UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In re:
Anna Jewell Fletcher

Debtor
_____/

Bankruptcy Case No. 22-44787
Hon. Mark A. Randon
Chapter 7

Anna Jewell Fletcher,

Appellant
v.

Michael A. Stevenson,
Appellee
_____/

Civil Case No. 23-cv-10586-NGE-EAS
HON. Nancy Edmonds
Magistrate, Hon. E. A. Stafford

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

BRIEF OF APPELLEE, MICHAEL A. STEVENSON

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TABLE OF CONTENTS

ISSUES PRESENTED

A. Whether the Bankruptcy Court correctly relied upon a line of cases which hold that a debtor's Chapter 7 case could not be converted to a Chapter 13 once the Chapter 7 discharge had been entered, including *In re Alcantar*, when determining Appellant was not eligible to convert her Chapter 7 case to a Chapter 13 case.

Appellee replies: Yes

B. Whether the Bankruptcy Court correctly held that Appellant was not eligible to convert her Chapter 7 case to a Chapter 13 case under 11 U.S.C. §706(a) when relying on the line of cases which hold that a debtor's Chapter 7 case could not be converted to a Chapter 13 once the Chapter 7 discharge had been entered.

Appellee replies: Yes

C. Whether the Bankruptcy Court correctly held that Appellant's Chapter 7 case could not be converted to a Chapter 13 case, because a discharge had already been entered in Appellant's Chapter 7 case, without finding that Appellant had committed acts of bad faith in the Chapter 7 case.

Appellee replies: Yes

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

Cases Page(s)

Statutes

Secondary Material

CERTIFICATION OF PAGE/VOLUME LIMIT – FED. R. BANKR. P. 8015

Counsel for Appellee, certifies that pursuant to Fed. R. Bankr. P. 8015(a)(4), the paper size and margins conform; (a)(5), the typeface is serif at exactly 14-point font; (a)(6) the typeface is set in plain, roman style, with italics and boldface used for emphasis and case names italicized; (a)(7), this Brief does not exceed thirty (30) pages (Fed. R. Bank. P. 8015(g) exclusions from page length applied) and contains no more than 13,000 word.

June 16, 2023

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STATEMENT OF THE FACTS

This Matter was before the Bankruptcy Court on the debtor, Anna Fletcher's (hereinafter, "Appellant"), Motion to: (1) Set Aside/Vacate Discharge; and (2) Convert from a Chapter 7 to a Chapter 13 (hereinafter, "Motion") (ECF No. 5 PageID 8) in a Chapter 7 proceeding.

On January 27, 2009, the Debtor took title to real property located at 86 Hibbard, Pontiac, MI (the "Real Property") with her mother, Hannah L. Wilson (hereinafter, "Wilson"). The Debtor and Wilson obtained a mortgage against the Real Property on January 30, 2009. The mortgage indicated that the Real Property was held as joint tenants with full rights of survivorship (ECF No. 5 PageID 224). Wilson pre-deceased Appellant and the Appellant became the sole owner of the Real Property. On September 9, 2019, Appellant transferred one half of her interest in Real Property to her daughter, Marneshia Fletcher (hereinafter, the "Daughter"), for no consideration (hereinafter, the "Transfer") as set forth in the Quit Claim Deed which reflected that the Debtor was transferring the Real Property on behalf of herself and as survivor of Wilson. (ECF No. 5 PageID 231).

On June 15, 2022 (hereinafter, the "File Date"), Appellant filed a voluntary petition under Chapter 7 of the Bankruptcy Code. Michael A. Stevenson (hereinafter, "Appellee") is the duly appointed Chapter 7 Trustee of the bankruptcy estate of the Appellant. On July 26, 2022, Appellee requested documentation and

information from Appellant, however none of the documents were produced as requested. Appellant's discharge was entered on September 13, 2022 (ECF No. 5 Page ID 123) (hereinafter, the "Discharge").

On October 12, 2022, Appellee's counsel was contacted by Appellant's counsel regarding the Appellee's investigation into, and interest in, the Transfer. Between October 12, 2022 and January 13, 2023, Appellant's counsel and the Appellee's counsel were in continuous contact regarding the Real Property issues in an attempt to resolve the Appellee's claims against the Daughter for the fraudulent transfer of the one-half interest in the Real Property.

On January 5, 2023, four months after the entry of the Discharge, the Appellant filed the Motion to Set-Aside/Vacate Order of Discharge and Convert Case to Chapter 13 (ECF No. 5 PageID 26) (hereinafter, the "Motion to Vacate/Convert"). The Appellant filed the Motion in an attempt to stop Appellee from filing an adversary proceeding against the Daughter to avoid the fraudulent transfer of the Real Property and liquidating it (See transcript at ECF No. 5, PageID 177-178). On February 2, 2023, the Appellee filed his Response to Debtor's Motion to Set-Aside/Vacate Order of Discharge and Convert Case to Chapter 13 (DN 30) (hereinafter, the "Response"). Appellant then filed the Debtor's Reply to Trustee's Response to Debtor's Motion to Set-Aside/Vacate

Order of Discharge and Convert Case to Chapter 13 (ECF No. 5 PageID 78) (hereinafter, the "Reply") on February 16, 2023.

A hearing on the Motion to Vacate/Convert was held on February 27, 2023. Following oral arguments, the Bankruptcy Court (hereinafter, "The Court") determined that, as the Debtor had received the Discharge, there was no basis to set aside the Discharge and, therefore, the Appellant was not entitled to convert her Chapter 7 case to a Chapter 13 case. The Court then denied the Motion to Vacate. An Order Regarding Debtor's Motion to: (1) Set Aside/Vacate Discharge; and (2) Convert to a Chapter 13 (ECF No. 5 PageID 113) (hereinafter, the "Order Denying") was entered on March 13, 2023, and an Amended Order Regarding Debtor's Motion to: (1) Set Aside/Vacate Discharge; and (2) Convert to a Chapter 13 (ECF No. 5 PageID 114) (hereinafter, the "Amended Order Denying") was entered on March 14, 2023.

On March 9, 2023, Appellant filed an Ex Parte Motion to Reconsider the Order Denying Debtor's Motion to Set-Aside/Vacate Order of Discharge and Convert Case to Chapter 13 (ECF No. 5 PageID 86) (hereinafter, the "Reconsideration Motion"). On March 10, 2023, the very next day and prior to the Court entering the Order Denying or ruling on the Reconsideration Motion, Appellant prematurely filed a notice of appeal of the denial of the Motion to Vacate. The Reconsideration Motion argued that the Court's failure to address

Appellant's bad faith argument required the Court to grant the Reconsideration Motion and convert the Appellant's case.

The Court issued its Opinion and Order Denying Debtor's Motion for Reconsideration (the "Reconsideration Order") (ECF No. 5 PageID 115) on March 15, 2023. The Reconsideration Order set forth a line of cases which the Court found persuasive and that held that after entry of a Chapter 7 discharge, conversion of a Chapter 7 case to a Chapter 13 case was improper where the discharge had not been set aside. In addition to the *Alcantar* case, *In re Alcantar*, No. 19 B 24926, 2001 WL 4192680, at *5 (Bankr. N.D. Ill. Sept. 10, 2021), the Court cited *In re Jones*, 111 B.R. 674 (Bankr. E.D. Tenn. 1990) as one of the cases it found to be persuasive and which served as a basis for its ruling. The *Jones* case denied conversion of the debtor's Chapter 7 case to a Chapter 13 case and held that "once a Chapter 7 Discharge has been granted[,] the debtor's personal liability is extinguished, thus rendering conversion to Chapter 13 meaningless except as to those creditors holding nondischargeable claims." *Id*. at 680.

The Court also found that *In re Copper*, which the Appellant relied upon for her argument that bad faith was the *only* substantive limitation on conversion to Chapter 13, did not find that bad faith was the only limitation on conversion, but merely one of the bases for denial of conversion. *In re Copper,* 426 F.3d 810 (6th Cir. 2005), a finding that was supported by *In re Marrama*, which held that the

right to convert is not absolute, and that bad faith was *a* reason to deny conversion. *In re* Marrama, 549 U.S. 365 (2007).

ARGUMENT

Pursuant to *11 U.S.C. §706(a)*, a debtor *may* convert her Chapter 7 case at any time if the debtor has not converted the case previously. *11 U.S.C. §706(a)* (emphasis added). The legislative history of *§706* indicates that *§706(a)* gives a debtor a one-time right to convert her case as long as the case has not previously been converted from Chapter 11 or 13 to a Chapter 7. *The policy of the provision is that the debtor should always be given the opportunity to repay his debts*. S.Rep. No. 95-989, at 94 (1987), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5880 (emphasis added). The policy behind the legislative history allowing the debtor a right to convert is that "the debtor should always be given the opportunity to repay (her) debts". *In re Copper*, at 817.

The wording of §706(a) itself does not give a debtor the absolute right to convert her case and, instead, it gives a court the discretion to convert the debtor's case. If a debtor's request for conversion is an abuse of the bankruptcy process or is made in bad faith, conversion can be denied. *See In re Marama*; *See also In re Ponzini*, 277 B.R. 399, 404 (Bankr. E.D.Ark. 2002) ([T]he use of the word "may" instead of "shall" suggests that the right to convert is "presumptive rather than absolute."); I*n re Marcakis*, 254 B.R. 77, 82 (Bankr. E.D.N.Y. 2000) (The very first words of section 706(a) — "The debtor may convert a case…" is in the nature

of the permissive."); *In re* Copper, at 815 ("[i]f .. the debtor's request for conversion was made in bad faith or represents an attempt to abuse the bankruptcy process, the court may deny the requested conversion") (citing *In re Brown*, 293 B.R. 865, 870 (Bankr. W.D.Mich. 2003)); *In re Lesniak*, 208 B.R. 902, 906-07 (Bankr. N.D.Ill. 1997) (conversion was denied as the schedules were "fraught with discrepancies" and the debtor lacked the desire to pay his debts); *In Eugene Alexander, Inc.*, 191 B.R. 920, 923-94 (Bankr. M.D.Fla. 1994) (finding that Chapter 7 debtor has right to convert to Chapter 11 but conversion should not be permitted if "cause" exists to convert case back to Chapter 7 or to dismiss. "To permit conversion to Chapter 11 in those circumstances would be futile and a wasted act."); *Kuntz v Shambam*, 233 B.R. 580, 585 (1st. Cir. BAP 1999) (a Chapter 7 debtor's right to convert may be denied in "'extreme circumstances' constituting bad faith"); *In re Thornton*, 203 B.R. 648, 652 (Bankr. S.D.Ohio 1996) (["T]his court agrees with the courts which have held that a debtor may be prevented from converting when sufficient evidence exists of the debtor's lack of good faith."); *In re Jeffrey*, 176 B.R. 4, 6 (Bankr.D.Mass.1994)(stating that when the Debtors have already received a discharge, their purpose in converting to Chapter 13 is not to repay their debts, but to avoid their obligations under Chapter 7, which is an abuse of process). Contrary to Appellant's assertions otherwise, however, a debtor's bad faith is not the only substantive limitations on conversion

of a Chapter 7 case to Chapter 13 case. In arguing otherwise, Appellee misconstrues the court's holding in *Marrama*.

The issue in *Marrama* was whether the right of conversion to Chapter 13 was absolute or limited. It was not an issue of the effect of the entry of a discharge order prior to the attempt to convert the case, nor did it resolve the question of whether or not a debtor could subject their now discharged Chapter 7 debts to a Chapter 13 plan of reorganization. Further, *Marrama* did not limit the ability of a court to deny conversion *only* in cases of bad faith, i.e. 'fraudulent conduct', as argued by Appellee, it simply held that a debtor did not have the absolute right to convert her Chapter 7 case to a Chapter 13 case, and that bad faith and an abuse of process were *bases* for denial of conversion.

Likewise, Appellants argument that *Marrama* is the only case law that has made findings on the limitations on conversion is also inaccurate. Among other reasons courts have found to limit conversion of a Chapter 7 case to Chapter 13 case, a debtor's request for conversion can be denied if the debtor has received a discharge in the Chapter 7 case. *See In re Alcantar*, at *5 ("Conversion cannot be considered here unless the discharge order is first vacated"); *In re Hauswirth*, 242 B.R. 95, 96 (Bankr. N.D.Ga. 1999) ("Debtor's conversion to Chapter 13 before the Chapter 7 Trustee has completed the administration of the estate but after the discharge order is entered thwarts the proper operation of the Code, as it interrupts

the complete administration intended by Congress.); *In re Marcakis*, at 82 (permitting conversion after discharge is "ludicrous" as no debts remain to be paid); *In re Lesniak*, at 906 (Bankr.N.D.Ill.1997) (imposing "a bright-line rule that would prohibit conversions from Chapter 7 to Chapter 13 if the request is made post-discharge"); *In re Jones*, at 680 ("Once the Chapter 7 discharge has been granted[,] the debtor's personal liability is extinguished, thus rendering conversion to Chapter 13 meaningless except as to those creditors holding nondischargeable claims."); *In re Sieg*, 120 B.R. 553, (Bankr. D.N.D. 1990) (prior Chapter 7 discharge left only nondischargeable student loan debts to be paid after conversion to Chapter 13); *In re Rigales*, 290 B.R. 401, 408 (Bankr. D.N.M 2003) (citing *Hauswirth*, at 96) (Where the discharge has been granted, the creditors whose debts have been discharged and who would be paid from the liquidation of the Chapter 7 estate's assets, would receive nothing if the case were converted to one under Chapter 13 before the Chapter 7 Trustee had completed administration of the estate, thereby frustrating the proper operation of the Bankruptcy Code and the administration of the case as intended by Congress)).

Appellant argues that the *Alcantar* court "specifically acknowledged that, even considering discharge, a 'debtor who still owes non-discharged debts would qualify for chapter 13. See *Id*. at 8". However, Appellant completely ignores the fact that the court in *Alcantar* found that, even though the "court has already

explained, a chapter 13 debtor must owe debts. Otherwise, there is no point in proposing a repayment plan. It is true that certain debts may survive the bankruptcy discharge. *Johnson*, 11 S.Ct. at 2154. Whether non-discharged debts could be treated in a converted chapter 13 plan is an open question that need not be resolved since Alcantar's debts were all unsecured and therefore discharged". *Alcantar* at *6.

Appellant further argues that, no matter how persuasive, because *Alcantar* is not an "in-circuit, on-point" case and is factually distinguishable from Appellant's case, having only non-priority unsecured debts that were dischargeable, the Court should not have relied on *Alcantar*[1] when denying the Motion to Vacate/Convert, and, therefore, this Court should disregard the Court's ruling that Appellant was barred from converting her Chapter 7 case to a Chapter 13 case as a result of her discharge. Instead, Appellant argues, this Court should follow *In re Oblinger*, 288 B.R. 781 (Bankr. N.D. Ohio, 2003), because it is "in-jurisdiction case law" that is persuasive with similar facts. Appellant's argument, however, completely disregards the fact that *Jones*, which was cited by the Court in the Reconsideration Order and is an Eastern District of Tennessee case, is also "in-jurisdiction case law" that is not only persuasive, but directly on point.

1 *Alcanter* cites *In re Tardiff*, which in turn cites both *In re Sieg* and *In re Jones*, the latter of which is an "in-circuit" case.

The facts in *Jones* are nearly identical to the facts in Appellant's case. In Jones, the debtors had non-priority unsecured debts, two non-dischargeable priority unsecured tax claims (one to the IRS and one to the State of Tennessee), a secured claim for an auto loan which was reaffirmed by the debtors, and mortgages on their real property. In the case *sub judice*, Appellant had non-priority unsecured debts, two non-dischargeable priority tax debts (one to the IRS and one to the State of Michigan), a leased vehicle Appellant assumed in the Chapter 7, and a mortgage on the Real Property.

After the discharge was entered in their case, the Jones', like Appellant, filed a motion to set aside their discharge and convert their Chapter 7 case to a Chapter 13 case. The court in *Jones*, denied the debtors motion to vacate the discharge, for reasons similar to the Court's in Appellant's case, and denied the debtors request for conversion post-discharge, as conversion "must be limited to those situations in which the debtor's Chapter 7 discharge has not yet been granted or has been revoked upon motion of debtor". *Jones*, at 680.

The argument that the plain text of *§706*, when paired with *Oblinger* and *United States v. Ron Pair Enterprises*[2], 489 US 235 (1989), "clearly suggests that the exclusion of a temporal limitation by Congress on conversion was purposeful" and, therefore, a debtor should be allowed to convert her Chapter 7 case even if the

2 *Ron Pair Enterprises* stands for the proposition that in resolving a dispute over the meaning of a provision in the Bankruptcy Code, the court should first look to the language of the statute itself.

discharge has already been entered because *§706* does not specifically say a debtor cannot convert if she has received her discharge fails to take into account that §706 is not an absolute, but, instead, is discretionary. Nor does it take into account that bankruptcy judges were granted broad authority to take any action "necessary or appropriate 'to prevent an abuse of process' described in *§105(a)* of the Code," and that that authority "is surely adequate to authorize an immediate denial of a motion to convert filed under *§706* in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors." *Marrama*, at 375.

The Bankruptcy Code defines a claim as a right to payment. *11 U.S.C. §101(5)(A)*. It further defines a creditor as an entity (or individual) that has a claim against the debtor. *11 U.S.C. §101(10)*. As a result of a debtor's unsecured debts being discharged in her Chapter 7 proceedings, none of the unsecured creditors listed on the debtor's schedules would be entitled to be paid through a Chapter 13 plan, as the discharge order operates as an injunction against the creditors collecting on the discharged debts. *11 U.S.C. §524(a)*. The only way for those creditors whose debts were discharged in the Chapter 7 case to be paid, short of a revocation of the discharge, would be for the debtor's non-exempt assets to be liquidated by the Chapter 7 trustee who would, in turn, pay those creditors.

Likewise, conversion of a Chapter 7 case to a Chapter 13 case after the discharge was entered, especially where the Chapter 7 trustee is in the process of liquidating assets for the benefit of the debtor's creditors, would be prejudicial to creditors and an abuse of process. *See In re Jeffrey*, ("Having received a discharge (the debtor) cannot now ignore their obligation to surrender their assets for the benefit of creditors. To permit conversion to a Chapter 13 at this point would be to tolerate a gross abuse of Chapter 7. It would also be an abuse of the right of conversion under *§706(a)*. … Where the Debtors have already received a discharge, it is clear that their purpose in converting to Chapter 13 is *not* to repay their debts. Rather, their purpose is to evade their obligations under Chapter 7."); *See, also, In re Spencer*, 137 B.R. 506, 512 (Bankr.N.D.Okla.1992) ("In the presence of extreme circumstances, debtor's right to convert can be conditioned or denied if necessary to prevent injustice to other parties....").); *In re Marcakis*, at 84; (Converting a case to a Chapter 13 after the entry of a Chapter 7 discharge "would be a futile act, and not in the best interest of creditors and in furtherance of the public policy underlying Chapter 13."); *In re Lesniak*, 208 B.R. 902, 906 (Bankr.N.D.Ill.1997) (permitting the Debtors to convert to Chapter 13 with a discharge in place is an abuse of process); *In re Safley*, 132 B.R. 397, 399, 400 (Bankr.E.D.Ark.1991) (Once the Chapter 7 discharge has been granted, the Debtor's personal liability is extinguished thus rendering the conversion

meaningless, except as to those creditors holding non-dischargeable claims.); *Jones*, at 680 (Gaining the benefits of Chapter 7 without the burdens, is an abuse of the bankruptcy process.); *Hauswirth*, at 96 ("Debtor's conversion to Chapter 13 before the Chapter 7 Trustee has completed the administration of the estate but after the discharge order is entered thwarts the proper operation of the Code[.]"). Furthermore, 11 U.S.C. §727(a)(8) and (9) and 11 U.S.C. §1328(f) are clear in that a debtor who receives a discharge in a Chapter 7 case is ineligible to receive another discharge within a certain number of years[3]. As such, Appellant would not be eligible for a discharge in the converted Chapter 13 case, as the Court denied her request to set aside her discharge in her Chapter 7 case and Appellant did not appeal that ruling, and the non-dischargeable debt owed by Appellant in her Chapter 7 case would not be discharged. Conversion of Appellant's Chapter 7 case after receiving her discharge goes against the structure of the Bankruptcy Code, as Congress intended a moratorium between discharges, and what Appellant is

3 Pursuant to §727(a)(8), a debtor cannot be granted a discharge if she has been granted a discharge under §§727 or 1141 of Title 11, or under sections 14,371, or 476 of the Bankruptcy Act in a case commenced within 8 years before the petition date. Pursuant to §727(a)(9), a debtor cannot be granted a discharge if she has been granted a discharger under §§1228 or 1328 of Title 11, or under sections 660 or 661 of the Bankruptcy acct within 6 years before the petition date unless payments under the plan in the case totaled at least 100% of the allowed unsecured claims in the case, or 70% of such claims and the plan was proposed in good faith and was her best effort. Pursuant to §1328(f), a debtor cannot be granted a discharge if the debtor has received a discharge in a case under Chapter 7, 11, or 12 of Title 11 during the 4 year period before the petition date, or, in a case under Chapter 13 of title 11, during the 2 year period before the petition date.

attempting to do by converting her discharged Chapter 7 case to a Chapter 13 case is an abuse of process. *See Alcantar*, at *8.

Contrary to Appellant's arguments, bad faith or some kind of fraudulent conduct are not the only things that would prevent Appellant from converting her case. The entry of the Chapter 7 discharge prior to conversion and abuse of process are likewise two bases, supported by case law, which would prevent Appellant from converting her Chapter 7 case to a Chapter 13 case. That being the case, the Court was not required to make a finding of bad faith to deny the Motion to Vacate/Convert, and its Order denying the Motion to Vacate/Convert should be upheld.

CONCLUSION

In conclusion, Appellee, Michael A. Stevenson, respectfully requests that this Honorable Court affirm the Bankruptcy Court's Order Regarding Debtor's Motion to: (1) Set Aside/Vacate Discharge; and (2) Convert to a Chapter 13, and the Amended Order Regarding Debtor's Motion to: (1) Set Aside/Vacate Discharge; and (2) Convert to a Chapter 13.

June 16, 2023

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PROOF OF SERVICE

Sonya N. Goll hereby certifies that on the 16th day of June, 2023 a copy of the **Brief of Appellee, Michael A. Stevenson,** and this **Proof of Service** was served via electronically or by placing same in an envelope with sufficient postage thereon, and depositing same in a United States mail receptacle in the City of Southfield, State of Michigan to:

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