

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

IN RE:

Chad Eric Van Gompel,

Debtor(s).

C/A No. 20-02840-HB

Chapter 13

**ORDER GRANTING MOTION TO
CONVERT TO CHAPTER 7**

THIS MATTER is before the Court on the Motion to Convert filed by the United States Trustee (“UST”).¹ Debtor Chad Eric Van Gompel filed a Response² and a hearing was held on June 3, 2021. The Court heard testimony from Van Gompel and various documents were admitted into evidence.

FACTS AND PROCEDURAL HISTORY

1. Van Gompel filed a petition for Chapter 13 relief on July 8, 2020, with the assistance of counsel.

2. Two weeks later, on July 22, 2020, he filed a plan and schedules and statements. Van Gompel’s scheduled assets included his residence at 1006 Lyman Road, Inman, SC 29349, which he valued at \$285,000.00.

3. On August 28, 2020, Van Gompel corrected his Statement of Financial Affairs (“SOFA”) by amendment, disclosing payments made to his attorney and for prepetition credit counseling required under 11 U.S.C. § 109.

4. The meeting of creditors was held on September 1, 2020 (“341 Meeting”), where Van Gompel was questioned under oath by the Chapter 13 Trustee. Van Gompel initially affirmed that his schedules and statements were correct, but upon further questioning from the Trustee, it

¹ ECF No. 45, filed May 5, 2021.

² ECF No. 62, filed May 27, 2021.

became apparent that he failed to disclose in his schedules and SOFA ownership interests in vehicles, firearms, storage containers, hand tools, and other items, as well as pre-petition transfers.

5. Throughout late 2020 and early 2021, Van Gompel filed numerous amendments to his schedules and SOFA:

- a. On November 4, 2020, he filed an amended Schedule A/B to add: a 2001 Dodge Ram 2500 with an “unknown” value; a 1980 Jeep CJ7 valued at \$833.00, with its motor described as being “gone”; a 2014 Superior Utility Trailer valued at \$1,000.00; three AR-15s and a shotgun without changing the original value listed of \$350.00 for all firearms; and a 40-foot storage container with numerous items therein valued at \$1,600.00.³
- b. He also filed an amended SOFA on November 4, 2020, to: change his income from \$25,000.00 to \$6,730.78 for the period of January 1, 2020 to the date of filing, from \$80,000.00 to \$81,384.00 for 2019, and from \$100,000.00 to \$59,563.00 for 2018; add information regarding a setoff within 90 days of his bankruptcy filing; disclose a gift to a friend in 2017 valued at \$1,500.00;⁴ and disclose he traded a 22-foot trailer for an 18-foot trailer in 2019, sold the trailer post-petition to his ex-girlfriend on September 9, 2020 (without Court authorization), sold assets on Craigslist in 2013, and closed two financial accounts in 2020, one of which had a \$19,000.00 balance.
- c. On November 16, 2020, Van Gompel filed amended Schedules A/B, I, and J and an amended Form 122C to, among other things, add two safes valued at \$0.00 and ammunition for his firearms, again with no change in the overall \$350.00 value for all firearms.
- d. On November 20, 2020, he filed an amended Schedule A/B to change the value of his residence from \$285,000.00 to \$293,250.00.
- e. On December 3, 2020, he filed an amended SOFA to change the date of closing from January 2020 to February 26, 2020, for the account with a \$19,000.00 closing balance.
- f. On December 15, 2020, he filed an amended SOFA to change the account with a \$19,000.00 closing balance from a “business account” to a checking account.
- g. On January 15, 2021, he filed an amended Schedule A/B to: increase the value of a 2014 Dodge Ram 2500 from \$17,300.00 to \$18,249.00; add details of the tools and equipment in his possession and increase their value from \$500.00 to \$4,550.00; increase the value of the safes from \$0.00 to \$40.00; and increase the value of his

³ The Statement of Change filed with the amended documents stated that a safe was added, but no safe is listed on these schedules.

⁴ The Statement of Change filed with the amended documents does not mention this change.

firearms and ammunition from \$350.00 to \$2,312.46. He also filed an amended SOFA to add the model year and value of the trailer he sold to his ex-girlfriend.

6. Van Gompel's proposed Chapter 13 plan, filed shortly after this case was filed, provides for 60 monthly payments of \$275.00 (\$16,500.00 total) to be made pursuant to a payroll deduction order, maintenance of contractual payments on his residence, avoidance of Republic Finance's lien on his electronics, and payment of less than 100% of nonpriority unsecured claims.

7. Eight claims were filed in this case totaling \$340,392.15. Of this amount \$225,650.68 is for secured claims, \$9,424.98 is priority, and the remaining \$105,316.49 is for unsecured claims. Van Gompel has not filed any objections to any claims and all claims were timely filed.

8. An order entered on February 9, 2021, denied confirmation of Van Gompel's plan, required Van Gompel to file an amended plan within ten days and provide the Chapter 13 Trustee with any documents or information requested at or before the confirmation hearing, and provided the case may be dismissed without further notice or hearing if he failed to do so.⁵ Van Gompel has not yet complied with the requirements of that order.

9. On March 12, 2021, the Court entered a consent order granting permission to the UST to examine Van Gompel pursuant to Fed. R. Bankr. P. 2004 ("2004 Examination").

10. On April 5, 2021, Van Gompel filed a motion requesting authority to sell his residence for \$48,750.00 more than the value he scheduled on November 20, 2020, indicating significant proceeds in excess of any liens on the property. The motion and proposed order filed by Van Gompel's counsel provided that excess proceeds shall be paid to the Chapter 13 Trustee. Van Gompel attributed the difference in scheduled value and sale price to the current state of the housing market overall. However, he offered no details to support this explanation, such as the

⁵ ECF No. 36.

reason for his initial valuation, the listing price, the date of the listing, or any independent valuation source.

11. On April 28, 2021, Van Gompel testified under oath at the 2004 Examination conducted by counsel for the UST. During the 2004 Examination, several additional omissions from Van Gompel's schedules and statements came to light: a 2016 Keystone travel trailer he previously owned was not disclosed on the schedules, nor was its pre-petition repossession listed on his SOFA; a lawsuit with Republic Finance was not listed on his SOFA; and a storage building Van Gompel moved to his residence was not listed on the schedules.

12. Additionally, Van Gompel's 2004 Examination testimony conflicted with his schedules: he testified the 2001 Dodge Ram 2500 with an "unknown" value on his Schedule A/B was worth approximately \$2,500.00; he testified he put a V8 engine worth \$2,000.00 in the 1980 Jeep CJ7 despite valuing the vehicle at \$833.00 on Schedule A/B with the description that the motor in the vehicle "is gone." In short, Van Gompel's 2004 Examination testimony revealed his schedules and SOFA were still incomplete and inaccurate despite numerous amendments.

13. On May 5, 2021, the UST filed this Motion.

14. On May 17, 2021, the Court entered an Order proposed and filed by counsel for Van Gompel granting authority for the sale of the residence for \$342,000.00.⁶ The Order requires any valid liens be paid in full, Van Gompel be paid \$57,000 for his claimed exemption, and any remaining proceeds be paid to the Chapter 13 Trustee. The sale closed on May 20, 2021, and the Chapter 13 Trustee received proceeds in the amount of \$43,059.94, which she is currently holding ("sale proceeds").

⁶ ECF No. 57, filed May 17, 2021.

15. Van Gompel now lives in Appleton, Wisconsin. He testified that as of the hearing date, most of the assets in question remain in South Carolina.

16. At the hearing, Van Gompel estimated that the 40-foot storage container is worth \$2,000.00, not including the many items stored therein, despite scheduling the container *and* the items stored therein with a value of \$1,600.00.

17. He also testified that the hand tools on his Schedule A/B were largely owned by his father. These hand tools are not listed on item 23 of the SOFA which directs the debtor to identify property the debtor holds or controls for someone else.

18. Van Gompel also presented evidence of a troubled domestic situation with his ex-girlfriend existing from the filing of the petition until she moved out of his residence in October of 2020. He testified that the situation placed him under duress and made it difficult to fill out his schedules and SOFA completely and accurately.

19. There is no confirmable plan filed at this time. Van Gompel testified that he is not currently employed but starts a job in Wisconsin soon. His attorney indicated that he hopes to file a new plan that provides for distribution of the sale proceeds held by the Trustee and increases distribution to unsecured creditors through ongoing payments.

APPLICABLE LAW

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 this Court may enter a final order.

Section 1307(c) states that, upon the request of a party in interest and after notice and a hearing, a Chapter 13 case may be converted to Chapter 7 or dismissed—whichever is in the best interests of creditors and the estate—“for cause.” It provides a nonexclusive list of eleven grounds

justifying conversion or dismissal, including unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c). “A Bankruptcy Court has considerable discretion in determining whether ‘cause’ exists.” *In re Demeza*, 567 B.R. 473, 477 (Bankr. M.D. Pa. 2017) (quotations and citations omitted). “Although bad faith, or a lack of good faith, is not included in this list, bad faith can constitute cause for dismissal under Section 1307(c).” *In re Buis*, 337 B.R. 243, 250 (Bankr. N.D. Fla. 2006) (citations omitted).

With respect to the debtor’s good faith in fully and accurately disclosing his assets and liabilities:

[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. The bankruptcy schedules and statements of affairs are carefully designed to elicit certain information necessary to the proper administration and adjudication of the case. 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.

In re Weldon, 184 B.R. 710, 715 (Bankr. D.S.C. 1995). Regardless of value, what property to include on bankruptcy schedules is not within a debtor’s discretion—the schedules are to be comprehensive and include all property owned by the debtor. *In re Coombs*, 193 B.R. 557, 563 (Bankr. S.D. Cal. 1996) (“Even if the debtor thinks the assets are worthless he must nonetheless make full disclosure...the debtor has no discretion—the schedules are to be complete, thorough and accurate in order that creditors may judge for themselves the nature of the debtor’s estate.” (citations omitted)).

There is a two-step analysis under § 1307(c):

First, it must be determined that there is “cause” to act. Second, once a determination of “cause” has been made, a choice must be made between conversion and dismissal based on the “best interests of the creditors and the estate.”

In re Nelson, 343 B.R. 671, 675 (9th Cir. BAP 2006) (citations omitted). In determining whether conversion or dismissal is appropriate, “the test turns on whether or not the [conversion or] dismissal is in the best interests of the debtor and the creditors of the estate, with particular emphasis on whether the [conversion or] dismissal would be prejudicial to creditors.” *In re Zimmer*, 623 B.R. 151, 162 (Bankr. W.D. Pa. 2020) (quotations and citations omitted). “[D]ismissal of the bankruptcy case is the appropriate remedy when *neither* of the ‘twin pillars’ of bankruptcy are present...(1) a discharge for the honest but unfortunate debtor, and (2) when assets are available for the satisfaction of valid claims against the estate.” *Id.* (emphasis in original) (citations omitted). “[T]he second pillar [is present] even if the [debtor’s] assets are such that claims can only be paid a very small percentage on the dollar. The key is that at least some portion of claims, however small, be paid through liquidation of assets.” *Id.* (quoting *In re Lots by Murphy, Inc.*, 430 B.R. 431, 436 (Bankr. S.D. Tex. 2010)). In this District, “[u]nless ordered by the court or the debtor consents otherwise, upon the conversion of a case, the chapter 13 trustee shall return all funds on hand, and all funds received after conversion, to the debtor.” SC LBR 3070-1(c).

DISCUSSION AND CONCLUSION

Van Gompel asserts that the sale proceeds paid to the Chapter 13 Trustee indicate good faith and he should be given an opportunity to remain in a Chapter 13 case. He also argues that a troubled domestic environment with his ex-girlfriend placed him under duress, making it difficult to fill out his petition, schedules, and SOFA fully and accurately. Although Van Gompel may have experienced difficulty, it does not adequately explain the omission of basic information—numerous assets and financial details—expected from any debtor in bankruptcy. In more than ten months since filing, Van Gompel had ample opportunity to correct his schedules and SOFA for

them to be complete and accurate, and his testimony indicates he still has not met that goal. The number of inaccuracies and omissions, coupled with the fact that disclosures were made only when Van Gompel was repeatedly pressured after filing to take his obligations seriously, evidence bad faith and cause for dismissal or conversion of the case. While his counsel stated an intention to file a new plan, none has been proposed to move this case forward. The untimely intention to file a new plan that treats creditors better, and late efforts to cooperate in this case only after pressure from the UST and the filing of this Motion, are not adequate to negate Van Gompel's prior errors and omissions.

As the UST has demonstrated cause, the Court must determine whether conversion or dismissal is in the best interests of creditors and the estate. Neither the UST, the Chapter 13 Trustee, Van Gompel, nor any creditors requested dismissal of the case. Additionally, at least one of the "twin pillars" of bankruptcy appears to be present—assets are available to satisfy claims against the estate—which negates any benefit of dismissal. Further, a Chapter 7 trustee is better equipped to discover and liquidate assets for the benefit of creditors and take any further action necessary on the facts of this case. Based on the foregoing, converting the case to Chapter 7 is in the best interests of creditors and the estate. Payment of the sale proceeds to the Chapter 13 Trustee was a condition of the sale proposed by Van Gompel, relied upon by parties in interest, accepted by the Court, and memorialized in the sale order. Therefore, pursuant to SC LBR 3070-1(c), the Court orders that upon conversion, the Chapter 13 Trustee shall submit the sale proceeds to the Chapter 7 Trustee.

IT IS, THEREFORE, ORDERED that the United States Trustee's Motion to Convert is granted. Pursuant to the Order Granting Van Gompel's Motion to Sell⁷ and SC LBR 3070-1(c),

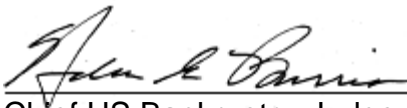
⁷ ECF No. 57, filed May 17, 2021.

the Chapter 13 Trustee shall submit the sale proceeds, as defined above, to the hereinafter appointed Chapter 7 trustee.

FILED BY THE COURT
06/10/2021



Entered: 06/10/2021


Chief US Bankruptcy Judge
District of South Carolina