

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-886

Order Dismissing Case with Prejudice

The relief set forth on the following pages, for a total of 4 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
05/15/2007



Entered: 05/15/2007


US Bankruptcy Court Judge
District of South Carolina

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE)
) CASE NO. 07-00886-dd
ALAN CHARLES LIVELY)
) CHAPTER 13
DEBTOR.)
_____)

**ORDER ON TRUSTEE’S MOTION TO DISMISS WITH PREJUDICE
FOR FAILURE TO DISCLOSE ASSETS**

This matter came before the Court on the Trustee’s Motion to Dismiss with Prejudice for Failure to Disclose Assets. The debtor filed a response, and he and his attorney appeared at the hearing on May 14, 2007.

The debtor filed for relief under Chapter 13 of the United States Bankruptcy Code on February 22, 2007. Joy S. Goodwin was appointed the Chapter 13 trustee.

On Schedule B of the petition, the debtor listed on Line 28 “Tools of the Trade: welder, weed eater, mover, tools” and gave these items a value of \$600. However, it appears that the debtor received a divorce in the Family Court for Dillon County, South Carolina on December 21, 2006. The Family Court order listed several items that the debtor owned that were not listed in the bankruptcy schedules. The Family Court valued the following items that were not listed in the debtor’s Schedules and Statement of Financial Affairs:

Miller Welder	\$1,400.00
Trailer 12/6	540.00
Lincoln Welder	450.00
Cutting system	1,150.00
7114 Machine	575.00
40’ container	800.00
John Deere Tractor	10,230.00

The Family Court valued these items at one-half the cost set forth on the depreciation schedule attached to the debtor's 2005 tax returns. The debtor testified in the Family Court and this Court that he had sold these items to his sister in 2004, yet admitted that he claimed the depreciation for these items in his 2005 income tax returns.

At the hearing on the trustee's motion to dismiss with prejudice for failure to disclose assets, the debtor admitted that he had not amended his 2005 tax returns to reflect that the debtor did not own the items and was not entitled to claim depreciation on the items listed in the divorce decree.

The Court is troubled by the inconsistent positions taken by the debtor. The debtor claims ownership on the items as late as the year 2005 before one government agency, the Internal Revenue Service, yet takes the position that he does not own these items and has not transferred those items within two years of filing this case¹ before another governmental agency, the United States Bankruptcy Court.

Income tax returns are the "quintessential documents 'from which the debtor's financial condition or business transactions might be ascertained.'" *Vines v. Internal Revenue Service (In re Vines)*, 200 B.R. 940, 945 (M.D. Fla. 1996) (quoting *Nisselson v. Wolfson (In re Wolfson)*, 152 B.R. 830, 833 (S.D.N.Y. 1993)). Tax returns are utilized to verify the schedules filed by the debtor, to find property that may be improperly scheduled or not scheduled at all, to determine tax liability, and to determine whether tax refunds are forthcoming. *See Lubman v. Hall (In re Hall)*, 174 B.R. 210, 215 (Bankr. E.D. Va.1994). The returns are essential to the orderly administration of a debtor's estate because without them, creditors and the trustee are forced to blindly accept the debtor's uncorroborated statements as contained in their schedules. *Vines*, 200 B.R. at 945; *Hall*, 174 B.R. at 215.

In re Tipler, 360 B.R. 333, 346 (Bankr. N.D. Fla. 2005).

¹ These items were not scheduled as transferred within the past two years per question number 10 in the debtor's statement of financial affairs.

It appears that the debtor intentionally failed to disclose assets in his bankruptcy schedules, as proven by his 2005 tax returns and the Family Court Order. Such misrepresentation is material and serious enough to deny him the protection of the bankruptcy code. Despite his knowledge that he claimed ownership of the property in 2005 and his knowledge that in December of 2006 a court of law had charged him with ownership of the property, the debtor made no mention of these assets on his schedules.²

For this reason, the Court will grant the trustee's motion to dismiss with prejudice for a period of one year as to any of the reorganization chapters of the United States Bankruptcy Code.

IT IS THEREFORE ORDERED that this case is dismissed for failure to disclose assets, and the debtor is barred from filing a case under Chapters 11, 12 or 13 for a period of one year from the date of entry of this Order.

AND IT IS SO ORDERED.

² The debtor claimed in the Family Court and also in this Court that he sold the assets to his sister in 2004. The Family Court found his testimony not credible and found that he owned the property in question. The debtor also filed his 2005 tax returns claiming ownership of the property. As of the date of the hearing of this matter, he had not amended those returns to change that representation. These facts would at least warrant a mention, disclosure or explanation of a potential claim to the assets in the debtor's schedules even if he maintains his position that he no longer owns the assets outright.