

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

IN RE:

Edward Wayne Grissom,

Debtor(s).

C/A No. 17-04224-HB

Chapter 13

**ORDER DENYING CONFIRMATION
OF CHAPTER 13 PLAN**

THIS MATTER is before the Court to consider confirmation of the Chapter 13 Plan of Debtor Edward Wayne Grissom, and the objections thereto filed by Chapter 13 Trustee, Wm. Keenan Stephenson, and Creditor Robert P. Voigt.¹

FACTS

Grissom entered into a Contract of Sale dated August 26, 2013, to purchase 20 acres of land from Voigt located at 34 Mill Springs Drive, Aiken, South Carolina ("Property"). The purchase price was set at \$185,000.00. Grissom made a down payment of \$55,000.00, and the balance was due in monthly payments of \$656.09 at 5% interest, with a final balloon payment due on August 6, 2048. The Contract of Sale provides that Grissom is responsible for payment of property taxes or assessments when they become due and if he fails to pay, Voigt has the right to pay the same and add such payment to the principal indebtedness to draw interest at the same rate. The Contract of Sale was recorded in the Aiken County Register of Mesne Conveyance on April 23, 2015 in Book No. RB 4549, Page Nos. 1199-1203. Voigt remained the record owner of the Property, and agreed to transfer ownership to Grissom by deed upon completion of the payments due under the Contract of Sale.

¹ ECF Nos. 10 & 11.

The Contract of Sale states that upon default by Grissom, Voigt may: terminate the contract and retain all sums of money paid to him as liquidated damages; accelerate all money secured by the contract and foreclose on the agreement; or declare all money owed be immediately due and payable and foreclose on the agreement. The contract also allows for recovery of reasonable attorney's fees and costs.

Grissom defaulted on his payment obligations to Voigt. As a result, Voigt initiated an action in Aiken County bearing the caption *Voigt v. Grissom*, C/A No. 2016-CP-02-2544. On June 26, 2017, the Master in Equity entered an order ("Master's Order") finding:

2. The defendants are in default and breached the terms of the agreement. The Contract of Sale is null and void. Plaintiff is entitled to keep the funds paid and retain those amounts. The Plaintiff is entitled to reasonable attorney fees (\$2,500.00) and costs (\$490.00). Plaintiff is also entitled to recover the amounts previously agreed to by the defendants for \$7,217.00.

3. Based on the down payment of \$55,000.00 and the monthly payments that were made by the Defendants, the Defendants appear to have accumulated some equity in the real estate and need to be afforded the right to exercise their right of redemption . . . The attorney for the Plaintiff will mail a copy of this order to the defendants last known address and file a certificate of mailing with the Aiken County Clerk of Court. The Defendants will have 50 days from the date a copy of this order is placed in the mail to pay the plaintiff the entire amount owed pursuant to the contract and the court orders. If the defendants fail to exercise the equitable right of redemption, the plaintiff will be entitled to have the defendants vacate the property 60 days from the date a copy of this order is placed in the mail.

(emphasis in original). The Master's Order calculated the entire amount owed on the Contract of Sale as of that date to be \$157,508.41, which included property taxes, costs, and attorney's fees. The Master's Order notes that Grissom appeared at the hearing *pro se* and was provided an opportunity to cross examine Voigt and review and object to any evidence submitted.

Voigt's state court counsel filed a certificate of service in that court indicating a copy of the Master's Order was mailed to Grissom on June 27, 2017, to 34 Mill Spring

Drive, Aiken, South Carolina 29801. Therefore, per the terms of the Master's Order, Grissom's deadline to exercise his equitable right of redemption and pay the entire amount owed pursuant to the Contract of Sale lapsed 50 days later on or about August 16, 2017.

Grissom filed for Chapter 13 relief on August 25, 2017, 59 days after the Master's Order was placed in the mail. He listed his mailing address and residence as 34 Mill Springs Drive, Aiken, SC 29801. Grissom's Schedules and Statements indicate that his monthly income is \$1,359.40, derived solely from Social Security and food stamps. He scheduled his monthly expenses before his proposed plan payment at an unrealistic figure of only \$458.00, not including any amounts for real estate taxes or medical or dental expenses. He testified at the hearing, however, that he earned additional income "under the table." Grissom also testified that upon request to the appropriate state authority for a waiver or exemption, he would not be required to pay real estate taxes; however, there was no indication that he had pursued such arrangements or that his testimony was accurate.

Grissom's Chapter 13 conduit plan proposes monthly payments of \$899.00 for 60 months with the Chapter 13 Trustee making the ongoing payments and curing any arrearages due to Voigt. Grissom proposes to pay Voigt a total of \$762.09 per month from his plan payment for pre- and post-petition arrears and to cover the ongoing monthly payments under the Contract of Sale for the life of the plan. After the conclusion of this case, the debt to Voigt will not be paid in full and Grissom would resume payments to complete his obligations under the Contract of Sale.

Voigt objects to confirmation of Grissom's plan, asserting his treatment in the plan is inappropriate because Grissom no longer has an interest in the Property or the Contract of Sale because it was terminated by the Master's Order. Grissom testified that he "could

not recall” ever receiving a copy of the Master’s Order and claims he was unaware of the deadline to exercise his equitable right of redemption and avoid cancellation of the Contract of Sale until Voigt filed an objection in this case.

Voigt also asserts that if the obligations under the Contract of Sale are to be paid through the plan, it does not contain sufficient funding to cure the pre-petition arrears as determined in the Master’s Order, plus subsequent monthly payments of \$656.09 each from June 2017 – August 2017 that Grissom failed to make. Further, both Voigt and the Trustee also objected to the plan on grounds that it was not feasible. The Trustee represented that he believed the plan payments needed to increase by approximately \$165.00 to address known debts.

DISCUSSION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L) and this Court may enter a final order.

Pursuant to § 1325(a)(6), a Chapter 13 plan cannot be confirmed unless it is feasible. That section specifically provides the Court shall confirm a Chapter 13 plan if “the debtor will be able to make all payments under the plan and comply with the plan.”

11 U.S.C. § 1325(a)(6).

With respect to feasibility, § 1325(a)(6) mandates consideration of all of the debtor’s legitimate expenses in making the feasibility determination, at least to the full extent practicable and foreseeable. The debtor must be able to afford his proposed plan payments above and beyond being able to satisfy all of his other minimal and permissible legal obligations.

In re Corbo, 391 B.R. 617, 622 (Bankr. D. Minn. 2008). The debtor bears the burden of proving by a preponderance of evidence that his plan meets the confirmation requirements of § 1325(a), including the feasibility requirement under § 1325(a)(6). *See In re Stanley*,

441 B.R. 37, 43 (Bankr. M.D.N.C. 2010); *see also In re Martellini*, 482 B.R. 537, 542 (Bankr. D.S.C. 2012) (applying the same standard to the good faith requirement of § 1325(a)(3) (quoting *In re Bridges*, 326 B.R. 345, 349 (Bankr. D.S.C. 2005))).

Based on the evidence before the Court, confirmation must be denied. Grissom's proposed plan and budget indicate that only \$2.40 remains after he pays the scheduled expenses and the monthly plan payment. Even a slight increase in plan payments to address his obligations under the Contract of Sale, or any expense not scheduled in the meager budget, would result in a deficit. Further, documents filed with Court under oath do not support any additional income earned "under the table," and Grissom's testimony did not convince the Court that any such income was realistic or stable, or that its inclusion here is appropriate. After weighing the evidence, the Court finds that Grissom failed to meet his burden of establishing that the proposed Chapter 13 plan, as currently filed or with payments increased to address known debts, is feasible as required by § 1325(a)(6).

Further, the Contract of Sale was cancelled pre-petition pursuant to the terms of the Master's Order. Grissom cites *In re Kingsmore*, 295 B.R. 812 (Bankr. D.S.C. 2002), to support his claim that he holds an interest in the Property or Contract of Sale sufficient to address payment obligations associated therewith in his plan. In the *Kingsmore* case, the Court concluded that the debtor's equitable right of redemption for properties subject to installment land contracts had not been previously addressed by the state court. *Id.* at 820 ("[T]he Special Referee's Order does not mention such a right of redemption, and no language in the Order leads this Court to conclude that the right has been extinguished, barred, or foreclosed."). Unlike *Kingsmore*, the Master's Order here clearly considered and addressed any equitable right of redemption, how it could be effected, and when it

would be extinguished. Therefore, the only question for the Court is whether that right has been extinguished on these facts.

Grissom was certainly aware of the proceedings before the Master in Equity, as he was present at the hearing that resulted in the Master's Order. That order only requires:

The attorney for the Plaintiff will mail a copy of this order to the defendants last known address and file a certificate of mailing with the Aiken County Clerk of Court. The Defendants will have 50 days from the date a copy of this order is placed in the mail to pay the plaintiff the entire amount owed[.]

The evidence indicates that Voigt's attorney complied. There is no dispute that Grissom did not redeem within 50 days from the date a copy of the Master's Order was placed in the mail. Instead, Grissom vaguely testified that he "does not recall" receiving a copy of the Master's Order.

Assuming, *arguendo*, "receipt" is required here, South Carolina law provides that "[e]vidence of mailing establishes a rebuttable presumption of receipt." *Bakala v. Bakala*, 352 S.C. 612, 625, 576 S.E.2d 156, 163 (2003) (citing *Weir v. Citicorp Nat'l Servs. Inc.*, 312 S.C. 511, 435 S.E.2d 864 (1993)). The testimony of the recipient that the mailing was never received tends to rebut the presumption and present a question of fact for determination. *See Foster v. Ford Motor Credit Co.*, 302 S.C. 450, 452, 395 S.E.2d 440, 441 (1990) (finding that an affidavit denying receipt of a mailed notice created an issue of material fact on summary judgment) (citing *Keller v. Provident Life & Accident Ins. Co.*, 213 S.C. 339, 347, 49, S.E.2d 577, 581 (1948); *Burbage v. Jefferson Standard Life Ins. Co.*, 138 S.C. 208, 136 S.E. 230, 231 (1926)). However, after weighing the evidence and with an opportunity to observe the credibility of the witness, the Court cannot find that the order was not properly mailed or received at Grissom's address. Grissom's negligible "do not recall" testimony was not persuasive.

The right of equitable redemption afforded to Grissom in the Master's Order lapsed on or about August 16, 2017, and was extinguished at that time. Therefore, the Master's Order terminated the Contract of Sale pre-petition. As a result, the plan that includes continued payment on the Contract of Sale and retention of the Property cannot be confirmed over Voigt's objection.

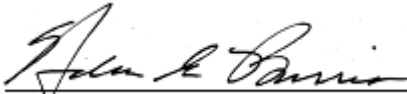
IT IS, THEREFORE, ORDERED that the Trustee and Voigt's objections to confirmation are sustained and confirmation of Grissom's proposed plan is denied.

AND IT IS SO ORDERED.

**FILED BY THE COURT
11/28/2017**



Entered: 11/28/2017


US Bankruptcy Judge
District of South Carolina