

FILED
at O'clock & min. M

FEB 15 2006

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (26)

IN RE:

Bertha Lee Cartledge and
Searles Cartledge,

Debtor.

C/A No. 06-00119-JW

Chapter 13

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law in the attached order of
the Court, Debtors' Motion to Extend Stay is denied.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
2/15, 2006

ENTERED

FEB 16 2006

L. G. R.

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ORDER

This matter comes before the Court upon a Motion to Extend Stay ("Motion") that was filed by Bertha Lee Cartledge and Searles Cartledge ("Debtors") pursuant to 11 U.S.C. § 362(c)(3)(B) on February 10, 2006.¹ The Motion and Notice of Hearing² on the Motion were served on all creditors, but no creditors have filed an objection at this time. The Chapter 13 Trustee filed a response to the Motion.

Debtors were debtors in a previous bankruptcy case (C/A No. 05-07709-jw) that was pending within the one (1) year period preceding the filing of this case. Debtors were represented by their current counsel in the their previous case. It appears from the Motion that their previous case was dismissed for counsel's failure to provide documents to the correct Chapter 13 Trustee. Therefore, pursuant to § 362(c)(3)(A),³ since Debtors filed their case on January 11, 2006, the automatic stay provided by § 362(a) was scheduled to terminate on February 10, 2006.

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.

² The Notice is deficient in numerous respects. It provides for passive notice, identifies the Motion as an Objection to claim, and gives the incorrect number of days to respond to the Motion.

³ Section 362(c)(3)(A) of the Bankruptcy Code provides as follows:

[I]f a single or joint case is filed by or against 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 refilled under a chapter other than chapter 7 after a dismissal under section 707(b)-

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 on the 30th day after the filing of the later case....

Debtors moved to extend the automatic stay on the date that the stay expired. Although, Debtors appear to have grounds to extend the stay under previous precedent, Section 362(c)(3)(B) does not provide the Court with any authority to extend the stay after the stay is terminated under § 362(c)(3)(A) if a hearing *is not* conducted before the expiration of the stay. 11 U.S.C. § 362(c)(3)(B), In re Wells, C/A No. 05-45311-W, slip op. at 2 (Bankr. D.S.C. Jan. 3, 2006) (extending the automatic stay when debtor's failure to submit documents in previous case was attributable to the negligence of counsel and debtor demonstrated by a preponderance of evidence that she filed the current case in good faith).

In this case, Debtors failed to adhere to this Court's local rules concerning motions to extend the automatic stay. See SC LBR 4001-1(b) et seq. Notably, Debtors failed to file their Motion with their bankruptcy petition and they also failed to schedule the hearing on the Motion on a date that preceded the termination of the stay.

In violation of the Court's local rules, Debtors filed their Motion on the 30th day after filing their bankruptcy petition. See SC LBR 4001-1(b)(2) ("[a]ll motions filed by the debtor pursuant to 11 U.S.C. § 362(c)(3) *must be filed with the petition . . .*") (emphasis added). The local rules are designed to provide adequate notice and due process to parties affected by the extension of the stay. Failing to file a timely motion to extend stay or properly notice or schedule it may impact the due process rights of those parties affected by the motion and their opportunity to object and be heard.

SC LBR 4001-1(b)(1) explicitly provides that "[m]otions pursuant to § 362(c)(3) shall be scheduled to be heard *prior to the expiration of thirty (30) days following the filing of the case.*" (emphasis added). This provision mirrors the requirement of § 362(c)(3)(B) in that it requires a hearing on the Motion within the 30 days following the petition date. Furthermore, SC LBR

4001-1(b)(1)(F) states that "[f]ailure to properly select a hearing date, or selection of a hearing date that is more than 30 days following the filing of the case pursuant to 11 U.S.C. § 362(c)(3), may be considered a waiver."

Since debtors bear a high burden of proof in rebutting the presumption that their case was filed with a lack of good faith, the local rules concerning the scheduling of motions to extend stay hearings are designed to ensure that there is sufficient time to carefully examine the evidence presented, and issue a written order. Failure to properly schedule a hearing on a motion to extend stay undermines the Court's efforts to carefully consider the totality of circumstances of a given debtor's case, and prevents interested parties from having sufficient time to prepare for the issues raised by the Motion.

In this case, Debtors' selection of a March 23, 2006 hearing date, which is after the termination of the automatic stay, fails to satisfy the requirements of the Bankruptcy Code. Furthermore, Debtors missed their opportunity to extend the stay because they were unable to schedule a hearing before the termination of the stay. The Court cannot extend the automatic stay because there has not been a hearing on Debtors' Motion before the expiration of the stay. 11 U.S.C. § 362(c)(3)(B). Accordingly, in light of Debtors' failure to comply with the clear provisions of § 362(c)(3)(B) and this Court's local rules, Debtors' Motion is denied. See In re Glover, C/A No. 05-45233-B, slip op. at 2 (Bankr. D.S.C. Jan. 6, 2006) (citing 11 U.S.C. § 362(c)(3)(B) and denying a motion to extend stay because the hearing date scheduled for the motion was after the expiration of the automatic stay).

AND IT IS SO ORDERED.

Columbia, South Carolina,
February 15, 2006


UNITED STATES BANKRUPTCY JUDGE

ENTERED

FEB 16 2006

L. G. R.