

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

DEBORAH SANDERS,

CASE NO. 11-01999-NPO

DEBTOR.

CHAPTER 13

**MEMORANDUM OPINION AND ORDER
DENYING MOTIONS TO DISMISS FOR BAD FAITH,
DENYING MOTION TO MODIFY CHAPTER 13 PLAN AS PROPOSED,
AND REQUIRING THE DEBTOR TO FILE
AN AMENDED MOTION TO MODIFY CHAPTER 13 PLAN**

This matter came on for hearing on August 26, 2013 (the “Hearing”), on the Trustee’s Motion to Dismiss for Bad Faith (the “Motion to Dismiss”) (Dkt. 63) filed by James L. Henley, Jr., the chapter 13 trustee (the “Trustee”), the Answer to Trustee’s Motion to Dismiss (the “Answer”) (Dkt. 65) filed by Deborah Sanders (the “Debtor”), the Joinder by the United States in Trustee’s Motion to Dismiss for Bad Faith (the “U.S. Joinder”) (Dkt. 67) filed by the United States, the Motion to Modify Chapter 13 Plan (the “Motion to Modify”) (Dkt. 57) filed by the Debtor, and the Order (the “Proposed Order”) (Dkt. 70) filed by the Debtor in the above-styled bankruptcy case (the “Bankruptcy Case”). At the Hearing, the Trustee represented himself, Tylvester O. Goss represented the Debtor, and Pshon Barrett represented the United States. At the conclusion of the Hearing, the Court instructed the parties to submit briefs addressing the issue of the Debtor’s alleged bad faith. Following the Hearing, the Trustee filed a Memorandum of Law in Support of Trustee’s Motion to Dismiss for Bad Faith Filing (the “Trustee’s Brief”) (Dkt. 84), the Debtor filed a Memorandum Brief (the “Debtor’s Brief”) (Dkt. 83), and the United States filed a Memorandum in Support of Joinder by the United States in Trustee’s Motion to Dismiss for Bad Faith (Dkt. 82).

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) & (O). Notice of the Motion to Dismiss and the Motion to Modify was proper under the circumstances.

Facts

1. The Debtor voluntarily filed the petition for relief (the “Petition”) (Dkt. 1) under chapter 13 of the U.S. Bankruptcy Code on June 6, 2011. On June 20, 2011, the Debtor filed statements and schedules regarding her current income, expenses, and creditors (Dkt. 7), including the Statement of Financial Affairs (*Id.* at 18-24); Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Dkt. 8); and her Chapter 13 Plan (the “Plan”) (Dkt. 9).

2. On Schedule A – Real Property (the “Original Real Property Schedule”), the Debtor detailed her ownership interests in three properties, as follows:

Description and Location of Property	Nature of Debtor’s Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor’s Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
House & Lot	Homestead	-	300,000.00	18,137.00
2521 Hallsferry Road Vicksburg, MS	Joint tenant	-	40,000.00	0.00
70 Acres of Open Land Clairborne County	Joint Tenants	-	25,000.00	0.00

(Dkt. 7 at 3).¹

¹ Hereinafter, other than when quoting specific schedules filed by the Debtor, the Court will refer to any properties located on “Halls Ferry” Road or in “Claiborne” County by their proper names and spellings.

3. The Trustee did not object to the Debtor's Plan, which included one hundred percent (100%) payments to unsecured creditors over a sixty (60) month period. (Dkt. 9). The Plan was confirmed on August 30, 2011 (Dkt. 31).

4. On June 20, 2013, unaware of the ongoing Bankruptcy Case,² the United States Attorney's Office filed a civil Complaint for Fraudulent Transfer (the "Civil Complaint") in the United States District Court for the Southern District of Mississippi against the Debtor and her husband, Marshall Sanders. *See* Complaint for Fraudulent Transfer, *United States v. Sanders*, No. 5:13CV88DCB-MTP (S.D. Miss. June 20, 2013) (Dkt. 84 Ex. F). The United States alleges that Marshall Sanders fraudulently transferred three properties, 1115 Monroe Street, Vicksburg, Mississippi 39180 (the "Monroe Street Property"); 2516 Halls Ferry Road, Vicksburg, Mississippi 39180 (the "2516 Halls Ferry Road Property"); and 2521 Halls Ferry Road, Vicksburg, Mississippi 39180 (the "2521 Halls Ferry Road Property"), to the Debtor on November 18, 2008. *Id.*

5. In the Bankruptcy Case, the Debtor filed the Motion to Modify and the Proposed Order on July 19, 2013. The Debtor seeks to amend the Original Real Property Schedule, to amend the Statement of Financial Affairs to reflect a sale of property, and to request the Trustee to amend the wage order accordingly (Dkt. 57). Along with the Motion to Modify, the Debtor filed the proposed Amended Schedule A – Real Property (the "Amended Real Property Schedule") (Dkt. 59), which disclosed two additional properties owned by the Debtor that were omitted from the Original Real Property Schedule. The Amended Real Property Schedule appears as follows:

² *See* U.S. Joinder at ¶ 5.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband Wife Joint or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
House & Lot	Homestead	-	\$300,000.00	\$18,137.00
2521 Hallsferry Road Vicksburg, MS	Joint tenant	-	\$40,000.00	\$0.00
70 Acres of Open Land Clairborne County	Joint Tenants	-	\$25,000.00	\$0.00
***1 lot at Lake Caroline, Madison County		-	\$40,000.00	\$0.00
***Commercial Building, 1115 Monroe Street		-	\$60,000.00	\$0.00

(Dkt. 59).

6. On July 22, 2013, the Trustee filed the Motion to Dismiss claiming the Bankruptcy Case should be dismissed pursuant to 11 U.S.C. § 1325(a)(3)³ because the Plan was not proposed in good faith. The Trustee claims that the Debtor failed to list all properties on the Original Real Property Schedule and has since failed to amend fully the schedule to reflect accurately all real property as of the date of the Petition, therefore warranting dismissal of the Bankruptcy Case under § 1325(a)(3) for proposing the Plan in bad faith. On July 24, 2013, the Debtor filed the Answer. On August 1, 2013, the United States filed the U.S. Joinder.⁴

7. At the Hearing, the Trustee and the United States (collectively, the “Movants”) argued the Bankruptcy Case should be dismissed for the Debtor’s bad faith pursuant to § 1307(c), a different statutory basis than the one the Trustee asserted in the Motion to Dismiss. The Movants claimed that the Debtor not only failed to disclose all of her property interests in

³ Hereinafter, all code sections refer to the United States Bankruptcy Code found at Title 11 of the United States Code unless otherwise noted.

⁴ In the U.S. Joinder, the United States incorporated by reference and re-alleged all of the Trustee’s assertions in the Motion to Dismiss.

the Original Real Property Schedule, but also she failed to disclose completely and accurately all ownership interests and properties in the Amended Real Property Schedule. Specifically, the Movants claimed that (a) the 2516 Halls Ferry Road Property is still missing from the proposed Amended Real Property Schedule altogether; (b) the ownership interests as to the two properties initially omitted in the Original Real Property Schedule, “1 lot at Lake Caroline, Madison County” (the “Lake Caroline Property”) and the Monroe Street Property, are not specified; and (c) the ownership interest in “70 Acres of Open Land, Clairborne County” (the “Claiborne County Property”) is incorrectly listed as “Joint Tenants,” whereas the Debtor is actually the sole owner of the property.

8. At the Hearing, the Trustee presented three (3) quitclaim deeds representing properties that Marshall Sanders transferred to the Debtor on November 18, 2008; one representing the Monroe Street Property (Motion to Dismiss Ex. D), one representing the 2516 Halls Ferry Road Property (Motion to Dismiss Ex. E), and one representing the 2521 Halls Ferry Road Property (Motion to Dismiss Ex. F).

9. Also at the Hearing, the Debtor testified that despite her statements at the § 341 Meeting of Creditors that she had reviewed the schedules and that the information therein was correct, it was her attorney husband and her bankruptcy attorney who had completed the schedules on her behalf and that she had assumed all the information regarding the properties, values, and ownership interests was correct. (Hr’g Tr. at 16, 30).⁵ The Debtor admitted that the three (3) quitclaim deeds represented the three properties, the Monroe Street Property, the 2516 Halls Ferry Road Property, and the 2521 Halls Ferry Road Property, that her husband had transferred to her on November 18, 2008. She also admitted that the only property she owns as a

⁵ The transcript of the Hearing is cited as “(Hr’g Tr. at ___)” (Dkt. 80).

joint tenant with her husband is the Lake Caroline Property and that she solely owns all other listed properties. (Hr'g Tr. at 25-26). Regarding the property still omitted from the Amended Real Property Schedule, the Debtor stated that she believed that the 2521 Halls Ferry Road Property listing on the Original Real Property Schedule included the 2516 Halls Ferry Road Property, which is an adjacent vacant lot. (Hr'g Tr. at 18).

10. Following the Hearing, the Trustee, the Debtor, and the United States filed briefs on whether the Bankruptcy Case should be dismissed for bad faith. The Trustee argued that the Bankruptcy Case should be dismissed under § 1307(c) because the Debtor's failure to disclose information regarding her assets constituted a bad faith filing of the Petition (Dkt. 84). The United States adopted the Trustee's argument that the Bankruptcy Case should be dismissed under § 1307(c) (Dkt. 82). In opposition, the Debtor argued that the Movants waived their § 1307(c) argument because the Movants did not make the same argument in the Motion to Dismiss and the U.S. Joinder, which prejudiced the Debtor (Dkt. 83).⁶ The Debtor also argued that if the Movants' § 1307(c) argument was not waived; the Bankruptcy Case should not be dismissed because the Debtor's omissions and inaccurate schedules were inadvertent (*Id.*).

Discussion

A. Trustee's Motion to Dismiss and U.S. Joinder

1. Rule 9013 Does Not Preclude Movants' § 1307(c) Claim

The first issue the Court must address is whether the Movants are precluded from bringing their § 1307(c) claim because they changed the legal basis of their argument at the Hearing. The Debtor identifies that the Movants initially contended in the Motion to Dismiss and the U.S. Joinder that the Bankruptcy Case should be dismissed pursuant to § 1325(a)(3) for a

⁶ Although the Debtor's Brief refers specifically only to the Trustee's argument, the Court interprets the Debtor's Brief as applying to the Movants' arguments.

failure to propose the Plan in good faith, but then asserted at the Hearing, and in the Movants' briefs, that the Bankruptcy Case should be dismissed pursuant to § 1307(c) for the failure to file the Petition in good faith. According to the Debtor, allowing the Movants' § 1307(c) argument to proceed would unduly prejudice the Debtor.⁷

Rule 9013 of the Federal Rules of Bankruptcy Procedure ("Rule 9013") requires that motions requesting orders from a court "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." FED. R. BANKR. P. 9013. Rule 9013 is derived in part from Rule 7(b)(1) of the Federal Rules of Civil Procedure. FED. R. BANKR. P. 9013 advisory committee's note; *In re Aucoin*, 150 B.R. 644, 647 (E.D. La. 1993). Regarding the Rule 7(b)(1)(B) particularity requirement for motions, courts "tend to focus on whether any party has been prejudiced by the movant's lack of particularity and whether the court can comprehend the basis of the motion and deal with it fairly; as a result, courts generally avoid engaging in an overly technical evaluation of the papers." 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1192 (3d ed. 2004) (footnotes omitted). Further, "[w]here the parties have discussed the grounds for a motion in their briefs and at oral argument, failure to state the grounds in the motion itself does not require denial of the motion." *Aucoin*, 150 B.R. at 647 (citation omitted) (applying the particularity requirement of Rule 9013); see *In re Jack Kline Co.*, 440 B.R. 712, 744 (Bankr. S.D. Tex. 2010).

In the case at bar, the Court finds that the Debtor has not suffered any prejudice. The Movants' initial argument was based on § 1325(a)(3). Section 1325(a) establishes nine (9) conditions for confirmation of a chapter 13 plan. 11 U.S.C. § 1325(a). Subsection (3) states the

⁷ The Debtor also argued that it would be prejudicial for the Court to allow the Movants to amend the Motion to Dismiss after the Hearing. The Movants, however, have not sought leave to amend the Motion to Dismiss. Therefore, that issue is not before the Court and will not be addressed.

condition that “the plan has been proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1325(a)(3). Later, the Movants based their argument on § 1307(c). Section 1307(c) provides that a court may dismiss or convert a bankruptcy case for cause. 11 U.S.C. § 1307(c). The statute sets out a list of reasons that justifies a court’s decision to dismiss a case. 11 U.S.C. § 1307(c)(1)-(11). The list, however, is not exhaustive, and the Fifth Circuit Court of Appeals has found that a debtor’s lack of good faith can be a sufficient cause for dismissal or conversion of a chapter 13 case. *Jacobsen v. Moser (In re Jacobsen)*, 609 F.3d 647, 660 (5th Cir. 2010). *Suggs v. Stanley (In re Stanley)*, 224 F. App’x 343, 347 n.16 (5th Cir. 2007) (unpublished). While § 1325(a)(3) is used to determine whether a plan should be confirmed and § 1307(c) is used to determine whether to dismiss or convert a bankruptcy case as a whole, both code sections involve analysis of a debtor’s motives during his or her bankruptcy case.

While the Motion to Dismiss only contained the argument that the Bankruptcy Case should be dismissed for the Debtor’s failure to propose the Plan in good faith, the Debtor was given notice at the Hearing regarding the Movants’ argument that the Bankruptcy Case should be dismissed for filing the Petition in bad faith pursuant to § 1307(c). Additionally, the Debtor had fourteen (14) days following the Hearing to prepare the Debtor’s Brief in response to the Movants’ position, which she did prepare and file. Further, the facts underlying the Movants’ two arguments did not change and were stated with particularity in the Motion to Dismiss. As a result, the Court finds that the Debtor was prepared fully to address the merits of the § 1307(c) argument, as demonstrated by the Debtor’s Brief.

In support of her position that the Movants are precluded from bringing their § 1307(c) claim, the Debtor cites *Glass Containers Corp. v. Miller Brewing Co.*, 643 F.2d 308 (5th Cir. 1981), in which the Fifth Circuit affirmed the district court’s rejection of a jury instruction

regarding an affirmative defense that was not previously pled or mentioned. *Glass Containers*, however, is easily distinguishable from the current case. In *Glass Containers*, the defendant raised the affirmative defense for the first time at the close of trial, just before the jury was instructed. *Id.* at 311. If the jury instruction had been allowed, the plaintiff would have been prejudiced by not being able to conduct discovery or make trial decisions in respect to the defense. In contrast here, the Debtor had fourteen (14) days to research and prepare the Debtor's Brief on § 1307(c). Because of the fourteen (14) day time period and the respective briefs provided by the Movants and the Debtor, the Court can adequately comprehend the basis of the Motion to Dismiss and deal with it fairly. For these reasons, the Court finds that the Debtor was not prejudiced, and the Motion to Dismiss and that the U.S. Joinder do not violate Rule 9013.

2. *Res Judicata* Precludes the Trustee's Claim, but Not the United States' Claim

The Movants argue the Bankruptcy Case should be dismissed pursuant to § 1307(c), which provides that a court may dismiss or convert a bankruptcy case for cause. 11 U.S.C. § 1307(c). As previously described, the code section sets out a list of reasons that justifies a court's decision to dismiss a case. 11 U.S.C. § 1307(c)(1)-(11). The list, however, is not exhaustive, and a debtor's lack of good faith, although not listed, can be a sufficient cause for dismissal or conversion of a chapter 13 case. *Jacobsen*, 609 F.3d at 660; *Stanley*, 224 F. App'x at 347 n.16. The Movants argue under § 1307(c) that the Court should dismiss the Bankruptcy Case because the Debtor failed to file the Petition in good faith. Specifically, the Movants claim that the Debtor's failure to disclose fully and accurately all of her properties and her ownership interests in those properties constitutes a filing in bad faith. Before considering the merits of the Movants' argument that the Debtor failed to file the Petition in good faith, the Court must

determine whether the Movants' argument is barred by the *res judicata* effects of the Plan's confirmation.

Section 1327 provides the effects of a chapter 13 plan confirmation. Subsection (a) states, "[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). Under § 1327, "[a]bsent timely appeal, the confirmed plan is *res judicata* and its terms are not subject to collateral attack." 8 COLLIER ON BANKRUPTCY § 1327.02[1] (16th ed. 2013) (footnote omitted). The Fifth Circuit has addressed the *res judicata* effects of a plan's confirmation only a few times, but generally has recognized and accepted the doctrine. *See Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir. 1987) (holding that confirmation of a chapter 11 plan barred a guaranty from later attacking the validity of a plan provision); *Sun Fin. Co. v. Howard (In re Howard)*, 972 F.2d 639, 642 (5th Cir. 1992) (stating that allowing a post-confirmation objection to any flaw in a chapter 13 plan would "step too hard on the debtors' interest in finality after the confirmation" of a plan); *Brown v. Chesnut (In re Chesnut)*, 356 F. App'x 732 (5th Cir. 2009) (unpublished) (holding that the *res judicata* effect of the chapter 13 debtor's confirmed plan barred a secured creditor from collaterally attacking the subject matter jurisdiction of the bankruptcy court to order a release of the creditor's lien upon completion of the debtor's payments under the plan).

Though the Fifth Circuit has not addressed a plan confirmation's binding effect on trustees, leading bankruptcy authorities and other jurisdictions have made it clear that a chapter 13 trustee also is bound by a confirmed plan pursuant to § 1327(a). *See* 8 COLLIER ON BANKRUPTCY § 1327.02[1] (16th ed. 2013) (footnote omitted) ("Because finality is so important, the chapter 13 trustee is also bound by the terms of a confirmed plan."); *Hope v. Acorn Fin., Inc.*,

No. 5:11-CV-276, 2012 WL 74874 (M.D. Ga. Jan. 10, 2012) (holding that the binding effect of a chapter 13 plan confirmation pursuant to § 1327(a) applies to trustees); *In re Smith*, No. 01-44618, 2004 WL 41401, at *5 (Bankr. W.D. Mo. 2004) (“[O]nce a confirmed plan is given *res judicata* effect-in the absence of a specific statutory exception-that effect also binds the trustee, who was a party to the confirmation proceeding.”); *Ledford v. Brown (In re Brown)*, 219 B.R. 191, 194 (B.A.P. 6th Cir. 1998) (“A trustee is considered a party to a confirmation proceeding, and, as such, is bound by the proceedings.”); *In re Mitchell*, 281 B.R. 90, 94 (Bankr. S.D. Ala. 2001) (“Plan confirmation orders bind debtors, creditors, trustees and other parties in interest.”); *In re Lee*, 189 B.R. 692, 694 (Bankr. M.D. Tenn. 1995) (“The binding effect of confirmation commits the Chapter 13 Trustee as well.”); *In re Hallmark*, 225 B.R. 192 (Bankr. C.D. Cal. 1998); *Bankowski v. Wells Fargo Bank, N.A. (In re Reid)*, 480 B.R. 436 (Bankr. D. Mass. 2012).

The Fifth Circuit also has not addressed the full scope of the *res judicata* effects of a chapter 13 plan’s confirmation. Bankruptcy authorities and other courts, including two bankruptcy courts within the Fifth Circuit, have held “that the binding effect of a chapter 13 plan extends to any issue actually litigated by the parties and any issue necessarily determined by the confirmation order, including whether the plan complies with sections 1322 and 1325 of the Bankruptcy Code.” 8 COLLIER ON BANKRUPTCY § 1327.02[1][c] (16th ed. 2013) (footnote omitted); see *Multnomah County v. Ivory (In re Ivory)*, 70 F.3d 73, 75 (9th Cir. 1995) (quoting another source) (“An order confirming a Chapter 13 plan is *res judicata* as to all justiciable issues which were or could have been decided at the confirmation hearing.”); *Universal Am. Mortg. Co. v. Bateman (In re Bateman)*, 331 F.3d 821 (11th Cir. 2003); *In re Szostek*, 886 F.2d 1405 (3d Cir. 1989); *In re Turner-Mayo*, No. 05-44726, 2007 WL 484614 (Bankr. S.D. Tex. Feb. 8, 2007); *Rosetti v. Chase Home Fin. LLC (In re Rosetti)*, No. 07-04063, 2007 WL 2669265 (Bankr. N.D.

Tex. Sept. 6, 2007); *In re Glow*, 111 B.R. 209 (Bankr. N.D. Ind. 1990); *In re Brenner*, 189 B.R. 121 (Bankr. N.D. Ohio 1995).

As previously stated, § 1325(a) establishes nine (9) conditions for confirmation of a chapter 13 plan. 11 U.S.C. § 1325(a). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 added subsection (7) to § 1325(a), which states the condition that “the action of the debtor in filing the petition was in good faith.” 11 U.S.C. § 1325(a)(7). While the Fifth Circuit has never specifically addressed the *res judicata* effects of a chapter 13 plan’s confirmation in light of a collateral attack on whether the debtor filed his or her petition in good faith, bankruptcy authorities and other jurisdictions that have considered the matter have specifically recognized that the *res judicata* effects of a chapter 13 plan confirmation applies to collateral attacks on the debtor’s good faith in filing the petition. *See* 8 COLLIER ON BANKRUPTCY § 1307.04[10] (16th ed. 2013) (“[B]ecause filing a petition in good faith is a standard for confirmation, the confirmation of a plan serves as a binding determination on the issue and bars later dismissal based on a lack of good faith.”) (footnote omitted); Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY, 4TH EDITION, § 229.1 at ¶ 9, Sec. Rev. Oct. 8, 2010, www.Ch13online.com (“Because good faith is one of the conditions for confirmation in §1325(a), confirmation precludes relitigation of the debtor’s good faith on a motion to dismiss.”) (footnote omitted); *Rosetti*, 2007 WL 2669265; *In re Curtis*, No. 09-41396, 2010 WL 1444851 (Bankr. S.D. Ill. Apr. 9, 2010); *In re King*, 290 B.R. 641 (Bankr. C.D. Ill. 2003); *In re Marquez*, No. 10-03882, 2011 WL 4543226 (Bankr. D.P.R. Sept. 28, 2011).

In this case, the Movants argue that the Debtor’s failure to disclose fully and accurately her assets constitutes a bad faith filing of the Petition and that the Bankruptcy Case should be dismissed pursuant to § 1307(c). In the Trustee’s Brief, the Trustee cites three cases, *In re*

Chaffin, 816 F.2d 1070 (5th Cir. 1987), *Stanley*, 224 F. App'x at 343, and *In re Love*, 957 F.2d 1350 (7th Cir. 1992), as authorities where courts have dismissed bankruptcy cases because a debtor failed to file his or her petition for relief in good faith. The three (3) cases cited by the Trustee are not applicable to the issue at hand. In *Chaffin*, the bankruptcy case was dismissed prior to the confirmation of the chapter 13 plan. 816 F.2d at 1071. In *Stanley*, a creditor objected to the chapter 13 plan confirmation and timely appealed the bankruptcy court's denial of the creditor's objection. 224 F. App'x at 345. In *Love*, the bankruptcy court dismissed the bankruptcy case prior to the confirmation of the debtor's chapter 13 plan. 957 F.2d at 1353. In none of these cases cited by the Trustee does a court dismiss a bankruptcy case after the parties involved in the confirmation process became bound by the terms of the plan confirmation pursuant to § 1327(a). Therefore, the cases cited by the Trustee in support of the § 1307(c) argument are inapplicable.

When the Trustee did not object to the Plan's confirmation and the Plan was confirmed on August 30, 2011, all parties who participated in the confirmation process became bound by every issue actually litigated or necessarily determined by the confirmation order, including whether the plan complied with § 1325(a). *See* 8 COLLIER ON BANKRUPTCY § 1327.02[1][c] (16th ed. 2013), *Shoaf*, 815 F.2d at 1046; *Turner-Mayo*, 2007 WL 484614, at *1. Because filing a petition in good faith is one of the conditions set forth in § 1325(a), the Court finds that the confirmation of the Plan precludes the Trustee from relitigating the Debtor's good faith in filing the Petition. *See* 8 COLLIER ON BANKRUPTCY § 1307.04[10] (16th ed. 2013); Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY, 4TH EDITION, § 229.1 at ¶ 9, Sec. Rev. Oct. 8, 2010, www.Ch13online.com; *Rosetti*, 2007 WL 2669265, at *3.

The United States, on the other hand, did not have adequate notice of the Bankruptcy Case as it did not become aware of the Debtor's pending bankruptcy until after it filed the Civil Complaint. The United States, therefore, is not bound by all of the issues determined by the confirmation order, including whether the Plan complied with § 1325(a). Therefore, the Court will address the merits of the United States' claim that the Debtor failed to file the Petition in good faith.

3. Based on the Totality of Circumstances, the U.S. Joinder is Denied

In determining whether a petition for relief has been filed in bad faith, the Court considers the "totality of the circumstances." *In re Chaffin*, 816 F.2d 1070, 1073 (5th Cir. 1987) ("*Chaffin I*"), modified, *In re Chaffin*, 836 F.2d 215 (5th Cir. 1988) ("*Chaffin II*"). Considering the circumstances in the Bankruptcy Case, while the Debtor failed to disclose initially all of her ownership interests in the Original Real Property Schedule, she provided credible testimony that her attorney husband and her bankruptcy attorney completed the schedules and that she had assumed all the information contained therein was correct. (Hr'g Tr. at 16, 30). Her testimony showed that she did not possess a basic understanding of property rights. The Court did not detect in the Debtor's testimony any attempt by the Debtor to conceal assets to thwart her creditors. Indeed, under the Plan as confirmed, the Debtor is paying unsecured creditors one hundred percent (100%) of their claims, and as of the date of the Hearing, the Debtor was current on the payments. (Hr'g Tr. at 27).

The Movants claim that if all of the Debtor's properties had been identified in the Original Real Property Schedule, these properties could have been sold to provide an earlier payout to unsecured creditors (Hr'g Tr. at 32). The Court notes, however, that the Trustee made no effort to sell the property that was disclosed initially in the Original Real Property Schedule,

even though the equity in the non-exempt disclosed assets exceeded the amount of unsecured claims. (Hr'g Tr. at 35).

In consideration of the totality of circumstances, the Court finds that the Debtor intended to effectuate a successful plan that paid all of her unsecured creditors in full. Therefore, the Court finds that the Debtor filed the Petition in good faith, and as a result, the U.S. Joinder should be denied. Consequently, even if the Trustee's argument was not precluded by *res judicata*, it would still be unsuccessful on its merits.

B. The Debtor's Motion to Modify Chapter 13 Plan and Proposed Order

Having decided the Motion to Dismiss and the U.S. Joinder should be denied, the Court will now address the Motion to Modify and the Proposed Order. At the Hearing, a total of four (4) omissions and inaccuracies in the Amended Real Property Schedule were brought to the Court's attention. The Debtor admitted to two (2) inaccuracies in the Amended Real Property Schedule: (1) the 2516 Halls Ferry Road Property is omitted from the Amended Real Property Schedule entirely (Hr'g Tr. at 18); and (2) the Debtor's ownership interest as to the Claiborne County Property is incorrectly listed as "Joint Tenants," whereas the Debtor is the sole owner of the property (Hr'g Tr. at 25-26). In addition, the ownership interests as to the Lake Caroline Property and the Monroe Street Property are not specified in the Amended Real Property Schedule (Dkt. 59). Due to these inaccuracies in the Amended Real Property Schedule, the Motion to Modify and the Proposed Order should be denied.

Though the Motion to Modify should be denied, the Court finds that the Debtor has a duty to provide the Trustee with accurate schedules. Section 521(1) imposes upon a debtor the "express, affirmative duty to disclose all assets." *In re Coastal Plains, Inc.*, 179 F.3d 197, 207-08 (5th Cir. 1999); *see* 11 U.S.C. § 521(1). Section 521(3) imposes upon a debtor the duty to

“cooperate with the trustee as necessary to enable the trustee to perform the trustee’s duties under this title.” 11 U.S.C. § 521(3). The trustee’s duties include, among other responsibilities, the obligations to “investigate the financial affairs of the debtor,” “advise, other than on legal matters, and assist the debtor in performance under the plan,” and “unless the court orders otherwise, furnish such information concerning the estate and the estate’s administration as is requested by a party in interest[.]” *See* 11 U.S.C. § 1302(b)(1), (4); 11 U.S.C. § 704(a)(4), (7). In order for a chapter 13 trustee to fulfill his duties, he must have access to complete and accurate schedules. It is the duty of a debtor to disclose all assets and to cooperate with the trustee to enable him to perform his duties. In accordance with these duties, the Court finds that the Debtor must provide the Trustee with complete and accurate schedules to enable the Trustee to perform his duties under the Bankruptcy Code. To this end, the Court, pursuant to its inherent powers, orders the Debtor to file an amended motion to modify that includes an accurate amended real property schedule correcting the aforementioned inaccuracies and omissions on or before fourteen (14) days from the date of this Opinion. *See* 11 U.S.C. § 105; 11 U.S.C. § 521(3).

Conclusion

For the above and foregoing reasons, the Court concludes that the Motion to Dismiss and the U.S. Joinder should be denied. The Movants did not violate Rule 9013 by changing the statutory basis for their argument prior to the Hearing. The Plan’s confirmation, however, is *res judicata* to the Trustee’s collateral attack on whether the Debtor filed the Petition in good faith. Even if the Trustee’s argument was not precluded, it would still be unsuccessful on its merits because under the totality of circumstances, the Court finds that the Debtor filed the Petition in good faith. Because of the determination that the Debtor filed the Petition in good faith, the U.S. Joinder should be denied on its merits. The Court concludes that because of the inaccuracies and

omissions within the Amended Real Property Schedule, the Motion to Modify and the Proposed Order also should be denied. In addition, the Court finds that the Debtor must provide the Trustee with complete and accurate schedules to enable the Trustee to perform his duties under the Bankruptcy Code.

IT IS, THEREFORE, ORDERED that the Trustee's Motion to Dismiss is hereby denied.

IT IS FURTHER ORDERED that the U.S. Joinder is hereby denied.

IT IS FURTHER ORDERED that the Debtor's Motion to Modify and the Proposed Order are hereby denied.

IT IS FURTHER ORDERED that the Debtor shall file an amended motion to modify the Plan that includes complete and accurate schedules fully disclosing all of her assets and her ownership interests in those assets, within fourteen (14) days from the date of this Opinion.

SO ORDERED.



Neil P. Olack
United States Bankruptcy Judge
Dated: October 11, 2013