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at ____ O'clock & ____ min. ____ M

DEC 19 2005

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

United States Bankruptcy Court
Columbia, South Carolina (30)

IN RE:

Rosalind McClain Goodwin,

Debtor.

C/A No. 05-45110-JW

Chapter 13

JUDGMENT

ENTERED

DEC 19 2005

D.L.L.

Based upon the findings of fact and conclusions of law made in the attached Order,
the Motion to Extend Stay filed by Rosalind McClain Goodwin is denied.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 19, 2005

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FOR THE DISTRICT OF SOUTH CAROLINAUnited States Bankruptcy Court
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Chapter 13

ORDER

ENTERED

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This matter comes before the Court upon a Motion to Extend the Automatic Stay ("Motion") filed by Rosalind McClain Goodwin ("Debtor") pursuant to 11 U.S.C. § 362(c)(3)(B).¹ The Motion and the Notice of Hearing were served on all creditors. A creditor holding a purchase money security interest in Debtor's vehicle filed an objection to the Motion but withdrew the objection at the hearing on the Motion. The Chapter 13 Trustee filed a response to the Motion.

Debtor was a debtor in two previous cases before this Court. In the first bankruptcy case, Debtor and her husband filed for relief under Chapter 7 on May 8, 2004. Debtor received a discharge on August 24, 2004 and the case was closed.

On January 19, 2005, Debtor sought bankruptcy relief under Chapter 13. Debtor's proposed plan was confirmed. Included in Debtor's plan was payment to the creditor with the purchase money security interest in Debtor's vehicle. On September 30, 2005, Debtor's Chapter 13 trustee filed a petition to dismiss Debtor's second case for non-payment of money due to trustee under Debtor's plan. Debtor did not file an objection to trustee's motion or enter into a payment arrangement with trustee to cure the arrearage in Debtor's plan payments. Debtor's second case was dismissed on November 3, 2005 for Debtor's failure to make payments due under the plan.

¹ 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.

Debtor filed this action on November 21, 2005. Because Debtor's second case was pending within the previous year, the automatic stay in the current case expires thirty (30) days after the petition date. 11 U.S.C. § 362(c)(3)(B). Debtor timely moved to extend the automatic stay as to all creditors. Debtor has also filed a proposed plan, schedules, and a statement of financial affairs.

To extend the automatic stay, Debtor must demonstrate that she filed the current case in good faith; however, in this case, Debtor is presumed to have not filed in good faith because Debtor's second case was dismissed for Debtor failing to abide by the terms of a confirmed plan. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). Congress, through the amended Bankruptcy Code, has put the burden on Debtor to present clear and convincing evidence that the current case was filed in good faith.

The term "good faith" is not defined by the Bankruptcy Code. The Court has previously considered the following nonexclusive list of factors to determine whether a debtor's plan was proposed in good faith: 1) percentage of proposed repayment; 2) debtor's financial situation; 3) the period of time payment will be made; 4) debtor's employment history and prospects; 5) the nature and amount of unsecured claims; 6) debtor's past bankruptcy filings; 7) debtor's honesty in representing facts; 8) the nature of debtor's pre-petition conduct that gave rise to the case; 9) whether the debts would be dischargeable in a Chapter 7 proceeding; and 10) any other unusual or exceptional problems the debtor faces. In re Bridges, C/A 04-12501-W, slip op. at 5 (Bankr. D.S.C. Mar. 29, 2005) (citing Solomon v. Cosby (In re Solomon), 67 F.3d 1128, 1134 (4th Cir. 1995)). The Court has also considered the following additional factors in determining whether a debtor's subsequent filing was in good faith: 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 Brown, C/A No. 03-07515-W, slip op. at 4 (Bankr. D.S.C. Sept. 26, 2003). Certainly many of these factors are relevant in determining whether Debtor's case was filed in good faith for purposes of § 362(c)(3)(B) based upon the totality of the circumstances surrounding the filing of the case. In re Bigby, C/A No. 05-45006-W, slip op. at 4 (Bankr. D.S.C. Dec. 7, 2005).

To support her contention that this case was filed in good faith, Debtor testified that she is relinquishing her vehicle to the secured creditor and thus her payments under the plan proposed in this case will be less than the plan payments in the second case.² Debtor also states that her estranged husband is providing her with a payment of \$500.00 per month.³ Based upon this increase in income and decrease in plan payments, Debtor asserts that she has had a substantial change in her financial circumstances and will be able to make the payments due under the proposed plan. The Court disagrees and finds that Debtor did not meet her burden of proof.

First, Debtor's reliance on the financial contributions of her estranged husband does not demonstrate a substantial change in circumstances from the dismissal of her previous case nor does it demonstrate that this case was filed in good faith. Bigby, slip op. at 4. The husband has not demonstrated a long history of making these contributions

² The secured creditor evidently withdrew its objection to the Motion because Debtor is surrendering the vehicle.

³ Husband's agreement to pay Debtor is not in the form of a court order but is an arrangement between the parties, which states that he will pay until a court orders alimony in a different amount. The agreement between the parties is dated September 1, 2005. Debtor anticipates seeking divorce and court ordered alimony sometime in the near future. The agreement was provided to the Court after the hearing on Debtor's motion and was considered in this ruling.

to Debtor but rather he has done so regularly for two months. See In re Williams, C/A No. 97-08824-W, slip op. at 4-5 (Bankr. D.S.C. Jan. 13, 1998) (Denying confirmation of a plan based upon lack of feasibility when plan was dependant upon contributions of a third party and the contributions were not substantiated by any indication that they were regularly made). Without these payments, Debtor's plan would fail as Debtor's schedules indicate that she only has \$98.50 per month in disposable income, including the contribution from the husband.

The agreement between the parties is dated September 1, 2005, almost a month before the trustee moved to dismiss Debtor's second case. As this Court found in Bigby, Congress contemplated that the change in circumstances would occur after the dismissal of Debtor's previous case. Bigby, slip op. at 3. In this case, as in Bigby, Debtor's reliance on the financial contribution of others is the continuation of financial circumstance that existed in the previous case. Id. According to Debtor's testimony, her husband agreed to pay alimony six to eight months prior to the hearing on Debtor's Motion. However, evidence indicates that Debtor's husband made irregular payments prior to October 1, 2005. Beginning in October, Debtor states that the husband began to pay the alimony regularly. Both the irregular and regular payment of voluntary alimony occurred during Debtor's second case and before the trustee filed a petition to dismiss Debtor's second case. Despite receiving this additional income from her husband, Debtor appears to have been unable or unwilling to enter into a payment arrangement with her previous trustee to cure the past due plan payments in the previous case.

The continuation of financial circumstances, existing in Debtor's previous bankruptcy, does not constitute a substantial change in financial circumstances in

Debtor's most recent case for purposes of § 362(c)(3)(C)(i)(III). Bigby, slip op. at 3. Nor does the continuation of financial circumstances from a previous case indicate that Debtor filed in good faith for purposes of § 362(c)(3)(B), to the contrary this information indicates that this filing was not in good faith. In re Brown, slip op. at 4.

Debtor also contends that by surrendering her vehicle, she will be able to make the proposed plan payments. While Debtor's payments under the proposed plan are less than the payments in Debtor's second bankruptcy, a comparison of Debtor's Schedule J in this case and the second case demonstrate that the benefit of surrendering the vehicle is offset by the increase in Debtor's expenses since the filing of the second case. According to Debtor's Schedule J in this case, Debtor's monthly expenses have increased by about \$250.00 per month since Debtor filed her second case, taking into account that Debtor was paying the secured creditor \$165.00 per month in the plan in the second case. Debtor's personal income, excluding the husband's contribution, has also decreased according to Debtor's Schedule I. These circumstances appear to demonstrate that Debtor will not be able to complete the proposed plan as there has been a net decrease in disposable income.

Considering the factors set forth in Bridges and Brown, the Court notes that Debtor's proposed distribution to unsecured creditor's in this case is one (1%) percent, which is no greater than the distribution provided by Debtor's previous Chapter 13 case. Debtor's financial situation is also not substantially different than her situation in her previous case. Debtor recently received the benefits of Title 11 by receiving a discharge in her Chapter 7 case fifteen months before the current case was filed and thus her debts in this case are not dischargeable in a Chapter 7 pursuant to § 727(a)(8). This is also

Debtor's third bankruptcy filed within the last eighteen months. These factors indicate that the current case was not filed in good faith. Bridges, slip op. at 5; Brown, slip op. at 4.

The amended Bankruptcy Code encourages debtors to complete their first bankruptcy by placing conditions on debtors' subsequent filings. Earnest debtors are provided a small safe harbor under § 362(c)(3)(B), if they can demonstrate that the current case was filed in good faith. When a presumption of a bad faith filing is triggered by § 362(c)(3)(C), debtors carry a high burden to rebut this presumption by clear and convincing evidence. Numerous facts indicate that this case was not filed in good faith. These facts weigh heavily against Debtor because there is a presumption of bad faith. In re Wallace, C/A No. 05-45119 (Bankr. D.S.C. December 19, 2005) (Extending the automatic stay despite two recent bankruptcies and a financial condition similar to previous case because debtor was not to presumed to have filed in bad faith). Debtor has not presented clear and convincing evidence that she filed this case in good faith and, therefore, the Court denies Debtor's Motion. The automatic stay provided by § 362(a) will expire on December 21, 2005 pursuant to § 362(c)(3)(A) without further order.

AND IT IS SO ORDERED.

Columbia, South Carolina,
December 19, 2005


UNITED STATES BANKRUPTCY JUDGE