

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
at.....O'clock &.....min.....  
JAN 37 2003  
BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (3)

IN RE:

Michael R. Ray,

Debtor.

C/A No. 02-01212-W

JUDGMENT

Chapter 7

ENTERE  
JAN 37 2003  
V. L. D.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order  
of the Court, the Debtor's Motion to Convert is denied.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
*January 7*, 2003.

03-5  
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**ORDER**

Chapter 7

**ENTERED**  
**JAN 07 2003**  
**V. L. D.**

THIS MATTER comes before the Court pursuant to a Motion to Convert Case to Chapter 13 (the "Motion") filed by Michael R. Ray ("Debtor") on November 25, 2002.

The record reflects that Debtor filed a Chapter 13 case, Case No. 01-01937, on February 27, 2001 that was dismissed on April 5, 2001 because Debtor failed to file schedules and statement of affairs. Debtor filed a second Chapter 13 case, Case No. 01-06511, on June 25, 2001 that was dismissed with prejudice for 180 days by an Order entered on September 24, 2001. Debtor filed this Chapter 7 case on February 1, 2002, and the Chapter 7 Trustee declared the case an asset case. Debtor sought the dismissal of this case, but the Chapter 7 Trustee and Creditor Crossman Communities of North Carolina opposed the motion. The Court has denied the motion to dismiss. Debtor received a discharge under 11 U.S.C. §727 by Order entered on November 21, 2002.<sup>1</sup> Debtor has not requested revocation of his Chapter 7 discharge in connection with the Motion.

As noted in In re Fisher, C/A No. 00-05354-W, slip op. at 2 (Bankr. D. S.C. Jan. 30, 2002), while this Court generally treats a debtor's right to convert a case from Chapter 7 to Chapter 13 as absolute, subject to considering reconversion in appropriate circumstances, the maintenance of a Chapter 7 discharge in a case subject to a further Chapter 13 discharge is

<sup>1</sup> Further references to the Bankruptcy Code shall be by section number only.

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inconsistent and therefore the appropriateness of conversion to Chapter 13 after the issuance of a discharge in the case as a Chapter 7 should be examined on a case by case basis. Additionally, in order to convert the case, a debtor must be eligible to be a debtor in the chapter to which he or she is converting. See §706(d). For the reasons stated herein, the Court denies the Motion in this case.

The Court first notes that Debtor has had two previous opportunities to reorganize under Chapter 13, yet both cases were dismissed. The second case was dismissed with a bar to a refiling under Chapter 13 for 180 days. To allow a debtor to file a Chapter 7 case before that time period elapses and voluntarily convert it later without any showing of a material change in circumstances or meeting the requirements of Federal Rule of Civil Procedure 60(b) would allow a debtor to circumvent the prior order of this Court. Moreover, it is noteworthy that in instances of serial filings, a debtor bears the burden of demonstrating a change of circumstances to indicate why he or she is entitled to a further opportunity to reorganize under Chapter 13. See In re Hartley, 187 B.R. 506 (Bankr. D.S.C. 1995).

It is apparent that Debtor seeks conversion, just as he did dismissal, in an effort to thwart the efforts by the Chapter 7 Trustee to discover and collect assets for the benefit of creditors, particularly the sale of real estate which is imminent and which has been approved by this Court by separate order. In objecting to the Motion, the Chapter 7 Trustee asserts that Debtor's failure to disclose the real estate and other assets in his schedules and statement of affairs is evidence of his bad faith in these proceedings. Though given the opportunity, Debtor chose not to offer testimony, evidence or explanation to refute the Trustee's assertions. Therefore, the Court sustains the Trustee's objection.

Additionally, Debtor did not offer any evidence or testimony to support the Motion or

demonstrate a change of circumstances which would entitle him to a further opportunity to reorganize under Chapter 13 in contravention of the prior order of this Court.

Considering the totality of circumstances in this case and considering Debtor has previously received a Chapter 7 discharge of his debts, the Motion to Convert is denied.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
January 7, 2003.

  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF MAILING**

The undersigned Deputy Clerk of the United States  
Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the foregoing petition which on this stamp appears  
was mailed on the date listed below to:

JAN 2 2003

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

VANNA L. DANIEL

Deputy Clerk

10gmt index, UST  
via mail