

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 In re:) Case No. 25-26837-C-13
4 KEVIN L. SHAW and KENNETH WAYNE)
COKER,) DC Nos. TBK-3 & MB-1
5)
Debtors.)
6 _____)

7 MEMORANDUM DECISION DENYING § 1307(b) REQUEST TO DISMISS
8

9 On this Court’s 11:00 a.m. calendar on March 24, 2026, the
10 motion of Marble Bridge Funding Group, Inc., to convert or
11 dismiss this chapter 13 case pursuant to 11 U.S.C. § 1307(c) was
12 heard and granted with a decision to convert to chapter 7.
13

14 I. The § 1307(c) Motion Proceeding

15 The premise of the Motion to Dismiss or Convert was that the
16 Debtors, by listing an unambiguous \$161,314.38 debt to Marble
17 Bridge Funding Group, Inc., as “unknown” used bad faith
18 manipulation to appear to squeeze under the chapter 13 debt
19 limits prescribed by 11 U.S.C. § 109(e) and hence were not
20 eligible to file a chapter 13 case.

21 Counsel for the debtors had signed up to appear at the
22 § 1307(c) hearing but then did not respond when this Court called
23 his name.

24 Having carefully examined the record and considering the
25 argument of the movant and the views of the chapter 13 trustee,
26 this Court concluded that the debtors were ineligible for chapter
27 13 relief by virtue of the § 109(e) debt limits and that they
28 had, in bad faith, made false statements under penalty of perjury

1 on the Petition and Schedules with the intent to maintain an
2 improper chapter 13 case.

3 Finding cause to act under § 1307(c), this Court, ruling
4 from the bench, ordered the case be converted to chapter 7. In
5 doing so, it considered all relevant circumstances.

6 Among the false statements under penalty of perjury that the
7 court observed in its study of the file were averments by debtor
8 Kevin L. Shaw that he had been known by no other names in the
9 past 8 years (Petition, item 2) and that he held no professional
10 license (Schedule A/B, item 27 "none").

11 Elsewhere, the Schedules and Statement of Financial Affairs
12 revealed that Kevin L. Shaw, under the name Kevin Le Roi Shaw, is
13 an active member of the California State Bar with State Bar No.
14 169184.

15 False statements under penalty of perjury by a licensed
16 California lawyer are indicative of bad faith - or worse. It is
17 inconceivable that the statements were accidental omissions.

18 The statutory standard for choosing between conversion and
19 dismissal under § 1307(c) is "whichever is in the best interests
20 of creditors and the estate." 11 U.S.C. § 1307(c).

21 This Court reasoned that the best interests of creditors and
22 the estate would be served by careful scrutiny by a chapter 7
23 trustee. Likewise, such scrutiny serves the public interest of
24 preserving the integrity of the bankruptcy process.

25

26 II. The Debtors' Tardy § 1307(b) Motion

27 At 11:14 a.m. on March 24, the clerk docketed a "Request for
28 Voluntary Dismissal" filed by the debtors pursuant to § 1307(b).

1 By the time the § 1307(b) "Request" came to the attention of
2 this Court, the hearing on the § 1307(c) motion hearing had been
3 concluded with the decision granting the motion and converting
4 the case announced.

5 This Court acknowledges that under the current law of the
6 Ninth Circuit a § 1307(b) motion is regarded as a "right" that
7 must be granted. Nichols v. Marana Stockyard & Livestock Mkt.,
8 Inc. (In re Nichols), 10 F.4th 956, 964 (9th Cir. 2021). In that
9 case, a bankruptcy court order was reversed for denying a
10 § 1307(b) motion that was filed and served three days before the
11 announced effective date of a § 1307(c) conversion order.

12 The Nichols court did not, however, decide the threshold
13 question of when a dismissal request is "before" a bankruptcy
14 court. Colburn v. Reaves, 2022 WL 3754721 at *3, Bankr. L. Rep.
15 ¶ 83,806 (D. Ariz. 2022).

16 A dismissal request under § 1307(b) is only before a
17 bankruptcy court if procedural rules are followed. Colburn v.
18 Reaves, at *3, citing Duran v. Rojas (In re Duran), 630 B.R. 797,
19 811 (9th Cir. BAP 2021).

20 The procedural rules differ as between § 1307(a) and
21 § 1307(b). A chapter 13 debtor's § 1307(a) conversion as of right
22 to chapter 7 is automatically effective without a court order the
23 moment a "conversion notice" is filed. Fed. R. Bankr. P.
24 1017(f) (3).

25 In contrast, exercise of the § 1307(b) "right" to dismiss a
26 chapter 13 case is not automatically effective, but requires, by
27 virtue of Rule 1017(f) (2), that a debtor proceed by motion filed
28 and served as required by Rule 9013.

1 Nor is the requirement of a motion an empty formality. There
2 is more for a court to consider. As § 349(a) regarding effect of
3 dismissal is not displaced by § 1307(b), that section remains
4 effective.

5 A court ruling on a § 1307(b) motion has discretion to
6 invoke § 349(a) to provide that such dismissal is with prejudice
7 to the discharge in a later case of debts that were dischargeable
8 in the case dismissed. 11 U.S.C. § 349(a); Duran, 630 B.R. at 811
9 (“§ 1307(b) is not a get-out-of-chapter-13-free card”).

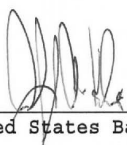
10 Marble Bridge, which alleges chicanery, deserves an
11 opportunity to be heard on the § 349(a) question.

12 Here, it appears that the “Request” had not yet been served
13 as required by Rule 9013. Such service is the responsibility of
14 the debtors. It follows that in this case service of the
15 “Request” (assuming it could be construed as a motion under Rule
16 9013) was not yet complete. Until completion of service, the
17 “Request” was not before the court. Thus, it was appropriate for
18 the Court to enter its order for conversion under § 1307(c). See
19 Colburn v. Reaves, at *3.

20 The last-minute effort by the debtors to exercise their
21 “right” to dismiss the chapter 13 case under § 1307(b) and get
22 the “Request” before this Court turned out to be too little, too
23 late.

24 Accordingly, the debtors’ “Request” is DENIED as moot
25 following the conversion of the case to chapter 7.

26 Dated: March 27, 2026

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28 
United States Bankruptcy Judge

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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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