

U.S. BANKRUPTCY COURT  
District of South Carolina

Case Number: 02-10461

Judgment

The relief set forth on the following pages, for a total of 2 pages including this page,  
is hereby ORDERED.

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**FILED BY THE COURT**  
**02/21/2003**



Entered: 02/21/2003

*John E. Waites*

US Bankruptcy Court Judge  
District of South Carolina

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Michael Keith Phillips and  
Mary Gibbs Phillips,

Debtors.

C/A No. 02-10461-W

**JUDGMENT**

Chapter 13

Based upon the Findings of Fact and Conclusions of Law in the attached Order, the Court sustains the Trustee's Objection and denies the confirmation of Debtors' First Amended Chapter 13 Plan.

U.S. BANKRUPTCY COURT  
District of South Carolina

Case Number: 02-10461

Order

The relief set forth on the following pages, for a total of 8 pages including this page,  
is hereby ORDERED.

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**FILED BY THE COURT**  
**02/21/2003**



Entered: 02/21/2003

*John E. Waites*

US Bankruptcy Court Judge  
District of South Carolina

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Michael Keith Phillips and  
Mary Gibbs Phillips,

Debtors.

C/A No. 02-10461-W

**ORDER**

Chapter 13

THIS MATTER comes before the Court upon the confirmation of Michael Keith Phillips and Mary Gibbs Phillips's ("Debtors") First Amended Chapter 13 Plan (the "Plan"). The Chapter 13 Trustee (the "Trustee") objects to confirmation and argues that Debtors fail to satisfy the confirmation requirements of 11 U.S.C. §1325.<sup>1</sup> Specifically, the Trustee asserts that Debtors did not propose their Plan in good faith pursuant to §1325(a)(3) because, after deciding to retain and not surrender three pieces of heavy equipment, they amended Schedule B to reflect a dramatic and unsubstantiated reduction in the values of a 1991 GMC Top-Kick bucket truck (the "Bucket Truck"), a 1994 Morbark chipper (the "Chipper"), and a 1991 New Holland Kabota loader (the "Loader"). In response, Debtors argue they initially relied on the secured creditor's valuations of the equipment and listed these amounts in Schedule B; however, upon learning the equipment was unencumbered and that they could retain the equipment, they amended Schedule B to reflect the actual value of the equipment. After considering the pleadings in the matter, the evidence, and counsel's arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule

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<sup>1</sup> Further references to the Bankruptcy Code shall be by section number only.

of Bankruptcy Procedure 7052.<sup>2</sup>

### FINDINGS OF FACT

1. Debtors filed a Petition seeking Chapter 13 bankruptcy relief on September 3, 2002. Debtors also filed their original Schedules and Statement of Financial Affairs on September 3, 2002.
2. In their original Schedule B, Debtors list the Bucket Truck with a value of \$25,000, the Chipper with a value of \$10,000, and the Loader with a value of \$7,000.
3. In their original Chapter 13 Plan, Debtors propose to surrender the Bucket Truck to Carolina First and move to value Carolina First's lien on the other two pieces of equipment at \$17,500.
4. The parties agree that Carolina First failed to perfect its liens encumbering the equipment; consequently, Debtors propose to retain the equipment as unencumbered instead of surrendering it.
- 5.

On December 27, 2002, Debtors filed their First Amended Schedule B, which lists the Bucket Truck with a value of \$8,000, the Chipper with a value of \$10,000, and the Loader with a value of \$3,000.

6. Mr. Phillips testified that the Bucket Truck is in poor condition. Specifically, the following parts need to be repaired or replaced: load controls, starter, clutch, power steering system, engine, windshield, doors, windows, and tool box. He also testified that someone offered to buy the Bucket Truck for \$8,000 for salvage purposes. In addition, he testified the Bucket Truck was in the same poor condition when Debtors filed this bankruptcy case in September 2002 as it was when Debtors filed First Amended

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<sup>2</sup> The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

Schedule B in December 2002.

7. Mr. Phillips testified that the Loader has been used for numerous work hours and has suffered an inordinate amount of wear and tear. In addition, he testified that the Loader recently malfunctioned and that it will cost approximately \$3,000 to repair it. He testified he has received no offers to purchase the Loader, and he estimates its value to be \$500.

8. The parties agree that Debtors' Plan should contribute at least \$10,000 for the value of the Chipper for purposes of satisfying of the liquidation test.

### CONCLUSIONS OF LAW

Debtors bear the burden of proving that their Plan meets the confirmation requirements of §1325(a), and part of this burden includes proving that the values used in their Plan are adequate. See In re Cushman, 217 B.R. 470, 476 (Bankr. E.D. Va. 1998) (citing Smyrnos v. Padilla (In re Padilla), 213 B.R. 349, 352 (BAP 9<sup>th</sup> Cir. 1997); In re Harrison, 203 B.R. 253, 255 (Bankr. E.D. Va. 1996)); In re Utsey, C/A No. 02-08676-W, slip op. at 2 (Bankr. D. S.C. Oct. 4, 2002) (noting that the debtor has the burden to establish value for purposes of stripping off a second mortgage as well as to satisfy confirmation); In re Johnson, C/A No. 99-10986-W, slip op. at 2 (Bankr. D. S.C. Mar. 20, 2000) (denying confirmation where the debtor did not prove that its plan provided an adequate valuation of collateral pursuant to §1325(a)(5)).

Attendant to debtors bearing the burden to establish accurate values in a Chapter 13 plan is the over-arching principle that accuracy, honesty, and full disclosure are critical to the functioning of bankruptcy and are inherent in the bargain for the debtor's discharge. See Kestell v. Kestell, 99 F.3d 146, 149 (4<sup>th</sup> Cir. 1996) (citing In re Mascolo, 505 F.2d 274, 278 (1<sup>st</sup> Cir. 1974)). One key means by which honesty

and full disclosure is accomplished are the debtors' schedules and statement of financial affairs. These bankruptcy schedules and statements are carefully designed to elicit certain information necessary to the proper administration and adjudication of cases, and debtors have a duty to complete these documents thoughtfully and thoroughly. See Anderson v. Hooper (In re Hooper), 274 B.R. 210, 220 (Bankr. D. S.C. 2001) (citing Tillery v. Hughes (In the Matter of Hughes), 184 B.R. 902, 909 (Bankr. E.D. La. 1995)); In re Justice, C/A No. 02-01524-W, slip op. at 7-8 (Bankr. D. S.C. Aug. 29, 2002). The court system, trustees, creditors, and other interested parties rely on these schedules and statements in order to make informed decisions, and the importance of accurate schedules cannot be overstated. See, e.g., In re Boland, C/A No. 01-03911-B, slip op. at 2 (Bankr. D. S.C. May, 24, 2001) ("This order serves to warn the bar and subsequent debtors that the Court will not be placed in the position of ferreting the truth from inaccurate and misleading information supplied by debtors and their counsel. Neither the UST, the Clerk, nor creditors and parties in interest should be placed at a similar disadvantage."). If complete and full disclosure is not made in the schedules and statements, debtors run the risk of having their entire case dismissed or converted to Chapter 7 or not receiving a Chapter 7 discharge; likewise, debtors' counsel may be sanctioned for failing to submit accurate and complete schedules and statements. See, e.g., Hooper, 274 B.R. at 220 (denying the debtors' discharge pursuant to §727(a)(4) because there were ten instances where the debtors omitted information or failed to provide accurate information in their schedules and statement of financial affairs, including payments to an insider creditor within one month of filing for bankruptcy); In re Trexler, C/A No. 02-04126-W, slip op. at 9-10 (Bankr. D. S.C. Oct. 23, 2002) (converting the debtor's Chapter 13 case to Chapter 7 in part because of the debtor's failure to make a full and complete disclosure in his schedules and statement of financial affairs); In re Style, C/A No. 02-

06803-W, slip op. at 3 (Bankr. D. S.C. Sept. 5, 2002) (sanctioning the debtor's lawyer for filing inaccurate and inadequate schedules); Justice, C/A No. 02-01524-W, slip op. at 8-10 (Bankr. D. S.C. Aug. 29, 2002) (converting the debtor's Chapter 11 case to Chapter 7 in part because the debtor did not disclose a transfer of real property to his spouse in his schedules or statement of financial affairs); Aiken-Augusta Auto Body, Inc. v. Groomes (In re Groomes), C/A No. 01-03492-W, Adv. Pro. No. 01-80148-W, slip op. at 9 (Bankr. D. S.C. Feb. 5, 2002) (denying the debtor's discharge pursuant to §727(a)(4)(A) because the debtor failed to disclose a transfer of real property, her interest in a business entity, her income, and a lease she had entered and because she misrepresented the value of her real property in her schedules).

In this case, the Court has serious questions regarding the accuracy of First Amended Schedule B. Although Debtors argue that their initial values for the equipment were simple mistakes because they relied on Carolina First's materials, the Court is not satisfied with this explanation. As cited above, submitting complete and accurate schedules is essential to the bankruptcy process. Simply because a debtor contemplates surrendering property to a creditor does not relieve him or her of the obligation to complete schedules in a thorough and thoughtful manner. However, even if the Court were to excuse the initial values as simple mistakes, the Court is not convinced that the values presented in First Amended Schedule B are accurate. The Court agrees with the Trustee that the reduction in values from September 2002 to December 2002 is dramatic.<sup>3</sup> While the Court does not expect debtors or their attorneys to be perfect in setting forth values in schedules and recognizes debtors' right to amend schedules, the Court's

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<sup>3</sup> The value of the Bucket Truck went from \$25,000 to \$8,000, and the value of the Loader went from \$7,000 to \$3,000.

concern is heightened when there is such a drastic difference in valuation at two different points in a case. In this case, Debtors presented no independent testimony or expert testimony of an appraiser who examined this property and reached a conclusion as to its liquidation value. The primary import of Mr. Phillips's testimony concerned the equipment's condition and mechanical problems, which the Trustee does not dispute. While the Court allowed Mr. Phillips's testimony as to his opinion of the value of the equipment, the testimony centered on the salvage value he could receive for the equipment and not its liquidation value.<sup>4</sup> Finally, the Court notes that it questions the timing of First Amended Schedule B. Indeed, after repeated requests by the Trustee to amend the Plan to increase payments to creditors in an amount equal to the value of the retained equipment, Debtors significantly reduced the equipment's value. Under the circumstances of this case, the Court is not convinced by Debtors' evidence, which is Mr. Phillips's opinion of value and an offer to purchase at salvage value, and cannot set a value of the equipment for purposes of considering whether the Plan satisfies the liquidation test of §1325(a)(4).<sup>5</sup> For the above-stated reasons, the Court finds that this Plan fails to satisfy §1325 and accordingly denies confirmation. See also In re Reed, C/A No. 01-03739-W, slip op. at 4 (Bankr. D. S.C. Jul. 24, 2001) (finding that debtors' failure to accurately reflect the value of their real property in their schedules is a factor

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<sup>4</sup> Mr. Phillips testified that the condition of the Bucket Truck was the same in December 2002 as it was in September 2002. The Court is dubious of accepting such a significant reduction in value, one of almost seventy percent, when the Bucket Truck was experiencing the same mechanical problems at both times.

<sup>5</sup> The Court notes that it has previously held that, when it performs the hypothetical liquidation test, it relies on values as of the date of the confirmation hearing. See In re Andrews, C/A No. 01-03532-W, slip op. at 5 (Bankr. D. S.C. Oct. 9, 2001). In addition, the Court recognizes that liquidation costs should be deducted when performing the hypothetical liquidation test. See id. at 6, n.3; In re Blackwell, C/A No. 98-02748-W, slip op. at 2-3 (Bankr. D. S.C. Sept. 3, 1998).

indicating their plan was not proposed in good faith); In re Brunner, C/A No. 92-71010, slip op. at 3-4 (Bankr. D. S.C. Jun. 4, 1992) (finding that a debtor's numerous misrepresentations, including inconsistent representations regarding the value of personal property, make the case unduly burdensome to the Chapter 13 trustee). Debtors are not prohibited from submitting an amended plan with substantiated values for the equipment and seeking to confirm a further amended plan.<sup>6</sup> Any such plan must be submitted within ten days of the entry of this Order.<sup>7</sup>

### CONCLUSION

From the arguments discussed above, it is, therefore,

**ORDERED** that the Trustee's Objection is sustained and the confirmation of Debtors' First Amended Chapter 13 Plan is denied.

**AND IT IS SO ORDERED.**

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<sup>6</sup> Either Debtors or the Trustee may submit an appraisal of value or independent or expert testimony regarding value. The Court notes that such evidence appears to be necessary in this instance as the property at issue is specialized heavy business equipment designed for the unique purpose of trimming trees or clearing land. Unlike consumer goods or property that is so widely purchased and advertised that it is amendable to a lay opinion of value from an owner or that has widely recognized valuation guides (e.g., automobiles and N.A.D.A. and Kelley Blue Book), the equipment at issue in this case is unique to a particular industry, which the Court presumes has its own unique valuation standards and market. Finally, the Court also observes that the employment by the Trustee of a professional to value property in this case may create an administrative expense which will have to be paid by Debtors.

<sup>7</sup> The Court will not prohibit Debtor from refile an amended plan that maintains their current position if Debtors specifically identify to the Trustee their new sources of evidence to support their position regarding value when they file their amended plan.