

Conversion

In re Eric and Shawna Laughlin

696-62858-fra7

9/29/97

FRA

Unpublished

Debtors filed bankruptcy under Chapter 7 on June 17, 1996 and were granted a discharge on February 21, 1997, subject to the outcome of an adversary proceeding seeking, in part, denial of discharge under § 727. The Trustee filed his notice of final account on June 5, 1997 and nonexempt assets were distributed as provided by the Code. On August 6, Debtors filed a motion to convert the case to one under Chapter 13.

The court held that irrespective of § 706 which allows a debtor to convert at any time, it was too late in these circumstances to convert. Where the Trustee has already made distributions to creditors, the court has discretion to deny a motion to convert.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)
ERIC L. LAUGHLIN and) Case No. 696-62858-fra7
SHAWNA M. LAUGHLIN,)
) MEMORANDUM OPINION
)

Debtors.)

I. FACTS

This case was filed under Chapter 7 of the Bankruptcy Code on June 17, 1996. An order discharging the Debtors was entered on October 27, 1996. However, the discharge is subject to the outcome of an adversary proceeding filed February 21, 1997, seeking, in part, denial of discharge under Code § 727.¹

In a status conference relating to the adversary proceeding counsel for Debtors advised that the case ought not to proceed,

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¹ An order extending the time within which to file the adversary proceeding was entered on January 24, 1997.

1 because the Debtors intended to convert the case to one under
2 Chapter 13.²

3 The motion to convert was filed on August 6, 1997. Prior to
4 that time, on July 13, 1997, an order was entered allowing
5 professional compensation and expenses and directing distribution
6 of estate assets by the Chapter 7 Trustee. This order followed
7 the expiration of the notice period set by the Trustee's notice
8 of final account issued and filed on June 5, 1997.

9 For the reasons outlined below, the motion to convert must
10 be denied.

11 II. DISCUSSION

12 Code § 706(a) states that:

13 The debtor may convert a case under this chapter to a
14 case under chapter 11, 12 or 13 of this Title at any
15 time, if the case has not been converted under § 1112,
1208 or 1307 of this Title. Any waiver of the right to
convert a case under this subsection is unenforceable.

16 It has been said that Courts refuse to interfere with the
17 right to convert in the absence of extreme circumstances. In re
18 Martin, 880 F.2d 857 (5th Cir. 1989), In re Tardiff, 145 B.R. 357
19 (Bankr. D.Maine 1992). The right to convert was intended by the
20 Congress to advance its policy of permitting debtors to repay
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23 ² Debtors' counsel stated at the status conference: "My
24 client has denied [plaintiff's allegations] all along but that's
25 two years worth of taxes he couldn't discharge in the 7. He
26 needs some relief from those by way of a payment plan and relief
from interest and so it behooves him to do a 13 anyway and since
the claim of the adversarial creditor is not one of the priority
debts that has to be paid through a plan, it appears that it
would be discharged in a 13 anyway."

1 their debts. Martin, 880 F.2d at 859, Tardiff, 145 B.R. at 359,
2 In re Street, 55 B.R. 763, 765 (BAP 9th Cir. 1985).

3 Nevertheless, there are circumstances where conversion is
4 inappropriate. Most cases that have denied conversion involve
5 circumstances where the debtor is either incapable of proposing a
6 feasible plan, In re Lily, 29 B.R. 442 (BAP 1st Cir. 1983), or
7 where a conversion is rendered pointless by a preexisting Chapter
8 7 discharge, In re Tardiff, supra.

9 This case presents a different concern. The Debtors'
10 discharge remains subject to revocation. The problem is that the
11 Chapter 7 Trustee has already liquidated Debtors' nonexempt
12 assets, and distributed the proceeds according to the provisions
13 of Chapter 7. To convert at this last juncture would give the
14 Debtors the benefit of both chapters in the same case.
15 Alternatively, the Chapter 13 Trustee, or creditors who have not
16 been paid, could insist on reimbursement of the estate by
17 claimants paid by the Chapter 7 Trustee.

18 Congress could not have intended the phrase "at any time" to
19 be taken literally. If that were the case, a discharged Chapter
20 7 debtor could move to reopen a closed case months or even years
21 later, solely for the purpose of converting, and seek renewed
22 bankruptcy relief. At some point practical considerations must
23 be said to limit, if not cut off, the right to convert. There is
24 no need to try to define that point in the context of this case:
25 suffice it to say, that where a Chapter 7 case proceeds to the
26 point where the Trustee has actually made distribution of estate

1 funds to claimants, the Court has the discretion to deny a motion
2 to convert the case.

3 Given all the circumstances of this case, I believe that
4 conversion is inappropriate. Debtors do not argue to the
5 contrary, and in fact appear to be indifferent to the issue.³

6 The foregoing constitutes the Court's findings of fact and
7 conclusions of law, which will not be separately stated. An
8 order consistent herewith will be entered.

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FRANK R. ALLEY, III
Bankruptcy Judge

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cc: Mr. Ronald Jones
14 Mr. David Mills
15 Mr. Michael Grassmueck
16 Mr. Paul Garrick
17 Mr. Ronald Becker

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³ Debtors' attorney indicated at the hearing on the motion to convert that, absent conversion, Debtor would simply file a new Chapter 13.