R. at 757 *citing*, *In re Goodwin*, 2005 Bankr. LEXIS 3043, C/A No. 05-45110-JW, slip. op. (Bankr. D.S.C. Dec. 19, 2005). In making this determination, Courts are given broad discretion but are directed to look at the totality of the circumstances on a case by case basis. *In re Taylor*, 2007 Bankr. LEXIS 1505 (Bankr. D. Va. 2007) *See also*, *Deans v. O'Donnell*, 692 F.2d 968, 972 (4th Cir. 1982).

² These factors are adopted for analysis, however, they should not be considered to be an exhaustive list.

In this case, the Debtor plans to pay her allowed unsecured creditor claims in full. The debtor testified to her sincere efforts to advance the goals and purposes of Chapter 13, evidenced by her consent to a one year bar on refiling in the event his case fails for any reason. While the previous decisions of this Court counsel against relying on voluntary contributions from family members or roommates, see e.g. *In re Bigby*, 2005 Bankr. LEXIS 3042, C/A No. 05-45006-JW, slip op. (Bankr. D.S.C. Dec. 7, 2005), the live-in boyfriend has a legal obligation to support his minor child even though, according to his testimony, there is no child support order or even an express agreement for a particular sum of child support. The Debtor has met her burden of proving by a mere preponderance of the evidence that she is acting in good faith in filing her second Chapter 13 case.

Therefore, the Motion filed by the Debtor pursuant to § 362(c)(3)(B) is hereby granted, with the following conditions. (1) The plan is confirmed on or before the ninetieth (90th) day from the entry date of this judgment. (2) The Debtor must consent to a wage order being issued in her case. (3) Should this case be dismissed for any reason, dismissal shall be with prejudice for a period of one (1) year as to any subsequent filing by Debtor under Chapters 11, 12, or 13 of the Bankruptcy Code.

AND IT IS SO ORDERED.

Columbia, South Carolina
July 3, 2007