

**FILED**  
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MAY 11 2006

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

United States Bankruptcy Court  
Columbia, South Carolina (37)

In re:

Bruster O. Harvin,

Debtor.

Case No. 05-13911  
Chapter 13

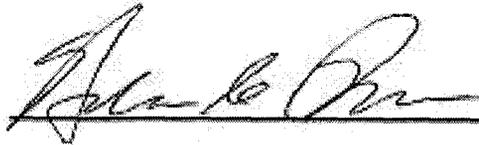
**ENTERED**

MAY 11 2006

**D. H. R.**

**JUDGMENT**

Based upon the findings of fact and conclusions of law made in the attached Order, the motion of the United States Trustee requesting dismissal of this case with prejudice is granted. The debtor's case is hereby dismissed and he is prohibited from refileing for relief under Title 11 of the Bankruptcy Code in any district for a period of one year.



UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
May 11, 2006

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D. H. R.

**ORDER DISMISSING CASE WITH PREJUDICE**

This proceeding came before the Court on April 25, 2006, for hearing on the motion of the United States Trustee (UST), filed on March 2, 2006, to dismiss this case with prejudice for three years. The debtor filed a response and appeared at the hearing with his counsel to testify and respond to the motion. After careful consideration of the arguments and evidence presented and the record in this case, the court enters the following order.

**FINDINGS OF FACT**

The debtor filed this chapter 13 case on October 14, 2005. The debtor's plan is not yet confirmed per the docket in this case.

The debtor filed his schedules with his bankruptcy petition and those schedules disclosed as his only interest in real property ownership of a one-half interest in two acres identified as "Tax Map No.:45-138-012." According to the debtor's testimony, that two-acre tract is located on Santee Road. This is not the debtor's home address. At the first meeting of creditors conducted by the chapter 13 trustee on November 22, 2005 and during the Rule 2004 examination of the debtor conducted by the UST on February 23, 2006, the debtor was asked if

he had any ownership interest in the real property located on Jane Harvin Road – his home address – and was questioned about any assets and information not on his schedules and statements.

On February 27, 2006 the debtor amended his Schedule A to add an unencumbered three acres at “Tax Map No. 45-211-027” in which he claims an “untitled interest.” According to the debtor’s testimony, this interest is in property located on Jane Harvin Road. At that time the debtor also added the following omitted assets in addition to the realty: (1) cash of \$80, (2) two bank accounts with a total balance of \$125.42, (3) interests in two insurance policies and (4) a pension from Albany International. The debtor also amended his schedules to disclose the fact that he had total pension income of almost \$13,000 in 2004 and 2005, and had made gifts of more than \$3,000 in the year preceding filing, as required by the questions on the Statement of Financial Affairs.

At the hearing the debtor testified that in 2004 he executed a deed transferring a tract of land to transferees with the last name of Collins (hereinafter “Collins”) and that this acreage included the property on Jane Harvin Road. The debtor testified that he did not previously disclose this interest in realty in his schedules because he did not believe that he had title to the property as a result of this transfer. A copy of the deed evidencing this transaction was admitted into evidence. The deed is signed by the debtor with the date of April 15, 2004 and states that he is transferring property defined as

*All that certain piece, parcel or lot of land, situate and lying in Penn Township, County of Williamsburg, State of South Carolina, containing sixty-nine and four tenths (69.4) acres, more or less, and being more fully shown on a plat entitled “MAP OF THE ESTATE OF DAVE HARVIN”, prepared by E.H. Haddock, Jr., dated May 24, 1967, and recorded May 31, 1967, in the Office of the Clerk of Court for Williamsburg County in Plat Book 15 at page 29, a copy of said plat being expressly incorporated herein by reference and made a part and parcel hereof.*

*This being the property conveyed to Bruster O. Harvin by deed of Theo M. Harvin, Sabra C.H. Holmes, and Theo H. Harvin a.k.a. Theo H. Barr dated September 18, 1996, and recorded*

*October 30, 1996, in the Office of the Clerk of Court for Williamsburg County in Deed Book A-370 at page 77.*

*LESS AND EXCEPTING: All that certain piece, parcel or lot of land, situate and lying in Penn Township, County of Williamsburg, State of South Carolina, containing 4.00 acres, more or less, and being more fully shown on a plat entitled "SURVEYED FOR: BRUSTER O. HARVIN", prepared by J. B. Ellis, Jr., RLS, dated March 4, 2004. . . .*

Despite the clear language of the deed, the debtor testified that he believed and had been advised in the past that the title to the acreage excepted did not automatically remain with him, but rather would have to be deeded back to him by Collins before he would have title to that property.<sup>1</sup> He testified that although he resided on the property and believed that he was entitled to a deed, he did not think he had legal title and so he did not schedule any interest in the property. The debtor also testified that Collins paid the taxes on that property including the taxes on the portion where he lives. As for the remaining items initially omitted and then added to the amended schedules, the debtor testified that he was mistaken but did not intend to hide anything.

#### **DISCUSSION AND CONCLUSIONS OF LAW**

The UST filed this Motion to Dismiss citing 11 U.S.C. § 1307(c) and asking that the case be dismissed "for cause," such cause being the debtor's bad faith as evidenced by his failure to disclose assets and the delay in amending his schedules to disclose assets after their discovery.<sup>2</sup> The UST argues that the debtor's numerous incomplete or inaccurate answers on his schedules and statements reflect a cavalier or reckless disregard for the importance of truthfulness in filing those documents. The debtor's counsel countered by arguing that the omissions were inadvertent, immaterial and did not harm creditors. He argued that the omission of the real estate results from the debtor's failure to realize that he may have title to the property and that the remainder of the omissions do not rise to a level of seriousness as to warrant dismissal of the case, much less dismissal with prejudice.

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<sup>1</sup> This advice did not appear to involve his bankruptcy counsel.

<sup>2</sup> Further references to Title 11 will be by section number only.

A comparison of the amended schedules to the debtor's original schedules reveals that the debtor clearly failed to list numerous assets and disclose certain information. This court has determined that "[t]he critical time for disclosure is at the time of the filing of a petition and the Debtor has the responsibility to do so. Bankruptcy law requires debtors to be honest and to take seriously the obligation to disclose all matters." Siegel v. Weldon (In re Weldon), 184 B.R. 710, 715 (Bankr. D.S.C. 1995). This court has further stated:

Since bankruptcy schedules and statements are carefully designed to elicit certain information necessary for the proper administration of cases, Debtors have a duty to complete these documents thoughtfully and thoroughly. See In re Phillips, C/A No. 02-10461, slip op. at 4 (Bankr. D.S.C., Feb. 21, 2003). Furthermore, accuracy, honesty, and full disclosure are critical to the functioning of bankruptcy and are inherent in the bargain for a debtor's discharge. See id. at 3 (citing Kestell v. Kestell, 99 F. 3d 146, 149 (4<sup>th</sup> Cir. 1996)).

In re Simpson, 306 B.R. 793, 797 (Bankr. D.S.C. 2003). The primary item omitted by the debtor was whatever interest he had in the property located on Jane Harvin Road. Regardless of the exact status of the legal title, it was clear from the debtor's testimony that he realized he had some interest and contractual right to the property when his initial schedules were prepared. He testified that he believed that he was *entitled* to a new deed for the property as of the date the case was filed. He clearly knew that he had an interest of some sort. Assuming the debtor was unsure of the status of his interest at the time the original schedules were filed and unable after due diligence to determine the nature of that interest, he was at least required to honestly schedule whatever interest that he thought that he had, either on Schedule A as an unknown interest in real property or on Schedule B under numerous questions asking the debtor to list any equitable, contingent or future interests. He did not do so when he filed his original schedules.

It is, however, understandable that occasionally a debtor will make an honest error on his or her schedules, and amendment may be necessary to correct such an error.<sup>3</sup> The omitted assets and information in question in this case were added to the debtor's schedules by amendment in late February of 2006. As to those amendments, the timing, accuracy and the thoroughness are problematic. First, the debtor added a disclosure of real estate, other assets and historical financial information more than four months after the case was filed. Also, this debtor made these amendments only after being interrogated by the trustee and UST. Finally, once the amendments were made, they were still misleading and unclear. When the debtor amended his schedules, among other things he added an "untitled interest" in real property. As of the date of the hearing, he still appeared to be unable to define his exact interest in that property. While the debtor may assert that his confusion over the nature of his interest supports his position that he was honestly mistaken about his duty to schedule the asset, the court is not convinced. "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." In re Phillips, slip op. at 4. "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." In re Boland, C/A No. 01-03911-WB, slip op. at 2 (Bankr. D.S.C. May 24, 2001). Even if the court could excuse the initial omission of the assets and information and the questionable timing of the amendments to correct the schedules, as of the date of the hearing the debtor's schedules still reflected an "untitled interest" in the added real estate. While the

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<sup>3</sup> For example, the record in this case reflects that the debtor amended his Schedules D, F and H on December 27, 2005. No issues have been raised by the UST regarding those amendments.

debtor asserted that he believed this definition of his interest to be correct, the UST discredited this testimony on cross-examination and also presented documentary evidence – a copy of the deed in question that gave rise to the confusion – indicating that the schedules in fact were still not correct on the date of the hearing on this motion. Had the debtor read the plain language of the deed before he filed his case and prepared his original schedules, he most likely would have ended his confusion and would have understood that he still owned a portion of the Jane Harvin Road property. Regardless, under South Carolina law, “a competent person usually is presumed to have knowledge and understanding of a document he signs, absent evidence his signature was obtained by misrepresentation, fraud, forgery, or duress.” Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6, 12 (2005). See also Webb v. Reserve Life Ins. Co. (In re Webb), 119 B.R. 114, 115 (Bankr. N. D. Tex. 1990)(one who signs documents “is charged with knowledge of the facts contained in the documents which he signed before a notary public as well as with knowledge of their legal effect”); Buffalo Fire Dep’t Fed. Credit Union v. Butski (In re Butski), 184 B.R. 193, 195 (Bankr. W.D. N.Y. 1993) (failure to read documents that one “signs does not relieve him or her (absent a showing of special circumstances) from being charged with knowledge of their contents.”) A debtor must do his or her homework by thoroughly reviewing financial affairs to prepare schedules and statements and, when challenged, must also be ready to provide evidence that the information in the documents is well supported by fact. See In re Phillips, slip op. at 5-6 (it was inappropriate for a debtor to amend schedules to lower value of property for the debtor’s benefit without sufficient proof of the lower valuation.) See also, e.g., In re Faust, C/A No. 05-01958-W, slip op. at 5 (Bankr. D.S.C. Aug. 1, 2005) (debtors blindly relied on a tax appraisal for a valuation in schedules, and the court found that the debtor must instead make a sufficient good faith effort to determine current market value by considering

numerous other sources of information – in essence must do his or her “homework” – and that failure to do so constituted grounds for conversion or dismissal pursuant to 1307(c.)

The omission of the real estate and other numerous omissions in the original schedules indicate at least a lack of diligence on the part of the debtor in fulfilling his obligation to fully and accurately disclose all of his interests in property and provide accurate and complete responses to the questions on the Statement of Financial Affairs. Further, the debtor’s failure to thoroughly and thoughtfully correct those omissions in a timely fashion and inclusion of misleading information when the schedules were eventually amended further evidence this lack of diligence and disregard for his obligations under the law. The UST has shown that the debtor exhibited at least a reckless disregard for his obligation to correctly and thoroughly file schedules and statements and therefore, the facts warrant dismissal of this case with prejudice. The omissions in this case are suspicious as illustrated by the arguments of the UST; however, based on the testimony, documentary evidence and overall evidentiary record, the court was not sufficiently convinced that the record supports a finding that the debtor maliciously withheld the information in question. Therefore, the court declines to sanction the debtor as strongly as requested.

Pursuant to the authorities cited above and for these reasons, the motion of the UST requesting dismissal of this case is granted. The UST has requested a dismissal with prejudice for three years, but based on the evidence presented and applicable law the prejudice period granted will be one year. Therefore, the debtor is prohibited from refileing for relief under Title 11 of the Bankruptcy Code in any district for a period of one year.



UNITED STATES BANKRUPTCY JUDGE

Columbia, SC  
May 11, 2006