

ENTERED

JAN 30 2006

K.R.W.

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

FILED
0'clock & ____ min ____ M
JAN 30 2006
United States Bankruptcy Court
Columbia, South Carolina (3)

IN RE:

Ronald Finnie,

Debtor.

C/A No. 06-00017-JW

Chapter 13

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Ronald Finnie's Motion to Extend the Automatic Stay is granted and the automatic stay is extended as to all creditors pursuant to § 362(c)(3)(B). Should this case be dismissed for any reason, the dismissal will be with prejudice to bar a re-filing by Mr. Finnie for a period of one (1) year as to Chapters 11, 12, and 13 of the Bankruptcy Code.

Columbia, South Carolina,
1/30, 2006


UNITED STATES BANKRUPTCY JUDGE

ENTERED

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Chapter 13

ORDER

This matter comes before the Court upon a Motion to Extend Stay ("Motion") that was filed by Ronald Finnie ("Debtor") pursuant to 11 U.S.C. § 362(c)(3)(B).¹ The Motion and Notice of Hearing on the Motion were served on all creditors, but none filed an objection. The Chapter 13 Trustee filed a response to the Motion.

Mr. Finnie was a debtor in a previous bankruptcy case (C/A No. 05-06345-jw) that was pending within the one (1) year period preceding the filing of this case. Debtor's previous case was dismissed on June 23, 2005 because he failed to file a chapter 13 plan in a timely manner. Therefore, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) is scheduled to terminate on February 1, 2006, the thirtieth (30th) day after Debtor filed his second bankruptcy case (C/A No. 06-00017-jw).

Pursuant to § 362(c)(3)(C)(i)(II)(aa), a presumption that Debtor did not file his second bankruptcy case in good faith exists because Debtor's previous case was dismissed for a failure to file a plan in a timely manner. Apparently, the failure to file a plan was the result of Debtor's negligence because he filed his first case pro se and was unaware of the requirements to file a plan. Filing a case pro se and being unaware of the requirements prescribed by the Bankruptcy Code does not demonstrate a substantial

¹ Hereinafter 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.

excuse that would prevent the presumption of a lack of good from arising. See 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa) (noting that a case is presumptively filed not in good faith where a debtor failed file or amend the petition or other documents as required by the Bankruptcy Code or court without substantial excuse). In light of the presumption of a lack of good faith, Debtor must demonstrate that his current case was filed in good faith by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C).

Debtor has enjoyed stable employment with the State of South Carolina for fifteen years. Moreover, it appears that Debtor's employment will continue for the duration of his bankruptcy. Furthermore, Debtor received a four percent (4%) pay increase in July 2005, and he will receive another four percent (4%) increase in July 2006. Although the increases are not a significant or substantial change in circumstances, Debtor's stable employment history and the \$3,024.90 per month that he currently earns are factors that weigh in his favor.

Furthermore, Debtor began receiving \$200.00 in rental income at the end of July 2005 from his ex-wife, who is a tenant in his home. Debtor has been legally divorced from his ex-wife since September 2002. Under the terms of the divorce proceedings, Debtor received physical custody of his two sons, and his ex-wife received physical custody of his daughter. Both Debtor and his ex-wife share joint custody of all the children. In August 2004, Debtor's ex-wife moved into Debtor's residence in order to facilitate the sharing of custody and for the benefit of the children. Additionally, Debtor's ex-wife suffers a disability and has limited income. Therefore, paying the \$200.00 rent, in order to maintain residence in Debtor's home, is also the most affordable means of housing for Debtor's ex-wife and daughter.

Debtor pays his ex-wife \$300.00 in child support payments each month. Debtor's ex-wife also receives additional funds provided by the State of South Carolina. Debtor does not subtract the \$200.00 in monthly rent from his monthly child support obligations. Instead, Debtor pays his ex-wife the \$300.00 in child support every month, and then his ex-wife remits the \$200.00 in rent thereafter. Given the ex-wife's limited income and the apparent benefit in keeping the parties' children together, it appears likely that Debtor's ex-wife will continue to be a tenant of Debtor and pay the monthly \$200.00 in rent for the duration of Debtor's plan.

Accordingly, Debtor's proposed plan appears feasible, and Debtor appears to have the intent and the ability to complete the proposed plan. Given the totality of the circumstances in this case, the Court finds that Debtor filed this case in good faith.²

It is therefore ordered that the automatic stay is extended as to all creditors pursuant to § 362(c)(3)(B). As a condition of extending the stay, it is ordered that should this case be dismissed for any reason, that the dismissal will be with prejudice to bar a re-filing by either Debtor for a period of one (1) year as to Chapters 11, 12, and 13 of the Bankruptcy Code.

AND IT IS SO ORDERED.

Columbia, South Carolina,
1/30, 2006


UNITED STATES BANKRUPTCY JUDGE

² The Court's findings are limited to the context of the Motion and nothing in this Order shall be construed as *res judicata* to prevent Debtor, the trustee, or a party in interest from challenging or establishing that this case or a plan was filed or proposed in good faith for purposes of § 1307 or § 1325. See In re Charles, 332 B.R. 538, 542 (Bankr. S.D. Tex. 2005) (holding that Congress, by enacting § 362(c)(3), intended the Courts to conduct an early triage of a case and determine whether a case is doomed to fail or whether a case has a reasonable likelihood of success).