

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: **18-04549-hb**

ORDER

The relief set forth on the following pages, for a total of 4 pages including this page, is hereby ORDERED.

**FILED BY THE COURT
03/28/2019**



Entered: 03/28/2019

A handwritten signature in black ink, appearing to read "John L. Curran", written over a horizontal line.

US Bankruptcy Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

James Edwin Ollis,

Debtor(s).

C/A No. 18-04549-HB

Chapter 12

**ORDER DISMISSING CASE ON
MOTION OF DEBTOR PURSUANT
TO 11 U.S.C. § 1208(b)**

THIS MATTER is before the Court for consideration of the Motion to dismiss pursuant to 11 U.S.C. § 1208(b) filed by Debtor James Edwin Ollis.¹ Before the voluntary dismissal could be processed, Creditor Rabo AgriFinance LLC filed an Objection.²

On March 13, 2019, the Court entered an Order denying confirmation of Ollis' proposed Chapter 12 plan and finding him ineligible for Chapter 12 relief pursuant to § 101(18).³ The Order directed parties in interest may request conversion or dismissal of this case. Rabo filed a Motion to Convert to Chapter 7, or Alternatively to Dismiss,⁴ and creditors Amber McCutcheon and Tim Kalliainen also filed Motions to Dismiss.⁵ A hearing on Rabo's Motions is currently scheduled for April 23, 2019. Rabo asserts that, in light of its pending Motion to Convert, the Court should deny Ollis' dismissal request.

Section 1208(d) provides "[o]n request of a party in interest, and *after notice and a hearing*, the court *may* dismiss a case under this chapter or convert a case under this chapter to a case under chapter 7 of this title upon a showing that the debtor has committed fraud in connection with the case." (emphasis added)). Section 1208(b), which governs a

¹ ECF No. 270, filed Mar. 27, 2019.

² ECF No. 272, filed Mar. 27, 2019.

³ ECF No. 248.

⁴ ECF Nos. 261 & 262, filed Mar. 22, 2019.

⁵ ECF Nos. 267 & 267, filed Mar. 25, 2019.

debtor's dismissal request, is quite different. It provides. "[o]n request of the debtor *at any time*, if the case has not been converted under section 706 or 1112 of this title, the court *shall* dismiss a case under this chapter. *Any waiver* of the right to dismiss under this subsection is unenforceable." 11 U.S.C. § 1208(b) (emphasis added). This subsection does not require notice or a hearing or otherwise qualify or limit a Chapter 12 debtor's right to voluntarily dismiss his or her case. Applicable rules provide that "[e]xcept as provided in §§ . . . 1208(b), and 1307(b) of the Code, . . . a case shall not be dismissed on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties, before a hearing on notice as provided in Rule 2002." Fed. R. Bankr. P. 1017(a) (emphasis added). Thus, while the court *may* convert a case under the conditions specified in § 1208(d) on the motion of a party in interest after notice and a hearing, it *must* dismiss a case at debtor's request unless the case was previously converted. A pending motion to convert does not affect this statutory right of a Chapter 12 debtor. *In re Parker*, 560 B.R. 732 (Bankr. E.D. Tenn. 2016) (granting the debtor's motion to voluntarily dismiss despite the pending motion to convert).

Under the analogous provisions for Chapter 13 cases, a Chapter 13 debtor is afforded the absolute right to dismiss his or her case, subject only to the statutory limitation that the case must not have "been converted under section 706, 1112, or 1208 of this title." 11 U.S.C. § 1307(b). A Chapter 13 case "may" be converted to Chapter 7 upon the request of a party in interest, but granting such request is not mandatory and requires a showing of cause. 11 U.S.C. § 1307(c). Sections 1208(b) and 1307(b) are identical in all material respects and there is nothing to indicate to the Court that a Chapter 12 debtor's request for dismissal should be treated differently. *See Parker*, 560 B.R. at 738 ("The legislative

history of § 1307 thus makes clear that Congress intended subsection (b) to provide a chapter 13 debtor with an absolute, unqualified right to dismiss his case if it was not previously converted from another chapter. As § 1208(b) is identical in all relevant respects to § 1307(b), it may be presumed that Congress also intended § 1208(b) to afford the chapter 12 debtor an absolute right to dismiss his case if it was not previously converted from chapter 7 or chapter 11.” (citations omitted)).

If the Court were to find otherwise, it would require use of § 105(a) to contravene the explicit mandates of § 1208(b), which was not allowed in *Law v. Siegel*, 571 U.S.C. 415, 421, 134 S. Ct. 1188, 1194, 188 L. Ed. 2d 146 (2014) (“It is hornbook law that § 105(a) ‘does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.’ Section 105(a) confers authority to ‘carry out’ the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits.” (quoting 2 *Collier on Bankruptcy* ¶ 105.01[2], p. 105-6 (16th ed. 2013))). Additionally, converting the case over a Chapter 12 debtor’s request to dismiss under § 1208(b) effectively places the debtor in an involuntary case, which is specifically governed by § 303. See 11 U.S.C. § 303(a) (“An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer, family farmer, or a corporation that is not a moneyed business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.”).

IT IS, THEREFORE, ORDERED that Debtor’s Motion pursuant to 11 U.S.C. § 1208(b) is granted, Rabo’s Objection is overruled, and the above-captioned case is hereby dismissed.

AND IT IS SO ORDERED.