

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re: Kathleen C. Toulson	:	Case No. 12-22256 GLT
	:	Chapter 13
Debtor	:	
	:	
Ronda J. Winnecour, Chapter 13 Trustee,	:	
Plaintiff	:	
vs.	:	Adversary No. 15-_____
	:	
Kathleen C. Toulson,	:	Document # 1
Defendant	:	

TRUSTEE'S COMPLAINT FOR DECLARATORY JUDGMENT

Ronda J. Winnecour, Chapter 13 Trustee, by her undersigned counsel, brings this Complaint, whereupon the following is a statement:

JURISDICTION AND VENUE

1. This is an action seeking a Declaratory Judgment as to the effective date of conversion of this case from chapter 13 to chapter 7, and seeking a finding that the Plaintiff's disbursement of funds to a creditor on August 26, 2015 was proper.
2. This court has jurisdiction pursuant to 11 U.S.C §1334, and venue is proper under 28 U.S.C. §1409.
3. This is a core proceeding.
4. The Plaintiff consents to the entry of a final order by this Court in this action.

PARTIES

5. Plaintiff is Ronda J. Winnecour, Chapter 13 Standing Trustee for the Western District of Pennsylvania (sometimes hereinafter referred to as the "Trustee"), whose place of business is Suite 3250, US Steel Tower, 600 Grant Street, Pittsburgh, PA 15219.

6. Defendant is Kathleen C. Toulson, an adult individual residing at 1979 Craft Creek Road, Claysville, PA 15323.

BACKGROUND

7. This Chapter 13 case was commenced by the filing of a voluntary petition in bankruptcy on April 30, 2012 by the Defendant, Kathleen C. Toulson (sometimes hereinafter referred to as the "debtor").
8. Plaintiff was appointed to serve as Trustee in this Chapter 13 case
9. The debtor's chapter 13 plan, dated April 30, 2012, was confirmed by order of this Court dated January 4, 2013.
10. On August 11, 2015, Debtor filed a "Notice of Conversion From Chapter 13 to Chapter 7 Filed Pursuant to Fed. Rule. Bankr. Proc. 1017(f)(3)" (sometimes hereinafter referred to as the "Notice"). A true and correct copy of the Notice is attached hereto as Exhibit "A," and incorporated herein by reference thereto.
11. The Court treated the Notice as a contested matter, by issuing an order dated August 19, 2015, requiring the debtor to serve the order and the Notice (referred to in the order as a "Motion"), fixing a response deadline, scheduling the "Motion" for a hearing, and establishing the procedure for a possible default order. A true and correct copy of the order is attached hereto as Exhibit "B," and incorporated herein by reference thereto.
12. On August 20, 2015, the debtor filed a certificate of service, evidencing compliance with the Court's August 19, 2015 order. A true and correct copy of the Certificate of Service is attached hereto as Exhibit "C," and incorporated herein by reference thereto.
13. The Trustee did not oppose the "Motion."

14. On September 9, 2015, the debtor filed a Certificate of No Objection, requesting entry of a default order converting the case to chapter 7. A true and correct copy of the Certificate of No Objection is attached hereto as Exhibit "D," and incorporated herein by reference thereto.
15. On September 16, 2015, the Court issued an order converting this case to chapter 7. A true and correct copy of the conversion order is attached hereto as Exhibit "E," and incorporated herein by reference thereto.
16. Prior to the filing of the Notice, the Debtor had paid in to her Chapter 13 plan the sum of \$26,310.32.
17. All priority creditors had been paid in full as of the date the debtor filed her Notice.
18. The secured claim of Capital One Auto had received payments under the plan, at modified terms.
19. On August 11, 2015, there remained a balance on hand of \$3,954.54 in this case.
20. The Trustee disbursed the sum of \$3,954.54 to Capital One Auto on August 26, 2015, prior to the entry of the September 16, 2015 order converting this case to a case under Chapter 7.
21. A controversy has arisen, as Debtor asserts that the Trustee improperly disposed of the funds on hand, citing *Harris v. Viegelahn* for the proposition that the funds on hand should have been refunded to the Debtor. See *Harris v. Viegelahn*, 135 S.Ct. 1829 (2015).

COUNT ONE
REQUEST FOR DETERMINATION OF THE EFFECTIVE DATE OF
CONVERSION

22. The trustee realleges each and every averment contained in paragraphs 1 through 21, above, and incorporates them herein as though fully set forth at length herein.
23. The Trustee avers that both the debtor and the Trustee followed this Court's procedures in this case (hereinafter sometimes referred to as the "Court's procedures," meaning the procedures outlined in the Court's August 19, 2015 order).
24. The Trustee avers that effective date of conversion of this case to chapter 7 is the date on which the Court entered its order converting the case, namely September 16, 2015.
25. Since all distributions made by the Trustee preceded that effective date, the Trustee maintains that she is in compliance with the procedures and orders of this court.
26. The debtor's assertion that the effective date of the conversion was August 11, 2015 conflicts with the Court's procedures, as well as being inconsistent with the documents debtor filed pursuant to the Court's procedures, namely the Certificate of Service and Certificate of No Objection.
27. By issuing the August 19, 2015 order, setting a response deadline and hearing date for what the order refers to as Defendant's "motion," it is apparent that the court treated the Notice of Conversion as a contested matter, subject to notice and hearing. The language in the order would otherwise be meaningless.
28. Defendant's Certificate of Service and Certificate of No Objection demonstrated her acquiescence to the Court's treatment of the Notice as a contested matter. In fact, Defendant's Certificate of No Objection expressly stated, "It is hereby

respectfully requested that the Order to the Notice of Conversion from Chapter 13 to Chapter 7 be entered by the Court.”

29. The Defendant thus acknowledged the need for an order for the conversion to become effective. Consequently, there is no basis to question the Trustee's August distribution, which was required to comply with her obligation to disburse funds under the confirmed plan, prior to entry of the order converting the case.

30. The Trustee seeks the Court's determination that the date of the conversion was September 16, 2015.

WHEREFORE, Ronda J. Winnecour, Chapter 13 Standing Trustee, respectfully requests that the Court declare that the effective date of conversion of this case from chapter 13 to chapter 7 was September 16, 2015.

COUNT TWO
REQUEST FOR A FINDING THAT THE PLAINTIFF'S DISBURSEMENT
OF FUNDS TO A CREDITOR ON AUGUST 26, 2015 WAS PROPER

31. The trustee realleges each and every averment contained in paragraphs 1 through 30, above, and incorporates them herein as though fully set forth at length herein.

32. The debtor has not challenged the Court's procedures, which are used by all four Bankruptcy Judges in this District, as being unlawful or improper, while she had the option of challenging the propriety of the court's procedures.

33. The Trustee believes the current procedures are appropriate, and in fact, very useful.

34. The *Harris* decision presents practical difficulties which are impossible to resolve without heightened notice to the Trustee. The Trustee is under order and duty to pay claims.

35. Various motions and notices are filed in this court in the normal course, with a typical response time of 17 days. Motions and orders are routinely reviewed by the Trustee's staff, including her attorneys, within a reasonable time. However, orders granting motions to convert now affect the Trustee's distributions, requiring her to suddenly apply the brakes on converted cases. Without a mechanism for providing the Trustee with heightened notice of an order converting a case, errant distributions would occur, because the Trustee's staff will not have known such an order was entered in the immediate days leading to distribution.
36. The Trustee requests avers that the Court's procedure enables the Trustee to cease distributing funds to creditors upon the conversion of a chapter 13 case to chapter 7, in that the Trustee has adequate notice of a pending conversion and the ability to monitor the status of the same.
37. The Court's procedures enable the Trustee and other parties in interest an opportunity to investigate the debtor's eligibility for a chapter 7 discharge prior to the entry of a conversion order.
38. The Court's procedures enable the Trustee and other parties in interest an opportunity to investigate the *bona fides* of the debtor's decision to seek conversion to chapter 7 prior to the entry of a conversion order.
39. The Court's procedures enable the Trustee to fulfill her duty to disburse funds to creditors in accordance with the confirmed chapter 13 plan, in compliance with the Court's order of confirmation and in accordance with the expectations of creditors provided for in the confirmed plan.
40. The Trustee reasonably relied on the Court's procedures in this case, as well as on the debtor's acquiescence to and compliance with those procedures, in

treating the effective date of the conversion as the date on which the conversion order was entered.

41. Upon the filing of the Notice, Trustee's staff inquired of undersigned counsel how the balance on hand should be disposed, and whether the vehicle creditor payments should be accelerated. Undersigned counsel gave staff the following instruction: "I anticipated this question. In this case, yes, it would be wise to accelerate. The reason is that the car loan was modified, such that if the case converted today with no further payments the car loan would revert to contractual terms and be woefully behind. The creditor would move for relief very quickly. Accelerating would mitigate that situation."

42. In this case, out of an abundance of caution, the Trustee informally communicated with Capital One Auto following entry of the conversion order, at the insistence of the debtor, requesting a return of the funds which had been disbursed to the creditor on August 26, 2015. As a result, the Trustee is in a position to either redistribute the funds to the creditor, in the event that the Court declares that the effective date of the conversion in this case was September 16, 2015, or to refund the money to the debtor if the Court declares August 11, 2015 to be the effective date of the conversion in this case.

43. The Trustee avers that September 16, 2015 was the effective date of conversion in this case, and requests that the Court find that the Trustee's distribution of funds to Capital One Auto on August 26, 2015 was proper.

WHEREFORE, Ronda J. Winnecour, Chapter 13 Standing Trustee, respectfully requests that the Court find that her distribution of funds to

Capital One Auto on August 26, 2015 was proper, and that the Court authorize her to redistribute the funds to Capital One Auto.

RONDA J. WINNECOUR,
CHAPTER 13 TRUSTEE

Date: 11/20/15

by /s/ Jana S. Pail
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