

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Mark Clifford Styles and  
Sheila Hill Taylor,

Debtors.

C/A No. 05-02542-W

**ORDER**

Chapter 13

FILED  
at \_\_\_\_\_ O'clock & \_\_\_\_\_ min  
JUN 27 2005  
United States Bankruptcy Court  
Columbia, South Carolina

**ENTERED**

JUN 27 2005

**B. R. M.**

This matter comes before the Court upon a Motion for Extension of Time to File Objection of Equity One, Inc. to Confirmation of Debtors' Chapter 13 Plan ("Motion to Extend"). Equity One, Inc. ("Equity One") filed the Motion to Extend on May 25, 2005. Mark Clifford Styles and Sheila Hill Taylor (collectively hereinafter referred to as "Debtors") filed an objection to Equity One's Motion to Extend on June 1, 2005. The hearing on Equity One's Motion to Extend was initially scheduled for June 2, 2005, the date set for Debtors' hearing on confirmation of their proposed chapter 13 plan. However, upon a request for a continuance made by Equity One's counsel, Debtors' counsel and the Chapter 13 Trustee agreed to reschedule the Motion to Extend hearing and Debtors' confirmation hearing to June 16, 2005. The central issue in dispute is whether Equity One should be provided a further opportunity to file an objection to Debtors' chapter 13 plan, which strips Equity One's second mortgage and values it at \$0.00, despite the fact that Equity One received timely and actual notice of Debtors' chapter 13 plan and motion to value, and failed to object in a timely manner. In light of the pleadings presented in this case and the arguments raised during the hearing, the Court makes the following Findings of Facts and Conclusions of Law.

## FINDINGS OF FACT

1. Equity One holds a first mortgage and second mortgage on certain real property that Debtors own. The address of Debtors' real property is 1006 Highway 248, Ninety Six, South Carolina, 29666.
2. On March 4, 2005, Debtors filed a bankruptcy petition in order to obtain chapter 13 bankruptcy relief. Debtors also filed a Notice of: 1) Deadline for Filing Objections to Confirmation of Chapter 13 Plan; 2) Motion for Valuation; 3) Motion to Avoid Certain Liens; and 4) Assumption or Rejection of Executory Contracts (the "Notice").
3. The Notice provided that any objections to confirmation of the Plan or the Motion to Value must be made in writing, served upon Debtors' counsel and the Chapter 13 Trustee, and filed with the Court within twenty-five (25) days from the filing of the Notice, Debtors' proposed chapter 13 plan (the "Plan"), and related motions.
4. Debtors attached their Plan and a Motion to Value Equity One's second mortgage at \$0.00 ("Motion to Value") to the Notice and filed them with Court on March 4, 2005.
5. In the Motion to Value, Debtors valued Equity One's second mortgage on their real property at \$0.00 because Equity One's first mortgage encumbered all of the equity in their real property.<sup>1</sup> Therefore, in the Plan, Debtors intended to strip-off Equity One's second mortgage because it was unsecured.
6. Debtors served the Notice, Plan, and Motion to Value on Equity One by mailing those items to the address that Equity One listed on its proofs of claim.

---

<sup>1</sup> Debtors' bankruptcy schedules indicate that they valued their real property at \$83,400.00, and that Equity One's first mortgage on the real property was \$94,623.91. Debtors also noted that Equity One's second mortgage was \$22,893.92, and was fully unsecured.

7. Initially, Equity One contended that it did not receive notice of the Plan and Motion to Value. However, Equity One has withdrawn that contention and now admits that it received timely notice of the Plan and Motion to Value.

8. Despite receiving actual notice of the Plan and Motion to Value, Equity One failed to file an objection on or before March 29, 2005, the deadline established by the twenty-five (25) day objection period disclosed in the Notice.

9. On May 25, 2005, Equity One filed a Motion to Extend. In the Motion to Extend, Equity One asserted that Debtors' attempt to strip its second mortgage would be inequitable, and that denying the Motion to Extend would prevent Equity One from being heard on its objection to Debtors' treatment of its second mortgage. Thus, Equity One concluded that it would be denied due process if the Court did not provide Equity One an opportunity to file a late objection and be heard at a hearing on the objection.

10. Debtors objected to Equity One's Motion to Extend because Equity One received notice of Debtors' treatment of its second mortgage and failed to object in a timely manner.

11. At the request of Equity One, the hearing on Equity One's Motion to Extend and Debtors' confirmation hearing were rescheduled from June 2, 2005 to June 16, 2005 upon the consent of Debtors' counsel and the Chapter 13 Trustee.

12. At the June 16, 2005 hearing, Equity One's counsel indicated that he wished to present a written appraisal of Debtors' real property. According to Equity One's counsel, the appraisal demonstrated there was equity, beyond the value of Equity One's first mortgage, in Debtors' real property. Accordingly, Equity One concluded that Debtors did not have the ability to strip Equity One's second mortgage.

13. Debtors objected to the submission of the appraisal into evidence because Equity One's counsel did not present a witness who could provide a sufficient evidentiary foundation to have the appraisal entered into evidence and be cross-examined.

14. During the June 16, 2005 hearing, Equity One requested a further continuance, which the Court denied.

15. At the conclusion of the hearing, the Court also took a request for fees made by Debtors' counsel under advisement.

### **CONCLUSIONS OF LAW**

In this case, the Court must determine whether it should provide Equity One with a further opportunity to file an objection to Debtors' Plan and Motion to Value, despite the fact that Equity One received timely and actual notice of the Plan and Motion to Value, but failed to object in a timely manner.

The evidentiary record of this case indicates that Equity One received actual notice of Debtors' Plan and their Motion to Value. Although Equity One received notice of Debtors' attempt to strip-off its second mortgage through the Plan, Equity One failed to take affirmative steps to protect its interests by filing a timely objection to the Plan and Motion to Value. The language of the Notice, Plan, and Motion to Value clearly apprised Equity One that Debtors intended to value its second mortgage at \$0.00. However, Equity One did not raise its objection within the twenty-five (25) day period for serving and filing objections to Debtors' Plan and Motion to Value, as required by local rule, and has not offered an acceptable excuse. See LBR SC 3015-1(e)(1) ("Any objection to confirmation of the chapter 13 plan or related motions must be filed not later than twenty-five (25) days after the filing of the Form Plan").

Instead, Equity One contends that it is being deprived due process if this Court does not provide it with a further opportunity to file and be heard on the merits of a late filed objection to Debtors' Plan and Motion to Value. The Court disagrees. The passive notice procedures utilized by this Court during the confirmation of Debtors' plan and valuation process meet the notice and opportunity for hearing requirements of the Bankruptcy Code. Equity One received actual notice of Debtors' Plan and Motion to Value, and by failing to file a timely objection within the time prescribed in the Notice and by Local Bankruptcy Rule 3015-1(e)(1), Equity One surrendered its ability to participate in the plan confirmation process and have its concerns heard by the Court. By receiving the opportunity to file a timely objection to Debtors' Plan and Motion to Value and have a hearing on such objection, Equity One was provided with due process to protect its interests. Equity One's failure to file a timely objection simply represents its failure to take advantage of the due process protections.

Furthermore and notably, even if the Court had granted Equity One's Motion to Extend, Equity One was not prepared to prosecute its objection at the time of the June 16, 2005 hearing. In this case, Equity One's counsel asserted that he had possession of a written appraisal, which indicated that there was sufficient equity in Debtors' real property that would have made Equity One's second mortgage undersecured rather than unsecured for lien-stripping purposes. However, Equity One's counsel did not procure a witness that could establish an evidentiary foundation for entry of the appraisal into evidence, and Debtors' counsel objected to the submission of the appraisal into evidence for that reason. Accordingly, Equity One could not produce any competent evidence demonstrating that its

second mortgage was undersecured rather than unsecured; and thus, even allowing the late objection would have resulted in its overruling.

Therefore, in light of the foregoing, the Court denies Equity One's Motion to Extend, and the Court shall confirm Debtors' plan by a separate order. Furthermore, the request for fees made by Debtors' counsel shall be addressed by a separate order of the Court.

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina

June 27, 2005