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AUG 29 2002

K.A.W.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at _____ o'clock & _____ min _____ M
AUG 29 2002
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (25)

IN R.

Robert H. Justice,

Debtor.

C/A No. 02-01524-W

JUDGMENT

Chapter 11

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Motion to Convert to Chapter 7 (the "Motion") filed by Leeds Building Supply, Inc. ("Leeds"), a creditor of Robert H. Justice ("Debtor"), as joined by Agricredit Acceptance LLC ("Agricredit") is granted, and the Court orders the conversion of Debtor's Chapter 11 case to Chapter 7.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
August 29, 2002.

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CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

8/29/02

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KAREN R. WEATHERS
Deputy Clerk

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Dana Wilkinson
Lil Gray
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BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
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IN RE:

Robert H. Justice,

Debtor.

C/A No. 02-01524-W

ORDER

Chapter 11

THIS MATTER comes before the Court upon the Motion to Convert to Chapter 7 (the "Motion") filed by Leeds Building Supply, Inc. ("Leeds"), a creditor of Robert H. Justice ("Debtor"), as joined by Agricredit Acceptance LLC ("Agricredit"). Leeds asserts that Debtor's Schedules and Statements are inaccurate as Debtor omitted material information from them for the significant period of time he has been in bankruptcy and that, consequently, creditors have been prejudiced. Specifically, Leeds argues Debtor failed to disclose accurately the following information: (1) the value of real property he owns, (2) his involvement in a pending lawsuit, and (3) his transfer of real property to his spouse within the year prior to his filing bankruptcy. According to Leeds, the sum of these factors indicates that there is cause to convert Debtor's case to Chapter 7 pursuant to 11 U.S.C. §1112(b).¹ In response, Debtor argues he filed the original Schedules pro se and urges the Court to excuse the inaccuracies because he did not know what information or the degree of detail he needed to provide. Further, Debtor asks the Court to provide him additional time to present a plan for confirmation. After considering the pleadings in the matter and the parties' arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy

¹ Further references to the Bankruptcy Code shall be by section number only.

proceedings by Federal Rule of Bankruptcy Procedure 7052.²

FINDINGS OF FACT

1. Debtor filed a Voluntary Petition for Chapter 13 relief on January 4, 2002, C/A No. 02-00036-W. On the same date, Debtor filed Schedules and a Statement of Financial Affairs that he prepared without legal assistance.
2. On January 25, 2002, the Court dismissed this case pursuant to Local Rules for Debtor's failure to file a Chapter 13 Plan timely.
3. On February 7, 2002, Debtor filed his current bankruptcy case, and, again, he sought Chapter 13 relief. On the same date, Debtor filed Schedules and a Statement of Financial Affairs that he prepared without legal assistance.
4. These Schedules list Debtor's real property as his residence valued at \$162,000.00 with a secured claim in the same amount, a duplex valued at \$92,000.00 with a secured claim in the same amount, and ten unimproved lots in Greer, South Carolina valued at \$52,608.00 with a secured claim of \$70,475.72 encumbering these lots.
5. Debtor's Statement of Financial Affairs Paragraph 4 lists that he is involved in "pending litigation" and instructs readers to see an attached list for details; however, no attached list is included with his Schedules or Statement.
6. Debtor's Statement of Financial Affairs Paragraph 10 lists that Debtor transferred real property located at 140 Matalin Court within the year prior to his filing bankruptcy but indicates

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.

that it was a transfer due to a foreclosure sale.

7. On February 20, 2002, attorney Eddye L. Lane ("Lane") filed a Notice of Limited Appearance for the purpose of seeking additional time for Debtor to provide or amend his Schedules, Statement, and Chapter 13 Plan. Accordingly, Lane also filed a motion with the Court seeking this relief.

8. On February 20, 2002, the Chapter 13 Trustee filed a Petition wherein she argues that Debtor had a prior Chapter 13 case but that he has not demonstrated a change of circumstances to justify filing a second case. This Petition was scheduled for a hearing on March 28, 2002.

9. On February 26, 2002, Agricredit filed an Objection to Debtor's bankruptcy case on the grounds that the amount of Debtor's debts renders him ineligible for Chapter 13 relief pursuant §109(e). The Court treated this Objection as a motion to dismiss, and it scheduled the motion for a hearing on March 28, 2002.

10. On February 27, 2002, Lane, on behalf of Debtor, filed a Reply to Agricredit's Objection. In the Reply, Debtor indicates that he has requested additional time to review his debts and financial documents and that he might file amended schedules. Debtor requests that Agricredit not obtain the relief sought until Lane has had an opportunity to review and amend Debtor's Schedules.

11. On March 1, 2002, the Court granted Debtor's motion for an extension of time to file proper Schedules, a Statement, and a Chapter 13 Plan.

12. On March 11, 2002, Debtor, with the assistance of counsel, filed Schedules and a Chapter 13 Plan. *Lane signed the Plan, an Amended Voluntary Petition, and a Certification Verifying Creditor Matrix.*

13. These Schedules do not list that Debtor owns any interest in real property.
14. No revised Statement of Financial Affairs was filed; consequently, Debtor did not provide additional information regarding his involvement in a pending lawsuit or his transfers of real property in the year prior to his filing bankruptcy.
15. On March 18, 2002, Agricredit filed its Amended Motion to Dismiss wherein it argues that the amount of Debtor's debts renders him ineligible for Chapter 13 relief pursuant to 11 U.S.C. §109(e). This Amended Motion was also scheduled for a hearing on March 28, 2002.
16. On March 25, 2002, Leeds filed a Return to Trustee's Motion to Dismiss wherein it argues that the omissions and misstatements in Debtor's Schedules constitute cause to dismiss Debtor's case.
17. On March 27, 2002, Debtor, with Lane acting as his attorney, moved to convert his case to Chapter 11.
18. On May 7, 2002, the Court entered an Order converting Debtor's case to Chapter 11.
19. Also on May 7, 2002, the Court entered a Consent Order approving the substitution of Debtor's counsel. The Consent Order provides that Lane is relieved as counsel and that Karl P. Jacobsen ("Jacobsen") will represent Debtor in his Chapter 11 case.
20. On July 2, 2002, Debtor filed Amended Schedules and an Amended Statement of Financial Affairs.
21. These Schedules do not list that Debtor owns any interest in real property.
22. Amended Schedule B indicates that Debtor is involved in a pending lawsuit but does not specify the nature of the lawsuit or the defendant. Amended Schedule B indicates that the value of Debtor's interest in this lawsuit is \$168,000.00.

23. Debtor's Amended Statement of Financial Affairs Paragraph 10 lists no transfers of real property within the year prior to his filing bankruptcy.

24. On July 3, 2002, the United States Trustee's (the "UST") office corresponded with Debtor through Jacobsen. In the correspondence, the UST asks Debtor to perform fourteen things by July 5, 2002. The UST's requests include Debtor's amending his Schedules and Statement, filing employment documents for his special counsel, furnishing bank account information to the UST, filing employment documents for Jacobsen as his general counsel, and filing employment documents for his accountant.

25. On July 8, 2002, the Clerk of Court struck the Schedules filed on July 2, 2002 for Debtor's failure to file them in accordance with Local Rule 1009-1.

26. On July 31, 2002, the UST filed a Delinquency Notice indicating that Debtor has failed to comply with Local Rule 2081-1 because he did not file complete and accurate monthly operating reports for May and June 2002.

27. Based upon the information Leeds presented to the Court that indicates Debtor's Schedules and Statement are inaccurate and based upon Debtor's failure to respond to or rebut Leeds's allegation, the Court finds that Debtor's Schedules and Statement are materially inaccurate.

CONCLUSIONS OF LAW

Section 1112(b) provides that a case pending under Chapter 11 may be converted to Chapter 7 upon the request of a party in interest and after notice and a hearing. A motion filed under §1112(b) invokes a two-step analysis by the Court. First, the Court must decide whether

“cause” exists either to dismiss or to convert the case. See Rollex Corp. v. Assoc. Materials, Inc. (In re Superior Siding & Window, Inc.), 14 F.3d 240, 242 (4th Cir. 1994). Next, the Court must decide which option is in the best interests of creditors and the estate. See id.

For converting or dismissing a case, “cause” includes, in part, the unreasonable delay by the debtor that is prejudicial to creditors. See §1112(b)(3). Courts are given broad discretion in what may constitute sufficient cause to convert a case. See In re Carowinds Boulevard Homes, Inc., C/A No. 00-10572-W, slip op. at 5 (Bankr. D. S.C. Dec. 20, 2000) (citing Toibb v. Radloff, 501 U.S. 157, 165 (1991); In re Dunes Hotel Assoc., C/A No. 94-75715-W, slip op. at 14 (Bankr. D. S.C. Sept. 26, 1997), aff’d 98-0535-18 (D. S.C. Feb. 18, 2000)); see also Quarles v. United States Trustee, 194 B.R. 94, 96 (W.D. Va. 1996) (“Whether ‘cause’ exists ‘for a conversion or dismissal of a chapter 11 case under §1112(b) is subject to judicial discretion under the particular circumstances of each case.’”). “In exercising its discretion in deciding whether to convert or dismiss the case on the ground of prejudicial delay, the court should consider whether the debtor’s delay is not justified under the circumstances and is therefore unreasonable, as well as the degree to which the debtor’s delay has harmed the interests of creditors.” 7 Resnick et al., Collier on Bankruptcy ¶1112.04[5][e] (15th ed. rev. 2002).

Considering the facts of this case, the Court concludes that creditors have suffered *unreasonable and prejudicial delay because of Debtor. As the case’s history indicates, Debtor has had a pending bankruptcy case for the better part of a calendar year (specifically, a total of eight months from January 4, 2002 to January 25, 2002 and February 7, 2002 to present). During this time, however, Debtor has not provided the Court and creditors an accurate portrayal of his financial affairs, and such failure is not reasonable or excusable as a mere mistake made by a*

formerly pro se litigant. See In re The V Cos. and V-S Architects, Inc., 274 B.R. 721, 725 (Bankr. N.D. Oh. 2002) (“Cause can be also be established under §1112(b)(3) by proving ‘unreasonable delay by the debtor that is prejudicial to creditors.’ Undue delay includes a debtor’s failure to provide meaningful information at any stage of the proceeding.”). Indeed, an examination of Debtor’s various Schedules and Statements of Financial Affairs leaves one with more questions than answers. For example, in his first set of Schedules and Statement of Financial Affairs, Debtor refers to “pending litigation,” yet Debtor does not disclose what this litigation involves or what his role is in it. In Debtor’s last version of Schedules, which were prepared with the assistance of experienced bankruptcy counsel but that technically are no longer a part of his case’s record as the Clerk of Court struck them for not complying with the Local Rules, Debtor seems to indicate that he is a plaintiff in this matter, but he still fails to explain what the case involves. In addition to this mysterious litigation, it appears that Debtor uses inaccurate values for his real property. With its Motion and without an objection by Debtor, Leeds attaches tax assessments of ten unimproved lots Debtor owns. The tax assessments, which in this Court’s experience are typically conservative estimations of real property’s value, indicate that the lots have a significantly greater value than what Debtor ascribes to them in his Schedules. According to the tax assessments, the total value of the ten lots is \$169,000.00, yet Debtor values them as worth \$52,608.00.³ These examples highlight Debtor’s deficiency in fulfilling one of his basic obligations as a debtor in bankruptcy: providing accurate information. Bankruptcy is a give-and-take process, and, in order for debtors to receive the benefits and

³ Debtor did not respond in any manner to Leeds’s allegation that Debtor uses inaccurate information in his Schedules as evidenced by his undervaluing his unimproved real property; therefore, Debtor did not rebut Leeds’s accusation.

protections of the Bankruptcy Code, they must fulfill their role of complete disclosure to their creditors and the Court. See Anderson v. Hooper (In re Hooper), 274 B.R. 210, 220 (Bankr. D. S.C. 2001) (citing Tillery v. Hughes (In the Matter of Hughes), 184 B.R. 902, 909 (Bankr. E.D. La. 1995)); see also In re Boland, C/A No. 01-03911-B (Bankr. D. S.C. May 24, 2001) (“[T]he Court will not be placed in the position of ferreting the truth from inaccurate and misleading information supplied by debtors and their counsel.”).

Along these lines of accurate disclosure, the Court also concludes that Debtor has omitted material information from his Schedules and Statement of Financial Affairs. With its Motion, Leeds also attaches a copy of a deed wherein Debtor transfers his interest in real property⁴ to his spouse for the consideration of \$1.00.⁵ Debtor, however, does not list this transfer in any of the three versions of his Schedules or Statement of Financial Affairs.⁶ As this Court has previously noted, bankruptcy schedules and statements of affairs are extremely important documents that are carefully designed to elicit certain information necessary to the proper administration and

⁴ The property that Debtor transferred to his wife by deed dated October 4, 2001 appears to be different from the property, 140 Matalin Court, that Debtor acknowledges he transferred by virtue of a foreclosure proceeding within the year prior to his bankruptcy filing.

⁵ Like Leeds’s inclusion of tax assessments with its Motion to challenge the accuracy of Debtor’s Schedules, Debtor did not dispute or respond to Leeds’s use of the deed to indicate an omission in Debtor’s bankruptcy materials and thereby did not rebut Leeds’s allegation.

⁶ Debtor’s failure to rebut Leeds’s allegation of a fraudulent transfer creates an inference that Debtor intended to deceive and delay by omitting this material information from his Schedules. See In re Caldwell, 101 B.R. 728, 737 (Bankr. D. Utah 1989) (converting a case based upon debtor’s fraud in concealing a substantial amount of assets from his bankruptcy documents); see also Rawls v. Rawls (In re Rawls), Civ. A. No. 91-2992, Bankr. No. 89-138, 1992 WL 165960, at *3 (E.D. La.) (finding that the debtor’s pattern of concealing multiple assets from his bankruptcy documents constituted fraudulent intent).

adjudication of cases. See Hooper, 274 B.R. at 220; Siegel v. Weldon (In re Weldon), 184 B.R. 710, 715 (Bankr. D. S.C. 1995). Debtors have a duty to complete these documents thoughtfully and thoroughly. See, e.g. In re Hewett, 32 B.R. 605, 607 (Bankr. W.D. Wash. 1983) (ordering the conversion of a case where the debtor's financial information was incomplete and incomprehensible after having a pending bankruptcy case for approximately ten months). In this case, the Court concludes that Debtor has not fulfilled this duty as his Schedules are incomplete and inaccurate.

Furthermore, Debtor has done little to demonstrate an intent or ability to reorganize his affairs. He has filed no disclosure statement and no plan from which creditors could ascertain his assets and intentions regarding reorganization. Cf. Quarles, 194 B.R. at 98 (affirming a bankruptcy court's decision to convert a case from Chapter 11 to Chapter 7 where the debtor failed to file a plan of reorganization and a disclosure statement and where the debtor lacked the means to implement a plan of reorganization when it continued to suffer monthly losses while in bankruptcy). At the hearing on the Motion, Debtor offered no evidence, testimony, or argument to illustrate his plan for reorganization. Debtor failed to rebut the Creditor's allegations and simply has not explained to the Court why he has taken no steps toward reorganizing his affairs or justified his delay.

Based upon Debtor's incomplete and potentially misleading Schedules coupled with his delay in filing documents necessary to his reorganization, the Court concludes that creditors have suffered prejudice. While Debtor has enjoyed the benefits of the automatic stay, he has not

reciprocated and performed his duties as a debtor in bankruptcy.⁷ Consequently, creditors, the UST, the Clerk, and the Court are left in a limbo-like status, unsure of how to participate in or administer Debtor's case because they lack adequate information on which to act. The Court concludes that Debtor has had an adequate opportunity -- eight months in bankruptcy and with the assistance of two separate bankruptcy counsel -- to properly meet his threshold duties of full and accurate disclosure in his Schedules and Statement. Further, Debtor had ample opportunity to testify and present other evidence at the hearing to justify his failures or refute creditors' assertions, but he did neither. The Court believes that a bankruptcy case or a series of cases is not designed to provide a long-term hiding place for debtors from their creditors. The breathing spell bankruptcy offers is conditioned upon debtors fulfilling their duties of truthful and timely disclosure as required by bankruptcy law. In this case, Debtor failed to meet these responsibilities over an eight month period, and the continuing delay prejudices creditors by delaying their efforts to collect their claims and act against their collateral. See Hewett, 32 B.R. at 607 ("[T]here is a point beyond which the Court and creditors cannot tolerate delay and the flaunting of the Code and Rules.").

In addition, the Court further concludes that additional grounds exist pursuant to §1112(e) for the conversion or dismissal of Debtor's case. Under §1112(e), a court may dismiss or convert a case if a debtor fails to timely file or provide the information required by §521(1). Section

⁷ At the hearing, the UST further indicated that on July 3, 2002 it requested that Debtor do or provide fourteen things such as amending Debtor's Schedules and Statement, filing appropriate employment applications with the Court, and providing bank account information to the UST; however, at the time of the hearing, the UST indicated that Debtor had performed only one of its requests. Also, on July 31, 2002, the UST filed a Delinquency Notice under Local Rule 2081-1 for Debtor's submission of incomplete and / or inaccurate monthly reports.

521(1) requires a debtor to file a list of creditors, a statement of financial affairs, and a schedule of assets, liabilities, income, and current expenditures. As this Court has previously determined that some of the information Debtor provided in these documents is materially incomplete and inaccurate, the Court concludes that Debtor has failed to satisfy the information requirements of §521(1), which is an additional ground that justifies the conversion or dismissal of Debtor's case.

Accordingly, the Court finds that there is cause pursuant to §§1112(b)(3) and 1112(e) to dismiss or convert Debtor's case. Because it appears that Debtor may have equity in certain assets and there are allegations of a fraudulent transfer, the Court finds that it is in the best interests of creditors and the estate for the Court to order the conversion of Debtor's case to Chapter 7.

CONCLUSION

From the arguments discussed above, it is therefore

ORDERED that Debtor's Chapter 11 case is converted to Chapter 7.

AND IT IS SO ORDERED.

Columbia, South Carolina,
August 29, 2002.


UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

Aug 27 2012

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KAREN R. WEATHERS
Deputy Clerk

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D.

D. Atty

Dana Wilkinson

L. I. Gray

US+