

ENTERED

JUN 05 2009

K.R.W.

IN RE:

James W. Medlin and Stacey O. Medlin,

Debtor(s).

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at _____ o'clock & _____ min _____ M

JUN 05 2009

United States Bankruptcy Court
Columbia, South Carolina (25)

C/A No. 09-02697-JW

Chapter 13

JUDGMENT

Based on the Findings of Fact and Conclusions of Law set forth in the attached Order of the Court, the chapter 13 trustee's objection to confirmation is sustained and confirmation of Debtors' proposed chapter 13 plan is denied.



UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina

6/5, 2009

FILED

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Chapter 13

Debtor(s).

ORDER

This matter comes before the Court for confirmation of the chapter 13 plan (“Plan”) filed by James W. Medlin and Stacey O. Medlin (“Debtors”). At the hearing, the chapter 13 trustee (“Trustee”) requested that the Court deny confirmation based upon Debtors’ failure to disclose assets. This Court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 157(a) and 1334(b). Pursuant to Fed. R. Civ. P. 52, which is made applicable to contested matters by Fed. R. Bankr. P. 7052 and 9014(c), the Court makes the following Findings of Fact and Conclusions of Law.¹

FINDINGS OF FACT

1. Debtors filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code (“Petition”) on April 9, 2009.

2. Simultaneously with the Petition, Debtors filed their bankruptcy schedules, which were signed by Debtors under penalty of perjury pursuant to 28 U.S.C. § 1746 and Fed. R. Bankr. P. 1008. On Schedule B – Personal Property, Debtors listed, among other things, various hand tools with a total value of \$50.00 under the category of household goods and furnishings. Under the category of machinery, fixtures, equipment and supplies used in business, Debtors listed only “One year old Staples fax Machine and Five year old Printer” with a total value of \$45.00.

¹ 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.

3. On March 10, 2009, Debtors filed their proposed chapter 13 plan, which was subsequently amended on May 21, 2009.

4. A hearing on confirmation was held on May 28, 2009. At the hearing, the Trustee argued that confirmation should be denied and the case should be dismissed on the grounds that Debtors failed to disclose that they owned a number of tools of significant value, which were used by Debtor James Medlin in the operation of his business, Carolina Erectors. In support of his argument, the Trustee offered into evidence copies of Debtors' 2007 and 2008 tax returns, which show that Debtors took depreciation deductions for business equipment in the amounts of \$17,761.00 in 2007 and \$3,099.00 in 2008. When questioned by the Trustee regarding the tax returns, Mr. Medlin was unable to explain why he took such large depreciation deductions.

4. At the hearing, Debtors offered into evidence a list of equipment they owned in 2007 and 2008. According to the list, the total value of equipment owned in 2007 was \$17,485.00 and the total value of equipment owned in 2008 was \$2,854.00. Mr. Medlin testified that some of this equipment had been stolen and much of the remaining equipment had little value because it was "worn out."

5. Since the hearing, Debtors have amended their Schedule B to list equipment with a total value of \$1,736.51 under the category of "machinery, fixtures, equipment and supplies used in business."

CONCLUSIONS OF LAW

A debtor's foremost duty in a bankruptcy case is to accurately and completely disclose assets and the corresponding values of those assets in his or her schedules and statements. In re Simpson, 306 B.R. 793, 798-99 (Bankr. D.S.C. 2003). The proper

administration of bankruptcy cases depends upon the debtor providing a complete and accurate portrayal of his or her financial situation. Id. at 798. The Trustee asserts that the information contained in Debtors' tax returns calls into question the accuracy of the information provided in the schedules. The tax returns show that Debtors claimed large depreciation deductions for tools used in Mr. Medlin's business. This appears to indicate that Debtors owned tools having a value in excess of the deductions claimed in 2007 and 2008. At the confirmation hearing, Debtors failed to satisfactorily explain these deductions and conceded that they currently own, or owned at the time the petition was filed, tools that were not disclosed in their schedules.²

Debtors bear the burden of proof at confirmation. In re Bowen, C/A No. 7-05485, slip op. at 5 (Bankr. D.S.C. Jan. 9, 2008). In order to obtain confirmation of their plan, Debtors must demonstrate that both the filing of the petition and the proposal of the plan were in good faith. 11 U.S.C. § 1325(a)(3), (7). The determination of good faith under both § 1325(a)(3) and § 1325(a)(7) is made using a totality of the circumstances approach. See Bowen, slip op. at 4; In re Loper, C/A no. 08-3646, slip op. at 6 (Bankr. D.S.C. 2009). Although Debtors' honesty in representing the facts of the case is only one of the factors to be considered to determine whether a plan has been proposed in good faith, it is a critical factor. See Deans v. O'Donnell, 692 F.2d 968, 972 (4th Cir. 1982) (setting forth a list of several factors to be utilized to determine whether the plan was proposed in good faith); see also Loper, slip op. at 5 ("Debtor's failure to honestly represent the status of his assets and transfers weighs heavy in [the good faith] analysis.")

² At the hearing, Debtors' counsel stated that he misunderstood Debtors' definition of "hand tools" and that their failure to disclose was due to his failure to ask the "right question" when they were preparing the schedules. Mr. Medlin testified that he considered things such as drills, welders, and power saws to be "hand tools." However, this explanation does not reconcile with the Debtors' listing of only \$50 worth of "hand tools" on Schedule B.

Debtors have not offered any credible explanation or excuse for their failure to disclose ownership of tools of significant value on Schedule B. "The unjustified failure to disclose interests in property which comprises property of the estate under 11 U.S.C. § 541(a) taints a bankruptcy case from its beginning." In re Jongsma, 402 B.R. 858, 875 (Bankr. N.D.Ind. 2009).

Debtors have since filed amended schedules to list the omitted property. In light of Debtors' failure to adequately explain their failure to disclose the tools, the subsequent amendment of Debtors' schedules to include these omitted assets does not undo the effect of the initial nondisclosure. See Loper, at 7 (denying confirmation based on debtor's failure to credibly explain his failure to disclose a material asset, notwithstanding debtor's filing of amended schedules disclosing the asset and an amended plan that increased the distribution to unsecured creditors). Debtors have failed to present sufficient evidence to meet their burden of demonstrating good faith. Based on the totality of the circumstances, the Court is unable to conclude that the filing of the petition and the proposal of the plan were made in good faith and therefore finds that Debtors have failed to meet the requirements for plan confirmation under § 1325(a).

Accordingly, it is hereby

ORDERED that the Trustee's objection to confirmation is sustained and confirmation of Debtors' plan is denied.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
6/5, 2009