

U.S. BANKRUPTCY COURT
District of South Carolina


Case Number: 05-6130

The relief set forth on the following pages, for a total of _____ pages including this page,
is hereby ORDERED.

FILED BY THE COURT ON

1/10/06





John E. Waites
US Bankruptcy Court Judge
District of South Carolina

ENTERED: _____

ENTERED

JAN 11 2006

J.G.S.

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

In re:

Cecil David Riley, Jr., and
Patricia Hartz Riley,

Debtors.

Case No. 05-06130-W
Chapter 13

CONSENT ORDER

Before the Court is the motion of the United States Trustee (UST) for an order converting this case to chapter 7. Cecil David Riley, Jr. and Patricia Hartz Riley ("Debtors") filed a motion in opposition to the motion.

In filing their case on May 26, 2005, Debtors disclosed in their "Schedule A, Real Property," ownership of a mobile home and 17.09 acres of land located at 2744 Wildflower Rd. in Blythewood, South Carolina. Debtors also stated that the current market value of this property was \$4,770. Debtors attached to their Schedule A a copy of a tax notice from Richland County which lists the "appraised value taxable" as \$5,300. The plan filed by Debtors proposed to pay unsecured creditors 1% of their allowed claims. Debtors listed in their Schedule F a total of \$53,709.55 in unsecured debt. The chapter 13 trustee determined that the \$5,300 tax value used by Debtors was an agricultural use value but that Richland County placed a market value of \$51,270 on the property. The trustee instructed Debtors to obtain an appraisal of the property. The appraiser employed by Debtors concluded that Debtors' 17.09 acres, even considered without the mobile home, has a value of \$90,000.

As a result of the appraisal, the trustee required Debtors to file an amended plan to increase their monthly payments under the plan from \$350 to \$1,530 or face dismissal. Debtors'

amended plan, which would have paid the vast majority, if not all of Debtors' unsecured claims, was confirmed on October 13, 2005. One day later, on October 14, Debtors moved to dismiss their case and their case was dismissed on October 21, 2005. On November 3, 2005, the UST filed a motion for an order setting aside this Court's order dismissing this case. By order entered on December 1, 2005 without objection by Debtors, this Court granted the motion of the UST and set aside the order dismissing this case.

The UST argues that by grossly undervaluing their property, Debtors sought to defraud their creditors by obtaining confirmation of a plan they were not entitled to have confirmed. The UST takes the position that Debtors' actions in their case constituted bad faith which warrants conversion of the case to chapter 7 for cause under Section 1307(c). Debtors concede that the \$4,770 market value they listed for their 17.09 acres was incorrect. However, Debtors assert that they did not intend to provide this value for their property and that they told the attorney who represented them in filing their case that they believed their 17.09 acres of land to be worth approximately \$1,500 per acre, or about \$25,000 in total. Debtors claim that when they signed their schedules and statements, they did not notice that their Schedule A listed a value of only \$4,770.

Debtors believe that the appraisal setting the value of their 17.09 acres at \$90,000, which was obtained at the chapter 13 trustee's instruction after the case was filed, was hastily performed by the appraiser and resulted in a substantially higher value than the property is actually worth. Debtors have asked the Court to give them the opportunity to obtain an accurate appraisal of this property and to propose a chapter 13 plan which will pay creditors what they are entitled to receive.

The UST, Debtors and the chapter 13 trustee have informed the Court that the UST's motion has been resolved by consent under the following terms:

1. Debtors will obtain an appraisal of their 17.09 acres of land which shall be performed by an appraiser acceptable to the UST and the chapter 13 trustee.
2. By January 28, 2006, Debtors will file a confirmable chapter 13 plan.
3. By March 28, 2006, Debtors will obtain confirmation of their amended plan.
4. In the event Debtors fail to comply with one or more of the requirements of the preceding paragraphs, the Court, on the affidavit of the UST certifying Debtors' failure, may convert this case to chapter 7 without further notice or hearing.
5. In the event Debtors' chapter 13 case fails for any reason, the case will not be dismissed, but will be converted to chapter 7.

The Court finds the agreement of the parties to be reasonable and adopts it as the order of the Court.

WE CONSENT:

W. Clarkson McDow, Jr.
U. S. Trustee for Region 4

By: /s/ Joseph F. Buzhardt
Joseph F. Buzhardt, III
Assistant U. S. Trustee
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/s/ William K. Stephenson, Jr.
William K. Stephenson, Jr.
Chapter 13 Trustee
P. O. Box 8477
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Cecil David Riley
Patricia Hartz Riley

By: /s/ Herman F. Richardson, Jr.
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