

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

IN RE:

Chase A. Morris,

Debtor(s).

C/A No. 20-04437-HB

Chapter 13

**ORDER GRANTING MOTION TO  
COMPEL, DENYING  
CONFIRMATION, & DISMISSING  
CASE**

**THIS MATTER** is before the Court to consider confirmation of the Chapter 13 Plan filed by Chase A. Morris<sup>1</sup> and the Objection to Confirmation and Motion to Compel filed by creditor James M. Wallace.<sup>2</sup> A continued hearing was held on April 1, 2021. Present at the hearing were Wallace and his counsel, John B. Butler, III, and Lydia Eloff on behalf of the Chapter 13 Trustee. Mr. Morris, *pro se*, failed to attend the hearing.<sup>3</sup> Based upon the record, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. In November 2015, Morris executed a note in favor of Wallace in the principal amount of \$134,500.00, together with interest thereon at the rate of 5.93% per annum. The note is secured by a mortgage on the real property located at 1564 Oxpens Road, Warrenton, SC 29851.

2. Under the terms of the note, Morris was required to pay Wallace monthly payments beginning in December 2015, until the note was paid in full by November 2045. Failure to make a timely payment is a default and the note and mortgage provide that upon a default for

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<sup>1</sup> ECF No. 24, filed Feb. 16, 2021.

<sup>2</sup> ECF Nos. 26 & 29.

<sup>3</sup> On March 19, 2021, the Court entered an order authorizing the withdrawal of Morris' prior counsel, V. Lee Ringler. (ECF No. 38).

nonpayment, Wallace may accelerate the debt to make the entire principal and interest due and payable. The note and mortgage further provide that if legal counsel is employed for the collection of the amount due and owing, Wallace is entitled to all costs of collection, including reasonable attorneys' fees.

3. The mortgage requires Morris to pay the real estate taxes as they become due and to maintain hazard insurance on the property. If Morris allows the insurance to lapse, then the mortgage provides Wallace may acquire such insurance and add its costs, plus interest thereon, to the debt amount secured by the mortgage.

4. Morris defaulted on the terms of the note and mortgage and Wallace initiated a foreclosure action in the Aiken County Court of Common Pleas on March 30, 2020. An order and judgment of foreclosure was entered in Wallace's favor on November 16, 2020. The order established the total debt owed by Morris to Wallace was \$141,039.82, together with interest at a rate of 5.93% per annum, and scheduled a foreclosure sale for December 7, 2020.

5. Morris filed the above-captioned Chapter 13 case on the same day as the scheduled foreclosure sale. Morris' plan proposes monthly payments to the Trustee of \$607.00 for 60 months. The Trustee will disburse \$352.00 to Wallace for the estimated prepetition arrears of \$15,000.00, while Morris proposes to continue regular payments directly to Wallace pursuant to 11 U.S.C. § 1322(b)(5).

6. Wallace filed a proof of claim in the amount of \$145,597.93, of which he asserts \$21,062.22 in prepetition arrears.

7. Wallace objected to confirmation of the plan, asserting it failed to comply with § 1322(b)(5) because the payments are not sufficient to cure the prepetition arrears, the plan is not feasible under § 1325(a)(6), and the plan does not comply with § 1325(a)(1) because Wallace's

interest is not adequately protected due to Morris' failure to maintain insurance and pay the real estate taxes as they become due.

8. On January 21, 2021, Wallace served Requests for Admission, Interrogatories, and Requests for Production (collectively, "Discovery Requests") on Morris and his attorney at the time. After no responses to the Discovery Requests were received by the February 22, 2021 deadline, Wallace filed a Motion to Compel and requested sanctions in the form of payment of attorneys' fees and costs and an order barring Morris from filing another case until any fees and costs awarded are paid.

9. No response to the Motion to Compel was filed by Morris and he did not appear at the hearing to contest the Motion or pursue confirmation of his proposed plan.

10. Wallace's counsel incurred \$715.00 in attorneys' fees and \$71.44 in costs as a result of Morris' failure to respond to the Discovery Requests.

11. At the hearing, the Trustee represented that the plan fails to meet the requirements for confirmation because Morris has only made one of three plan payments that have become due, Morris has failed to make post-petition payments to Wallace, and Morris has failed to provide required information pursuant to SC LBR 3015-4.

#### **CONCLUSIONS OF 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 (L) and this Court may enter a final order.

Fed. R. Civ. P. 33,<sup>4</sup> provides that responses to interrogatories must be served within 30 days after the party is served with interrogatories. Fed. R. Civ. P. 34 sets forth a similar deadline

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<sup>4</sup> Made applicable to this adversary proceeding by Fed. R. Bankr. P. 7033.

for responses to requests for production. Fed. R. Civ. P. 37 provides that a party seeking discovery may move for an order compelling such responses if a party fails to respond to an interrogatory or produce documents. With respect to the requests for admission, Fed. R. Civ. P. 36 states in relevant part:

A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

Fed. R. Civ. P. 36(a)(3). Furthermore, Rule 37(a)(5)(A) expressly provides for the award of expenses where a motion to compel is granted: “If the motion is granted – or if the disclosure or requested discovery is provided after the motion was filed – the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising the conduct, or both to pay the movant’s reasonable expenses incurred in making the motion.” Fed. R. Civ. P. 37(a)(5)(A). This Court has also imposed sanctions for failing to properly respond to discovery by limiting further filings for bankruptcy relief until the sanctions are paid. *See In re Yarborough*, C/A No. 06-02088-JW, slip op. at 2 (Bankr. D.S.C. Aug. 8, 2008).

It has been more than 30 days since Morris was served with the Discovery Requests and Wallace has received no response. Accordingly, the requests are deemed admitted and Wallace is entitled to an order compelling Morris to respond to the interrogatories and requests for production. With respect to Wallace’s request for sanctions, the Court finds it appropriate to require Morris pay the \$786.44 in attorneys’ fees and costs incurred.

Section 1307(c) provides that a Chapter 13 case may be dismissed or converted to Chapter 7 “for cause,” and provides a nonexclusive list of ten causes justifying conversion or dismissal. Among those are: “(1) unreasonable delay by the debtor that is prejudicial to creditors . . . (4)

failure to commence making timely payments under section 1326 of this title; [and] (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan . . .” 11 U.S.C. § 1307(c).

“Debtor has ‘the burden of proving by a preponderance of the evidence that [his] plan meets the confirmation requirements of § 1325(a) . . .” *In re Martellini*, 482 B.R. 537, 541-42 (Bankr. D.S.C. 2012) (quoting *In re Bridges*, 326 B.R. 345, 349 (Bankr. D.S.C. 2005)). Section 1325(a) requires that the plan “complies with the provisions of this chapter and with the other applicable provisions of this title,” 11 U.S.C. § 1325(a)(1), and that “the debtor will be able to make all payments under the plan and comply with the plan.” 11 U.S.C. § 1325(a)(6). The Bankruptcy Code allows the Chapter 13 plan to “provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due[.]” 11 U.S.C. § 1322(b)(5).

This case has been pending since December 2020 with no progress toward confirmation of a plan, and Morris failed, after due notice, to appear at the hearing to move the case forward. Morris’ plan fails to meet the requirements of §§ 1322(b)(5), 1325(a)(1) and (6) and cannot be confirmed. The plan fails to provide sufficient payments to cure the prepetition arrears owed Wallace, and Morris has failed to timely make plan payments to the Trustee and post-petition payments to Wallace. Morris has also failed to provide all information requested by the Trustee in order to recommend confirmation should an adequate plan be filed. Accordingly, confirmation must be denied and cause to dismiss exists under § 1307(c)(1), (4), and (5).

Since this case is to be dismissed, Morris does not need to respond to Wallace’s Discovery Requests despite this Court’s granting of the Motion to Compel. However, Morris is prohibited

from filing another petition for bankruptcy relief in this Court until such time as the \$786.44 in attorneys' fees and costs awarded herein are paid in full.

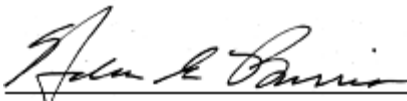
**IT IS, THEREFORE, ORDERED THAT:**

- (1) Wallace's Motion to Compel is granted;
- (2) Morris shall pay Wallace \$786.44 in attorneys' fees and costs. Payment shall be made by certified funds sent to Wallace at 23 Tea Rose Court, Columbia, SC 29229;
- (3) confirmation of the Chapter 13 plan filed on February 16, 2021, is denied as the plan fails to meet the requirements of 11 U.S.C. §§ 1322(b)(5), 1325(a)(1) and (6);
- (4) the above-captioned case is hereby dismissed pursuant to 11 U.S.C. § 1307(c); and
- (5) Morris is prohibited from filing another petition for bankruptcy relief in this Court until such time as the \$786.44 in attorneys' fees and costs awarded herein are paid in full.

**AND IT IS SO ORDERED.**

**FILED BY THE COURT  
04/02/2021**



  
Chief US Bankruptcy Judge  
District of South Carolina

Entered: 04/02/2021