

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

FILED
at ___ O'clock & ___ min ___ M
AUG - 1 2005

United States Bankruptcy Court
Columbia, South Carolina (7)

In re:

Robert David Faust, Sr., and
Catherine Richardson Faust,

Debtors.

Case No. 05-01958-W
Chapter 13

ENTERED

AUG - 1 2005

S. R. P.

ORDER

This matter is before the Court on the motion of the United States Trustee (UST) pursuant to 11 U.S.C. § 1307(c) for an order converting this case to chapter 7.¹ The debtors opposed the motion, but do not oppose the entry of this order.

Section 1307(c) provides that on the request of the UST and after notice and a hearing, the Court may convert a case under chapter 13 to a case under chapter 7 or may dismiss a case, whichever is in the best interests of creditors and the estate, for cause. The UST contends that the debtors substantially undervalued their real property in their schedules and that their bad faith in doing so warrants conversion of the case to chapter 7.

After considering the facts of this case, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Fed. R. Civ. P. 52, made applicable in bankruptcy proceedings pursuant to Fed. R. Bankr. P. 7052.²

¹ Further references to Title 11 U.S.C. will be by section number only.

² 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.

FINDINGS OF FACT

The debtors, Robert David Faust, Sr. and Catherine Richardson Faust (debtors), filed for relief under chapter 13 on February 18, 2005. On their "Schedule A, Real Property" (Schedule A) the debtors listed their home and a second piece of real property described as 20.28 acres of land on Broad River Road in the town of Irmo, in Richland County, South Carolina. Also on their Schedule A, the debtors listed the current market value of this property as \$2,700 and stated that there were no secured debts on the property. The debtors indicated on Schedule A that \$2,700 was the tax appraisal value and attached to their Schedule A a copy of their 2004 Richland County real property tax notice which states the "Appraised Value Taxable" as \$2,700. Although the tax notice sets the "Appraised Value Taxable" at \$2,700, the Richland County Tax Assessor's records on this property show that \$2,700 is the "Agricultural Use Value" of the property and that the "market value" of the property is \$182,500. Agricultural Use Value is essentially a special property assessment under state law meant to encourage farming. By applying for the Agricultural Tax Value on acreage tracts of land that qualify based on bona fide agricultural use of the property, the land owner obtains a property assessment that is based on a statutory formula instead of a market value assessment. In effect, that formula ensures a special low property value which results in a greatly reduced tax burden on the farmer. The debtors applied for the Agricultural Use Value on their 20.28 acres of land in 2004.

The debtor Catherine Faust litigated with her brothers from 1998 to 2002 over 41 acres of land which was previously owned by Mrs. Faust's mother. As a part of a settlement of that litigation, the 41 acres were divided, and Mrs. Faust received the 20.28 acres at issue in this matter. During the litigation, Mrs. Faust's 20.28 acres property was appraised two times, once

for \$120,000 and once for \$144,000. Those appraisals were performed at least four years prior to the filing of this case. Mr. Faust testified at the hearing on the UST's motion that he and Mrs. Faust spent over \$80,000 on attorneys' fees in the litigation over this property.

On June 22, 2005, after the UST filed his motion seeking conversion of this case, the debtors filed an amended Schedule A which again stated that the market value of their 20.28 acres was \$2,700. In notes included on that amendment, the debtors stated that the land was zoned as farmland and that they had obtained a commercial appraisal listing a value of \$176,000 which was accurate only if the property is zoned as commercial. The debtors reiterated that their opinion was that the property has always been farmland and has a value of \$2,700. The debtors attached to their amended Schedule A the appraisal showing the value of the property to be \$176,000. The appraisal stated that the property was zoned "RU-Rural District/Includes Residential." The appraisal also stated that the highest and best use of the property is improved residential. It is clear that no zoning change is needed to market this property for residential development.

The debtors filed a chapter 13 plan at the outset of their case proposing to pay their unsecured creditors a total of one percent of the \$98,532 owed to them.

CONCLUSIONS OF LAW

As this Court has ruled previously,

The Bankruptcy Code provides that Debtors' foremost responsibility is to cooperate with the Court and the Trustee and to facilitate the accurate and proper performance of their duties. *See* 11 U.S.C. § 521. 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 (4th Cir.1996)). Therefore, debtors are responsible for disclosing an accurate and complete schedule of assets with proper values and a truthful statement of affairs in order to convey a complete and accurate portrayal of their financial situation. *See id.* at 3 ("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"); *Siegle v. Weldon (In re Weldon)*, 184 B.R. 710, 715 (Bankr. D. S.C. 1995) (The 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."). Furthermore, there is no allowance for selectivity in asset disclosure. *Id.* ("To allow the Debtor to use his discretion in determining the relevant information to disclose would create an end-run around this strictly crafted system.") As a result of debtors' duty to accurately and completely disclose assets and the corresponding values, if complete and full disclosure is not made in the schedules and statements, debtors run the risk of having their case dismissed or converted to Chapter 7 or not receiving a Chapter 7 discharge. *In re Phillips*, C/A No. 02-10461-W, slip op. at 4.

In re Simpson, 306 B.R. 793 at 797, 798 (Bankr. D. S.C. 2003).


It is clear from the facts of this case that the debtor's 20.28 acres of land is worth at least \$176,000, the value their own appraiser determined to be accurate. It is also clear that the debtors knew, or certainly should have known, that this property was worth far in excess of \$2,700 when they filed their Schedule A. Although the debtors claim that they believe the property to be worth only the Agricultural Use Value, it seems highly unlikely the debtors would have spent more than \$80,000 for legal fees in protracted litigation for property they believed to be worth so little. Because Mrs. Faust's attorney in that litigation was her agent, his affidavit supporting a value of \$144,000 in 2000 was, in effect, her statement as to the value. The Court also believes that the debtors knew in 2004 why they were applying for the Agricultural Use Value for their property - so that it would not be taxed based on the far higher market value.

Although there is ample evidence to conclude that the debtors knew in this case that the tax appraisal value was not realistic, the debtors' reliance on this assessed value would have been inappropriate even if they had not had such knowledge. It is never acceptable for debtors to blindly rely on tax assessment values - especially special assessment values - in determining market values of property. Debtors must make a sufficient good faith effort to determine current market value by considering such factors as recent neighborhood sales, prior offers made to the debtors by potential purchasers, the purchase price paid by the debtors, prior appraisals, or other valuation information. The tax assessment value is only one factor to be considered by the debtor in making a determination of market value.

Because the debtors failed to meet their responsibility to provide an accurate representation of the value of their real property, the Court concludes that cause exists under § 1307(c) to dismiss this case or convert it to chapter 7. Clearly, it is in the best interests of creditors and the estate for the debtors' case to remain in bankruptcy and for their 20.28 acres to be sold. It appears that such a sale will pay unsecured creditors in full. However, the debtors have asked for the opportunity to remain in chapter 13 for a period of 120 days after confirmation of their plan in order to attempt to sell or borrow against their property and pay creditors in full with 7% interest. The debtors agree that, under this proposal, their case would be converted to chapter 7 if, at the end of the 120-day period, they have not been able to raise the funds to pay creditors in full with 7% interest. The UST has informed the Court that he does not oppose this proposal. Because the ultimate resolution of this matter will be the sale of the property and payment of creditors under either option, the Court will adopt the debtors proposal. It is, therefore

ORDERED, that the debtors shall amend their plan within ten (10) days to provide for payment in full of all creditors, including their unsecured claims with 7% interest, within 120 days of confirmation. The plan will provide that the debtors will transfer to the chapter 13 trustee for distribution to creditors all proceeds (after deduction of expenses) from the sale of, or loans against, the debtors' 20.28 acres of land. In the event the debtors have been unable to raise the funds necessary to pay unsecured creditors in full within the 120 days, this case will be converted to chapter 7 on the affidavit of the trustee certifying that the debtors have not transferred funds to the trustee.

AND IT IS SO ORDERED.


United States Bankruptcy Judge

Columbia, South Carolina
August 1, 2005