

**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: **24-00441-hb**

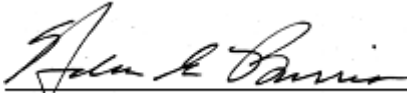
**ORDER**

The relief set forth on the following pages, for a total of 16 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT  
08/19/2024**



  
Chief US Bankruptcy Judge  
District of South Carolina

Entered: 08/19/2024

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

IN RE:

Matthew Ryan Niemiec,

Debtor(s).

C/A No. 24-00441-HB

Chapter 13

**ORDER DENYING REQUEST TO  
CONTINUE CONFIRMATION  
HEARING, DENYING  
CONFIRMATION OF PLAN, AND  
CONVERTING CASE TO CHAPTER 7**

**THIS MATTER** came before the Court to consider (1) confirmation of the Chapter 13 plan proposed by Debtor Matthew Ryan Niemiec (“Niemiec”)<sup>1</sup> and the Objection of creditor Myron B. Boloyan (“Boloyan”);<sup>2</sup> and (2) the Motion to Convert Case to Chapter 7 (the “Motion to Convert”) filed by Boloyan,<sup>3</sup> the Joinder therein filed by creditor J. Cameron Halford (“Halford”),<sup>4</sup> the Response filed by Chapter 13 Trustee Gretchen D. Holland (the “Trustee”) supporting conversion,<sup>5</sup> and Niemiec’s Objection.<sup>6</sup> Appearances were made by the Trustee, Halford representing himself, W. Harrison Penn on behalf of Boloyan, and Lanier H. Sims of Benjamin R. Matthews & Associates on behalf of Niemiec. After careful consideration of the testimony, exhibits, and record in this case, the Court finds as follows.

**FINDINGS OF FACT**

Prior to the filing of this case, Boloyan, Halford, and Niemiec were law partners or affiliated counsel with an office in South Carolina. All three are residents of South Carolina. The professional relationship ended with disputes and litigation in South Carolina courts.

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<sup>1</sup> ECF No. 49, filed June 26, 2024.

<sup>2</sup> ECF No. 70, filed July 25, 2024.

<sup>3</sup> ECF No. 43, filed June 18, 2024.

<sup>4</sup> ECF No. 66, filed July 19, 2024.

<sup>5</sup> ECF No. 72, filed July 29, 2024.

<sup>6</sup> ECF No. 61, filed July 6, 2024.

Niemiec owes Halford approximately \$21,845.00.<sup>7</sup> Niemiec’s debt to Halford arises from Niemiec’s use of funds held by a former law firm (Halford & Niemiec, LLP) to pay his personal debts. An arbitrator found that Niemiec misappropriated funds—with payments coded as firm expenses rather than as personal draws—and that Niemiec violated his fiduciary duty to Halford to “not place [his] personal financial interests ahead of the interests of the firm” and to “be fair in his draws of revenue”, and awarded the judgment amount to Halford.<sup>8</sup> The arbitrator’s award was confirmed by the Court of Common Pleas for York County, South Carolina (the “State Court”), resulting in a judgment attaching to Niemiec’s residence located at 36 Honeysuckle Court, Clover, SC 29710 (the “House”).<sup>9</sup>

Niemiec owes Boloyan around \$392,804.87 secured by a mortgage on the House.<sup>10</sup> Niemiec’s debt to Boloyan arises from a transaction in which Boloyan, as seller, financed Niemiec’s purchase of the House. A ledger maintained by Boloyan and his wife of Niemiec’s payments reflects that Niemiec made payments from the beginning of the term of the note and mortgage in 2019 until he missed the payments due in April and May of 2023, though payments were often late.<sup>11</sup> On May 31, 2023, Boloyan filed a foreclosure action in the State Court against Niemiec and others (*Boloyan v. Niemiec et al.*, C/A No. 2023-CP46-01701) (the “Foreclosure Action”).<sup>12</sup> Boloyan testified that at a hearing in the Foreclosure Action in November of 2023, Niemiec requested the State Court delay the foreclosure sale of the House so he could pursue a refinancing of the mortgage. Boloyan stated, however, that no attempt at refinancing ever occurred, and Niemiec’s testimony indicates refinancing was never seriously pursued. On

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<sup>7</sup> See Claim No. 7-1 filed by Halford.

<sup>8</sup> Claim No. 7-1, pp. 9-10.

<sup>9</sup> Claim No. 7-1, pp. 6-7.

<sup>10</sup> See Claim No. 5-2 filed by Boloyan for \$387,281.17 and the Notice of Post-petition Mortgage Fees, Expenses, and Charges filed on May 28, 2024, by Boloyan, listing \$5,523.70 in post-petition fees.

<sup>11</sup> Boloyan’s Ex. 10.

<sup>12</sup> Boloyan’s Ex. 9.

December 5, 2023, the State Court entered an Order of Foreclosure, finding Niemiec was in default under the terms of the note and mortgage for failing to timely pay the mortgage, maintain homeowner's insurance, and pay county taxes, finding Boloyan had by right accelerated the balance due under the note and mortgage and was owed—as of the date of entry of that order—\$383,465.43, granting Boloyan a judgment against Niemiec, and ordering the House sold.<sup>13</sup>

On January 4, 2024, Niemiec, with the assistance of Joseph M. Bochicchio, PLLC (the “NC Firm”), filed a Chapter 13 petition (Official Form 101) in the Bankruptcy Court for the Western District of North Carolina (“WDNC”) (C/A No. 24-30009). As a basis for the WDNC being a proper venue, the petition indicated Niemiec had lived in the WDNC for the longest part of the one hundred and eighty (180) days preceding the petition date. The petition, schedules, and statements filed by the NC Firm, however, indicate Niemiec's residence and law office are located in South Carolina, and Niemiec has lived in South Carolina at least the past three (3) years. Further, Niemiec claimed exemptions on Schedule C under South Carolina law, the major creditors disclosed—including Halford and Boloyan—reside here, and the Foreclosure Action was pending in a South Carolina court at filing.

Niemiec testified at the June 6, 2024, hearing that he read his initial schedules and statements and acknowledged signing them. On his original Schedule A/B (Property), Niemiec listed a personal checking account and a “Bank of York (4209) business checking” with a balance of \$567.00 even though he testified at the hearing on this Motion that that account is held in the name of his law firm, Law Office of Matthew Niemiec, LLC. Niemiec initially listed the House on Schedule A/B as having a value of \$550,000.00.<sup>14</sup> Schedule D (Creditors Who Have Claims

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<sup>13</sup> Boloyan's Ex. 9.

<sup>14</sup> At a hearing held on June 6, 2024, Niemiec testified he spoke with real estate agents pre-petition about selling the House and all advised a sales price of around \$450,000.00.

Secured by Property) listed the claim of Flagship Credit Acceptance (“Flagship”) secured by a 2020 Hyundai Santa Fe (the “Hyundai”) and Boloyan’s mortgage claim, but not Halford’s secured claim. Instead, Halford’s claim was listed on Schedule E/F (Creditors Who Have Unsecured Claims) as a non-priority unsecured claim, with the type of non-priority unsecured claim listed as “judgment liens.” LVNV Funding, LLC (“LVNV”) was also listed on Schedule E/F. No taxing authorities are listed on Schedules D or E/F. The original creditor matrix included Flagship, LVNV, Halford, and Boloyan. Schedule I (Your Income) listed Niemiec’s monthly income as \$6,600.00 and did not include any other individual’s income. Schedule J (Your Expenses) listed his net monthly income after certain expenses as negative \$1,307.00. The Statement of Financial Affairs for Individuals Filing for Bankruptcy (Official Form 107) (“SOFA”) indicated that in 2022, Niemiec earned \$80,000.00 in gross income from operating a business, and in 2023, he earned \$72,000.00 in gross income from operating a business.

On January 16, 2024, the WDNC issued a Notice of Chapter 13 Bankruptcy Case (Official Form 309I) providing notice to parties in interest that the § 341 meeting would be held on February 15, 2024. The NC Firm filed a plan for Niemiec that provided he would make monthly payments to the WDNC trustee of \$2,836.00 for sixty (60) months; provided the pre-petition arrearage on Boloyan’s mortgage claim would be cured (though no arrearage amount was listed) and the installment payments thereon would be maintained through disbursements made by the WDNC trustee; and did not specifically treat Halford’s claim.

On February 2, 2024, at the insistence of creditors, a Consent Order was entered to transfer the case from the WDNC to this Court, with the NC Firm acknowledging in that Consent Order that “the assets to be administered in the Chapter 13 Case are located in South Carolina and the majority of Debtor’s scheduled creditors are located in South Carolina.”

The case was assigned the number captioned above on February 6, 2024. Holland was assigned to the case as trustee. Benjamin R. Matthews of Benjamin R. Matthews & Associates appeared in the case on behalf of Niemiec. The Court issued a new Notice of Chapter 13 Bankruptcy Case (Official Form 309I) stating the new court location, trustee, and deadlines, that necessarily pushed the § 341 meeting to March 25, 2024, and set a confirmation hearing for May 9, 2024.<sup>15</sup>

To date, four (4) creditors other than Halford and Boloyan have filed claims in this case: (1) Ascendium Education Solutions, Inc. (the “Student Loan Creditor”) filed a non-priority unsecured claim for \$468,262.89 related to student loans (Claim No. 1-1); (2) the North Carolina Department of Revenue filed a non-priority unsecured claim for \$21,459.65 for taxes due (Claim No. 2-1); (3) Flagship filed a claim for \$28,697.00 secured by the Hyundai (Claim No. 3-1); and (4) LVNV filed a non-priority unsecured claim for \$641.77 owed on a credit card (Claim No. 4-1). As noted above, of these creditors, only Flagship and LVNV were listed on the schedules or matrix in the initial filing. The deadlines for non-governmental and governmental creditors to file claims have passed, and no objections to filed claims have been made as of the date of this order. In addition to these debts, the Trustee has represented to the Court that tax returns for 2022 and 2023 provided to her by Niemiec reflect that Niemiec has income tax debts totaling approximately \$92,740.00, though claims for those debts have not yet been filed. It also appears Niemiec owes delinquent property taxes for the House in an undisclosed amount.

On April 5, 2024, Matthews filed a modified plan for Niemiec increasing the plan payment and changing plan terms.<sup>16</sup> That plan proposed Niemiec would pay the Trustee \$2,836.00 per month for two (2) months followed by \$4,300.00 per month for fifty-eight (58) months and

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<sup>15</sup> See docket text of ECF No. 11, entered Feb. 12, 2024.

<sup>16</sup> ECF No. 16.

proposed Niemiec would pay non-priority unsecured creditors one hundred percent (100%) on their claims plus nine percent (9.00%) interest through plan payments. This proposal excluded the Student Loan Creditor, whose claim was separately classified as paid directly by Niemiec. The plan further proposed to cure the pre-petition arrearage on Boloyan's mortgage claim and maintain the installment payments thereon through disbursements made by the Trustee. Halford's claim was not specifically addressed in that plan. Boloyan and Halford objected.

On April 8, 2024, four (4) months after this case began in the WDNC, the Trustee here filed a Petition to Dismiss based on Niemiec's failure to make all plan payments.<sup>17</sup> Attachments indicate that, at that point, Niemiec was behind \$9,972.00, having missed the first two (2) payments of \$2,836.00 and the next payment of \$4,300.00. Niemiec objected, triggering a hearing.<sup>18</sup>

After a continuance, the § 341 meeting was finally concluded on April 22, 2024.

On May 3, 2024, Niemiec filed amended Schedules I and J, slightly decreasing his monthly income, adding the income of his housemate, and increasing the household net monthly income by approximately \$3,400.00.<sup>19</sup>

On May 8, 2024, Niemiec filed a modified Chapter 13 plan.<sup>20</sup> The notable change made is that it provides specific treatment for Halford's claim, proposing to pay the claim in full plus nine percent (9.00%) interest without valuation or lien avoidance.

On May 17, 2024, Niemiec filed amended schedules and statements.<sup>21</sup> On amended Schedule A/B, Niemiec then valued the House at \$744,900.00, removed his personal checking account, and increased the balance of his law firm's checking account from \$567.00 to \$3,723.79.

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<sup>17</sup> ECF No. 20.

<sup>18</sup> ECF No. 21.

<sup>19</sup> ECF No. 26.

<sup>20</sup> ECF No. 27.

<sup>21</sup> ECF No. 32.

On June 5, 2024, Niemiec filed an amended SOFA to disclose significant gross income received by his law firm in the two (2) years prior to filing.<sup>22</sup>

The Court held a hearing on June 6, 2024, to consider the Trustee's Petition to Dismiss and confirmation of Niemiec's May 8, 2024, plan. At the hearing, the Trustee withdrew the Petition to Dismiss, without objection from any other party, because Niemiec had cured the delinquency in plan payments as of that time. Boloyan and Halford both argued that the plan was not feasible and that Niemiec had shown bad faith in the case. Niemiec acknowledged in testimony the representation on the petition that he had lived in the WDNC for the longest part of the one hundred and eighty (180) days preceding the petition date was not true and stated that it was an oversight on his part to sign a document with that representation, but it was clear from his testimony that his filing of a voluntary petition in the WDNC was intended. The May 8, 2024, plan was not confirmable, in part because counsel for Niemiec had just received Niemiec's tax returns for 2022 and 2023 that showed significant tax debts that would require an increase in the plan payment. Consequently, the Court entered an Order denying confirmation of that plan, but allowing the opportunity to file a modified plan.<sup>23</sup>

After considering Niemiec's testimony, a Rule to Show Cause was issued requiring the NC Firm and its attorney who filed the petition in the WDNC to show cause why its engagement agreement with Niemiec should not be cancelled, why any fees paid by Niemiec should not be disgorged and any claim for the remainder of fees due forfeited, and why further sanctions should not be imposed given the improper filing of the petition in the WDNC.<sup>24</sup>

On June 18, 2024, Boloyan filed the Motion to Convert.

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<sup>22</sup> ECF No. 34. Niemiec testified at the June 6, 2024, hearing that he did not review or recall signing this SOFA.

<sup>23</sup> ECF No. 38, entered June 13, 2024.

<sup>24</sup> ECF No. 39, entered June 13, 2024.



On June 26, 2024, Niemiec filed amended Schedules A/B, C, I, and J.<sup>25</sup> On Schedule A/B, Niemiec then listed a value for the House of \$759,100.00, and added his personal checking account with a balance of \$52.00. On Schedule C, he claimed a \$67,100.00 exemption in the House. Schedule I listed Niemiec's household's monthly income as \$14,518.83, and Schedule J was amended to increase his household's net monthly income to \$9,689.83. Schedule J did not include any amount for payments on student loans to be paid directly to the creditor by Niemiec.

Also on June 26, 2024, Niemiec filed a modified plan.<sup>26</sup> That plan provides Niemiec will pay the Trustee monthly payments of \$2,836.00 for two (2) months, followed by monthly payments of \$4,300.00 for four (4) months, followed by monthly payments of \$6,250.00 for fifty-four (54) months. The plan provides Flagship's claim and Halford's claim will be paid in full without valuation or lien avoidance plus nine percent (9.00%) interest through Trustee disbursements. Niemiec proposes to pay non-priority, unsecured creditors one hundred percent (100%) of their claims plus nine percent (9.00%) interest through the Chapter 13 plan, excluding the separately classified Student Loan Creditor, paid directly by Niemiec in an unspecified amount. The plan provides that Boloyan's mortgage claim, including pre-petition arrears, will be paid through conduit provisions.<sup>27</sup> The plan does not specifically address Niemiec's tax debt, but the form plan provisions likely address the required payment method.<sup>28</sup>

On June 27, 2024, Niemiec filed an amended SOFA to amend his answer to question 27—“[w]ithin 4 years before you filed for bankruptcy, did you own a business or have any of the following connections to any business?”—to list his ownership interest in his law firm.<sup>29</sup> On the

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<sup>25</sup> ECF No. 48.

<sup>26</sup> ECF No. 49.

<sup>27</sup> See SC LBR 3015-1.

<sup>28</sup> As noted above, at the June 6, 2024, hearing, counsel for Niemiec indicated that Niemiec intended to address his tax debt through either a modified plan or a plan payment increase stipulation.

<sup>29</sup> ECF No. 54.

same date, Niemiec also filed an amended petition to indicate under “[a]ll other names you have used in the last 8 years” that his law firm is a DBA.<sup>30</sup>

On July 17, 2024, after due notice and a hearing, the Court entered an Order Imposing Sanctions on Joseph M. Bochicchio, PLLC (the “Order Imposing Sanctions”).<sup>31</sup> Therein the Court found that Niemiec did not have any relevant ties to the WDNC; the NC Firm’s filing of a bankruptcy petition there on Niemiec’s behalf had no factual or legal basis; and the petition—signed by the NC Firm and Niemiec—misrepresented that in the one hundred and eighty (180) days preceding the petition date, Niemiec lived in the WDNC area longer than in any other district. The Court concluded that the factual misrepresentation in the original petition and the filing in an improper venue resulted in a waste of judicial resources and caused unnecessary delay and additional expenses to creditors and the bankruptcy estate. As a result, the Order Imposing Sanctions cancelled the retainer agreement between Niemiec and the NC Firm pursuant to § 329, pursuant to Bankruptcy Rule 9011, 11 U.S.C. § 105, and the Court’s inherent authority, ordered the NC Firm to pay the Trustee \$5,000.00 for distribution to creditors, clarified that the \$5,000.00 sanction was “to be added to rather than credited against any amounts due from Niemiec under the Chapter 13 plan”, and recognized that Niemiec also bore responsibility for signing the petition containing the misrepresentation. The NC Firm has complied with the Order Imposing Sanctions, and the Trustee is holding \$5,000.00 as a result.

On August 1, 2024, the Court held a hearing to consider confirmation of Niemiec’s June 26, 2024, plan and to consider whether this case should be converted to Chapter 7 or dismissed pursuant to § 1307(c). As of the hearing date, Niemiec was again behind on his payments due under the proposed plan. At that point \$22,872.00 in plan payments had come due, and Niemiec

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<sup>30</sup> ECF No. 55.

<sup>31</sup> ECF No. 64.

had paid \$18,572.00, leaving an arrearage of \$4,300.00. At the hearing, Niemiec testified that he would have to work harder to produce income and make the plan work. The Trustee stated that amendments to the conduit provisions of the plan are needed and recommended a continuance of the confirmation hearing. However, the Trustee also supported the Motion to Convert. Niemiec joined in the Trustee's continuance request, while Boloyan and Halford objected to any further continuance and requested denial of confirmation and conversion of the case to Chapter 7.

#### APPLICABLE LAW

The 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 the Court may enter a final order.

Section 1325 sets forth requirements for a plan to be confirmable, including “the plan has been proposed in good faith and not by any means forbidden by law”, “the debtor will be able to make all payments under the plan and to comply with the plan”, and “the action of the debtor in filing the petition was in good faith”. 11 U.S.C. § 1325(a). The Fourth Circuit has held that determining whether a debtor has proposed a Chapter 13 plan in good faith requires an examination of the totality of the circumstances on a case-by-case basis. *In re Bridges*, 326 B.R. 345, 349 (Bankr. D.S.C. 2005) (citing *Deans v. O'Donnell*, 692 F.2d 968, 972 (4th Cir. 1982)). The factors relevant to that determination include (1) the percentage of proposed repayment; (2) the debtor's financial situation; (3) the period of time payment will be made; (4) the employment history and prospects of the debtor; (5) the nature and amount of unsecured claims; (6) the debtor's past bankruptcy filings; (7) the debtor's honesty in representing facts; (8) any unusual or exceptional problems; (9) the debtor's pre-filing conduct; and (10) the possibility of non-dischargeability in a chapter 7 proceeding. *In re Pizzo*, 628 B.R. 811, 818 (Bankr. D.S.C. 2021) (quoting *In re Anstett*,

383 B.R. 380, 385 (Bankr. D.S.C. 2008)). These factors are not exhaustive and are not intended to be a checklist, as the Court’s discretion in making the good faith determination is necessarily broad. *Id.* (citations omitted). The overriding objective is to make sure that there has not “been ‘an abuse of the provisions, purpose, or spirit’ of Chapter 13 in the proposal or plan.” *Anstett*, 383 B.R. at 385 (quoting *Deans*, 692 F.2d at 972). A party objecting to confirmation on the basis that the plan fails to meet the requirements of § 1325(a) must first establish a *prima facie* objection. If the objecting party makes such a *prima facie* showing, the debtor bears the ultimate burden of proving that the plan meets the requirements for confirmation. *See In re Moore*, 635 B.R. 451, 453 (Bankr. D.S.C. 2021); *see also Trantham v. Tate*, No. 22-2263, 2024 WL 3763674, at \*7 (4th Cir. Aug. 13, 2024) (citing § 1322(b) for the proposition that the Code does not require that a debtor justify his plan’s permissive provisions included pursuant to that Code section, in contrast to when a party objects on the basis that the plan does not comply with § 1325(a)).

Section 1307 of the Bankruptcy Code provides, in relevant part, “on request of a party in interest. . .and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including. . .unreasonable delay by the debtor that is prejudicial to creditors” or “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). As is clear from the language of the statute, the Court must determine (1) whether there is “cause” to convert or dismiss the case; and (2) if there is such “cause,” whether conversion or dismissal is in the best interests of creditors and the estate. *See In re Blackmon*, 628 B.R. 804, 808 (Bankr. D.S.C. 2021) (quoting *In re Nelson*, 343 B.R. 671, 675 (9th Cir. BAP 2006)). “The burden of proof under § 1307(c) of the Bankruptcy Code rests with the moving party.” *In re*

*White*, 542 B.R. 762, 771 (Bankr. E.D. Va. 2015) (citing *In re Love*, 957 F.2d 1350, 1355 (7th Cir. 1992)).

The list of examples of “cause” in the statute is not exhaustive. *Id.* (citing *In re Kestell*, 99 F.3d 146, 148 (4th Cir. 1996)). “A debtor’s bad faith in filing the petition constitutes ‘cause’ to dismiss or convert under § 1307.” *In re Ballentine*, 605 B.R. 710, 714 (Bankr. M.D.N.C. 2019) (citing *In re Page*, 519 B.R. 908, 912-13 (Bankr. M.D.N.C. 2014)). “In determining whether a chapter 13 petition was filed in bad faith, the Fourth Circuit follows the factors discussed in *In re Love*, 957 F.2d 1350 (7th Cir. 1992).” *In re Uzaldin*, 418 B.R. 166, 173 (Bankr. E.D. Va. 2009) (citing *Kestell*, 99 F.3d at 148). In determining whether the debtor has shown bad faith in filing the petition, the Court is concerned with ensuring “fundamental fairness” and examines the totality of the circumstances, including “the nature of the debt; whether the debt would be non-dischargeable in a chapter 7 proceeding; the timing of the petition; how the debt arose; the debtor’s motive in filing the petition; how the debtor’s actions affected creditors; the debtor’s treatment of creditors before and after the petition was filed; and whether the debtor has been forthcoming with the bankruptcy court and the creditors.” *Id.* at 173-74.

A debtor’s failure to propose a confirmable plan after being given several chances may constitute “cause” under § 1307(c). *See In re Kemmerlin*, 659 B.R. 741, 749 (Bankr. D.S.C. 2024); *see also* 11 U.S.C. § 1307(c)(5). Bad faith constituting “cause” under § 1307(c) also includes filing inaccurate or misleading schedules. *In re Loper*, C/A No. 08-03646-JW, slip op. at 4-5 (Bankr. D.S.C. Feb. 18, 2009) (citing *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372 (2007); *In re Hartley*, 187 B.R. 506 (Bankr. D.S.C. 1995)). “A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed.” Fed. R. Bankr. P. 1009(a). However, “a debtor’s right to amend is not unlimited and an

amendment can be denied upon a showing of bad faith by the debtor or prejudice to the creditor.” *In re Paduch*, 636 B.R. 340, 344 (Bankr. D. Conn. 2022) (citing *In re Wiggs*, 610 B.R. 57, 60 (Bankr. D. Conn. 2019)).

Since bankruptcy schedules and statements are carefully designed to elicit certain information necessary for the proper administration of cases, Debtors have a duty to complete these documents thoughtfully and thoroughly. Furthermore, accuracy, honesty, and full disclosure are critical to the functioning of bankruptcy and are inherent in the bargain for a debtor’s discharge. Therefore, debtors are responsible for disclosing an accurate and complete schedule of assets with proper values and a truthful statement of affairs in order to convey a complete and accurate portrayal of their financial situation.

*In re Kinsale*, 617 B.R. 58, 67 (Bankr. D.S.C. 2020) (quoting *In re Simpson*, 306 B.R. 793, 797-98 (Bankr. D.S.C. 2003)). It is not always remarkable when debtors amend schedules and statements. However, if a debtor has made numerous amendments, the schedules and statements still containing inaccuracies and omissions may equal cause to convert or dismiss the case. *See In re Van Gompel*, 632 B.R. 730, 736 (Bankr. D.S.C. 2021).

#### **DISCUSSION AND CONCLUSION**

Niemiec’s request for a further continuance of the confirmation hearing is denied. The case has been pending for eight (8) months, and confirmation has already been denied once. The current plan is the fourth, and creditors and the Court still do not have a clear picture of Niemiec’s financial circumstances. Creditors have continued to expend time and money as the disclosure of information evolves, and they oppose further delay. On this record it appears that a further continuance would serve no purpose.

Confirmation of Niemiec’s June 26, 2024, plan must be denied, as the plan fails to comply with 11 U.S.C. § 1325. The Court cannot find from this record that the June 26, 2024, plan—even assuming the proposed payment addresses all required claims—is feasible, *i.e.*, that Niemiec “will be able to make all payments under the plan and to comply with the plan”. 11 U.S.C. § 1325(a)(6).

As of the date of the hearing, Niemiec was delinquent on plan payments for the second time, indicating the plan is not feasible. Further, he has failed to provide an accurate and consistent picture of his financial circumstances. For example, on his initial schedules filed with the petition, Niemiec listed his gross household income as \$6,600.00 (which did not include any other individual's income), and net monthly income as negative \$1,307.00. When he needed additional income to meet the requirements of the code, on his May 3, 2024, Schedules I and J, Niemiec—now including the income of his housemate—listed his household income as \$9,594.34 and his net monthly income as \$4,765.34. On his June 26, 2024, Schedules I and J—as creditors further challenged his ability to fund an adequate plan—he listed his household income as \$14,518.83 and his net monthly income as \$9,689.83. The accuracy of the most recent amounts was not substantiated by any documentation nor corroborated by any other witnesses. Moreover, it is unclear how the approximately \$100,000.00 in tax liability will be paid. He has changed his statement regarding the value for the House significantly since filing, and the financial picture set forth in his schedules has shifted to suit his purposes. The overall picture also indicates failure to propose the plan in good faith pursuant to § 1325(a)(3).

A debtor also must have filed the petition in good faith. 11 U.S.C. § 1325(a)(7). Niemiec's pre-petition conduct indicates bad faith. His debt to Halford arose through misappropriating funds held by a former law firm for personal use in violation of his fiduciary duty to Halford. Niemiec engaged in a delay tactic in the Foreclosure Action by requesting the State Court delay the foreclosure sale of the House so he could pursue a refinancing of the mortgage, yet never seriously pursued refinancing. Filing the bankruptcy petition in the WDNC hindered and delayed his creditors. Niemiec—an attorney who knew that his residence, law office, assets, and major

creditors were all located in South Carolina—cannot place all of the blame for the improper venue filing on the NC Firm.

Denial of confirmation and of a request for additional time for filing another plan or a modification constitute cause pursuant to § 1307(c)(5). Moreover, the Court finds that the facts herein constitute “unreasonable delay by the debtor that is prejudicial to creditors” under § 1307(c)(1) and further cause under that statute.

Having found “cause” under § 1307(c), the Court concludes that conversion of this case to Chapter 7 is in the best interests of creditors and the estate. The evidence indicates substantial equity in the House for a significant distribution to general unsecured creditors.<sup>32</sup>

**IT IS, THEREFORE, ORDERED:**

1. The verbal request to continue the confirmation hearing made on August 1, 2024, is denied, and confirmation of the Chapter 13 plan filed by Debtor Matthew Ryan Niemiec on June 26, 2024, is denied pursuant to 11 U.S.C. § 1325(a)(3), (6) and (7);
2. The Motion to Convert this case to Chapter 7 is granted pursuant to 11 U.S.C. § 1307(c)(1) and (5); and
3. The Chapter 13 Trustee shall distribute funds in her possession in accordance with SC LBR 3070-1(c), except that the \$5,000.00 sanction paid by Joseph M. Bochicchio, PLLC, shall be turned over to the Chapter 7 Trustee appointed in this case as an asset of the Chapter 7 estate.

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<sup>32</sup> Nothing herein prejudices the future Chapter 7 trustee’s right to challenge any claims.