WRITTEN DECISION – FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re:	)	Bankruptcy Case No. 24-04161-CL13
	)	
	)	Chapter 13
DEMETRIUS L. BYRD & CASSANDRA L. BYRD,	)	
	)	
	)	MEMORANDUM DECISION AND FINAL
Debtors,	)	ORDER EXTENDING THE AUTOMATIC
	)	STAY
	)	
	)	
	)	
_____	)	Chief Judge: Christopher B. Latham

MEMORANDUM DECISION AND FINAL ORDER EXTENDING THE AUTOMATIC STAY

Before the court is Debtors' motion to extend the automatic stay as to all creditors (ECF Nos. 11, 14 & 15). The Trustee opposes (ECF No. 16). The court finds that the bad faith presumption did not arise and that Debtors have demonstrated good faith by preponderance of the evidence. Thus it will **grant** the motion as follows.

I. BACKGROUND

Before bringing the present bankruptcy case, Debtors had filed another chapter 13 petition in the same year (*see* Case No. 24-02083-CL13). They promptly submitted an initial chapter 13 plan for it (Case No. 24-02083-CL13; ECF No. 3). Three months later, the Trustee objected to confirmation and moved to dismiss, citing feasibility and inexplicable plan provisions (Case No. 24-02083-CL13; ECF No. 18). At that point, Debtors had made two of three plan payments. *Id.* They did not oppose or otherwise respond to the Trustee's objection. The court granted his motion as its local rules provide and dismissed the case (Case No. 24-02083-CL13; ECF No. 28).[1]

Debtors filed this chapter 13 just eight days later (ECF No. 1). And they timely moved to extend the automatic stay (ECF Nos. 11, 14 & 15). *See* 11 U.S.C. § 362(c)(3)(B).[2] Debtors claim they were trying to get a claim estimate from their personal injury attorney for the Trustee, and that attorney's delay led to their dismissal. No one disputes that the motion and hearing were timely.[3] But the Trustee opposes extension, arguing that the bad faith presumption arises and that the filing is not in good faith (ECF No. 16). Debtors submitted a written reply (ECF No. 17). The court heard oral argument and took the matter under submission pending this final order.

---

[1] Under its local rules, the court may treat the failure to timely file opposition to the chapter 13 Trustee's motion as consent to its granting and waiver of oral argument. LBR 9013-7(b)(2).

[2] Unless otherwise noted, all statutory references are to the United States Code, Title 11.

[3] Debtors must file and serve motions to extend the automatic stay within seven days of the petition date and give creditors at least 14 days' notice of the hearing on that motion. LBR 2002-1(b)(1)–(2). And § 362(c)(3)(B) requires a hearing before the initial 30-day stay expires.

II. CONTROLLING LEGAL STANDARDS

The automatic stay expires after 30 days if the debtor had a case dismissed in the preceding one-year period. § 362(c)(3). The court – upon a motion, and after notice and a hearing – may extend the stay only if the movant demonstrates that the new filing was in good faith. 11 U.S.C. § 362(c)(3)(B). Under certain circumstances, a presumption of bad faith arises and Debtor must rebut that presumption by clear and convincing evidence. The code calls out six independent ways the presumption arises for purposes of § 362(c)(3)(B):

> (i) as to all creditors, if—
>
> > (I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;
> >
> > (II) a previous case under any chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—
> >
> > > (aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);
> > >
> > > (bb) provide adequate protection as ordered by the court; or
> > >
> > > (cc) perform the terms of a plan confirmed by the court; or
> >
> > (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—
> >
> > > (aa) if a case under chapter 7, with a discharge; or
> > >
> > > (bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and
>
> (ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor, if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor….

§ 362(c)(3)(C).

"The presence of any of the above-listed events gives rise to a rebuttable presumption of bad faith." *In re Montoya*, 342 B.R. 312, 316 (S.D. Bankr. Cal. 2006). If the bad faith presumption arises, the debtor must rebut it by "clear and convincing evidence to the contrary." § 362(c)(3)(C). If there is no bad faith presumption, though, debtors can establish good faith by a preponderance of the evidence. *In re Montoya*, 342 B.R. at 316 (citing *In re Collins,* 335 B.R. 646, 651 (Bankr. S.D. Texas 2005); *In re Charles*, 334 B.R. 207, 217 (Bankr. S.D. Tex. 2005)).

In the Ninth Circuit, the test for good faith includes:

> (1) whether debtor misrepresented facts in the petition or the plan, unfairly manipulated the Code or otherwise filed the current chapter 13 plan or petition in an inequitable manner; 2) debtor's history of filings and dismissals; 3) whether debtor only intended to defeat state court litigation; and 4) whether egregious behavior is present.

In re Castaneda, 342 B.R. 90, 96 (Bankr. S.D. Cal. 2006) (first citing *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999); and then citing *In re Villanueva*, 274 B.R. 836, 841 (B.A.P. 9th Cir. 2002)).

III. ANALYSIS AND DISCUSSION

A. Bad Faith Presumption

The Trustee argues the bad faith presumption arises here because there has not been a substantial change in Debtors' affairs since the previous case was dismissed (ECF No. 16). In support, he notes that the case at hand was filed less than nine days after the earlier dismissal, and Debtors do not present a change in circumstance. *Id.* At oral argument, they did not dispute that the presumption arose. The court now addresses the point.[4]

Despite a lengthy bankruptcy history, only one of Debtors' earlier cases was pending in the operative one-year period (*see* Case No. 24-02083-CL13). *See* § 362(c)(3)(C)(i)(I). Next, Debtors were not dismissed after "failing to file or amend the petition or other documents...without substantial excuse." *See* § 362(c)(3)(C)(i)(II)(aa). And the court never ordered adequate protection or confirmed a

[4] "The burden of establishing the presence of presumptive bad faith rests upon the opponent to the motion." *In re Montoya*, 342 B.R. at 316 (citing *In re Collins,* 335 B.R. at 651; *In re Charles*, 334 B.R. at 215–17).

plan in the previous case. *See* § 362(c)(3)(C)(i)(II)(bb)–(cc). Further, no creditor had sought relief from the automatic stay. *See* § 362(c)(3)(C)(ii).

The final consideration is whether there was a substantial change in circumstances between the earlier case's dismissal and the current petition – or alternatively, a reason to conclude that the instant case will conclude with a confirmed plan that will be fully performed. *See* § 362(c)(3)(C)(i)(III). As the Trustee rightly suggests, since this case was brought so soon after the last one, the prospect of a substantial change in Debtors' affairs during that gap would seem unlikely. Even still, the court disagrees that Debtors did not present a change in circumstances. They allege that in the previous case the Trustee sought information about their personal injury claim (ECF No. 11). They were unable to get that before dismissal. *Id.* But they now claim to have correspondence that will satisfy the Trustee's concerns. *Id.*

Further, Debtors say: (1) one of them is graduating from school and will begin additional employment in the summer; and (2) they are renting out a bedroom and can increase the plan payment (ECF No. 17). And at oral argument, they represented that they had already made two plan payments. Taken as true, the court finds reason to determine that the present case will conclude with a confirmed plan that will be fully performed. Thus, the bad faith presumption does not arise, and Debtors must establish good faith by a preponderance of the evidence.[5] *In re Montoya*, 342 B.R. at 316 (citing *In re Collins,* 335 B.R. at 651; *In re Charles*, 334 B.R. at 217).

B. Good Faith

In the Ninth Circuit, the *In re Leavitt* factors govern good faith. *In re Castaneda*, 342 B.R. 90, 96 (Bankr. S.D. Cal. 2006) (first citing *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999); and then citing *In re Villanueva*, 274 B.R. 836, 841 (B.A.P. 9th Cir. 2002)). The court analyzes each in turn.

[5] "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." *United States v. Arnold & Baker Farms (In re Arnold & Baker Farms),* 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994). Alternatively, had the bad faith presumption arisen, Debtors would have needed to establish good faith by clear and convincing evidence. "The clear and convincing evidence standard requires the moving party to 'place in the ultimate fact finder an abiding conviction that the truth of its factual contentions are "highly probable."' Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighted against the evidence [the non-moving party] offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)) (cleaned up), *rev'd on other grounds*, 888 F.3d 438 (9th Cir. 2018).

First, the Trustee does not argue, and nothing in either case suggests, that Debtors misrepresented facts in the petition or the plan or otherwise unfairly manipulated the code. Indeed, their counsel admitted at oral argument that he should have filed an opposition to the Trustee's dismissal motion, which may have obviated the need for this new case. The court finds this factor weighs in favor of extending the stay.

Next, Debtors' bankruptcy history reaches back to 1994.[6] But aside from the previous case, all of them were over twelve years ago and resulted in discharge. Thus, this factor is neutral.

Debtors' statement of financial affairs indicates no legal actions, repossessions or foreclosures in the year before filing (ECF No. 1). And the Trustee does not argue otherwise. So it appears Debtors did not file to defeat state court litigation – or its interchangeable equivalent, nonjudicial foreclosure. So this factor either does not apply or favors stay relief.

Finally, the court sees no evidence of egregious behavior. On the contrary, Debtors made two plan payments in the first thirty days of the case. This factor likewise supports a good faith filing.

Considering the *In re Leavitt* factors and the totality of the circumstances, the court finds that Debtors have demonstrated their good faith by a preponderance of the evidence.

IV. CONCLUSION

The court finds the bad faith presumption does not arise and that Debtors have proven good faith by a preponderance of the evidence. Accordingly, and good cause appearing, the court **grants** the motion as to all creditors properly served.

IT IS SO ORDERED.

Dated: January 17, 2025

CHRISTOPHER B. LATHAM, CHIEF JUDGE
United States Bankruptcy Court

[6] Collectively, Debtors were in bankruptcy four times before. *See* Case Nos. 94-13553-JH7; 03-05663-PB7; 09-09394-LT13; 24-02083-CL13.