UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE: LaKendra Eubanks, Debtor.	C/A No. 25-01665-EG Chapter 7 **AMENDED ORDER DENYING MOTION TO CONVERT CASE TO CHAPTER 13 AND DISMISSING CASE WITH PREJUDICE FOR TWO YEARS***

THIS MATTER is before the Court on two motions: the Motion to Convert Case from Chapter 7 to Chapter 13 (the "Motion to Convert")[1] filed by LaKendra Eubanks ("Debtor") and the Motion to Dismiss Case with Prejudice Pursuant to 11 U.S.C. § 707(a) (the "Motion to Dismiss")[2] filed by the United States Trustee ("UST"). The Court held a hearing on the two motions on August 14, 2025. After her last-minute attempts to appear remotely or continue the hearing were denied, Debtor failed to appear. Based on the record before the Court, including the arguments and evidence presented at the hearing by the Assistant U.S. Trustee ("AUST"), the Court denied the Motion to Convert and granted the Motion to Dismiss, dismissing Debtor's case with prejudice for a period of two years, noting that an order would be entered by the Court. This Order sets forth the findings of facts and conclusions of law for the Court's rulings.

FINDINGS OF FACT

A. Debtor's Bankruptcy Filing History

This is Debtor's sixth bankruptcy case. All but one of her prior cases were filed in South Carolina; her only bankruptcy case outside of this District was filed in the Southern District of Florida. Most of Debtor's prior cases were filed with the assistance of counsel under Chapter 13;

[1] ECF No. 26, filed July 3, 2025.
[2] ECF No. 33, filed July 11, 2025.
* This Order is being amended to correct a typographical error on page 3.

however, Debtor's most recent prior case (C/A No. 23-02648-hb, the "2023 Case") and the instant case were both filed under Chapter 7, *pro se*. Relevant aspects of Debtor's prior cases are summarized as follows:

1. Debtor's first case (C/A No. 12-01057-jw) was filed on February 21, 2012, and voluntarily dismissed on April 6, 2015. In her schedules, Debtor disclosed her ownership interest in real property located at 1059 Stockton Street in Aiken, South Carolina (the "Residence"), as well as an interest in a 2002 Lexus SC430. After Debtor's Chapter 13 plan was confirmed, she had a mortgage modification approved within less than one month before her voluntary dismissal of the case.

2. Debtor's second case (Bankr. S.D. Fla., C/A No. 16-16607-RAM) was filed in the U.S. Bankruptcy Court for the Southern District of Florida on May 6, 2016. The petition in that case listed an address in Sunny Isles Beach, Florida as both Debtor's residence and mailing address. Debtor's interest in the Residence was reported in Schedule A, which noted that property was a "Rental Property." Debtor included her interest in the 2002 Lexus SC430 in Schedule B. The case was dismissed with prejudice for 180 days due to filing deficiencies, and though the case was later reinstated upon Debtor's motion, it was dismissed again with prejudice on October 4, 2016, after confirmation of Debtor's plan was denied. The Chapter 13 trustee's final report indicated that Debtor only paid $315.00 to the trustee for disbursements, none of which went to the mortgage creditor.

3. Debtor's third case (C/A No. 18-06126-hb) was filed on December 3, 2018, with a petition listing Debtor's residence and mailing address as 2862-C Banks Mill Road, Aiken, South Carolina. Debtor's schedules again disclosed her interests in the Residence and the 2002 Lexus SC430. The Statement of Financial Affairs indicated that the mortgage creditor had initiated a foreclosure proceeding for the Residence in Aiken County (the "Foreclosure Action"). After pending for roughly three months, the third case was dismissed on February 15, 2019, due to Debtor's failure to attend the § 341 meeting of creditors. The Chapter 13 trustee filed a final report that stated Debtor had only made payments totaling $189.00, none of which was disbursed to the mortgage creditor.

4. Debtor's fourth case (C/A No. 19-05485-hb), filed on October 18, 2019, listed the Residence as both Debtor's residential and mailing address. In addition to her interests in the Residence and the 2002 Lexus SC430, Schedule A/B also listed Debtor's one-half interest in real property located at 447 Lybrand St, Aiken, South Carolina (the "Lybrand Street Property"). The Statement of Financial Affairs indicated that the Foreclosure Action remained pending in state court. Shortly after Debtor's conduit plan was confirmed, the Chapter 13 trustee moved to dismiss the case for nonpayment. The motion was granted and the case dismissed on May 29, 2020, with prejudice for one year as to Chapters 11, 12, and 13 based on a consent order between Debtor and the trustee entered earlier in the case. The trustee's final report indicated that Debtor paid $8,217.00 total while the case was pending, from which the trustee made distributions to the mortgage creditor for $2,121.56 in pre-petition arrears and $3,828.45 in ongoing conduit payments.[3]

[3] During the pendency of Debtor's fourth case, an assignment of the mortgage claim was executed on April 9, 2020, transferring the claim from JPMorgan Chase Bank, National Association, to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust F, with Carrington Mortgage Services as the new servicer. Accordingly,

5. Debtor's fifth case, the 2023 Case, was filed under Chapter 7 on September 1, 2023, *pro se*. The petition again listed the Residence as Debtor's residential and mailing address, and Schedule A/B disclosed her interest in the Residence but not her interests in the Lybrand Street Property or the 2002 Lexus SC430. After the Chapter 7 trustee entered a report of no distribution but before Debtor was granted a discharge, the case was converted to Chapter 13 upon Debtor's motion. Nearly three months after conversion, the case was dismissed on March 25, 2024, for Debtor's failure to timely file additional schedules/statements and an adequate Chapter 13 plan. Debtor made no payments to the trustee while the Chapter 13 case was pending. Debtor moved for the Court to reconsider the dismissal order, and the Chapter 13 trustee objected. On the morning of the reconsideration hearing, which was scheduled for 10:00 a.m., Debtor sent an electronic transmission to the Court at 9:33 a.m. saying that she was out of town and requesting that she be permitted to appear remotely or have the hearing continued. The request was denied as untimely, and after Debtor failed to appear at the hearing to prosecute her motion, the Court denied the motion to reconsider dismissal by order issued April 30, 2024 (the "Order Denying Reconsideration").

B. This Case

Debtor filed the present case under Chapter 7 of the Bankruptcy Code, *pro se*, at 3:41 p.m. EDT on May 1, 2025 (the "Petition Date").[4] Although Debtor's petition states she completed credit counseling prior to filing her petition, the certificate of completion filed the next day indicates that Debtor received her credit counseling briefing on May 1, 2025, at 9:31 p.m. PDT—that is, at 12:31 a.m. EDT on May 2, 2025.[5] The Voluntary Petition lists the Residence as Debtor's current residential address but includes a different address in Sunny Isles Beach, Florida for her mailing address.

Debtor's schedules and statements included several deficiencies and inconsistencies. For example, on Schedule A/B, Debtor checked the box for "Yes" to indicate that she owned real property but did not disclose any information about the property. However, Schedule D reports that Carrington Mortgage Services ("Carrington") holds a claim secured by a mortgage on the Residence, and the Chapter 7 Statement of Intent indicates that Debtor wants to redeem her interest

the Chapter 13 trustee's final report listed the mortgage payments for both the arrears and the ongoing conduit payments as paid to Carrington Mortgage Services.

[4] ECF No. 1.

[5] ECF No. 13.

in the Residence. Schedule A/B reported that Debtor owned only one vehicle, the 2002 Lexus S430 that was omitted from the schedules filed in the 2023 Case. The initial schedules and statements filed in this case also included inconsistent information about Debtor's income. While the Schedule I and Statement of Financial Affairs filed with the Voluntary Petition indicate that she has no income whatsoever, Debtor concurrently filed a Chapter 7 Statement of Current Monthly Income reporting gross monthly wages of $1,800. She later filed an amended Chapter 7 Statement of Current Income reporting gross monthly wages of $2,160 as well as an amended Statement of Financial Affairs indicating that she is employed as a real estate instructor and received $11,835 in gross revenue between January 1, 2025 and the Petition Date.[6]

On June 16, 2025, Carrington filed a Motion for Relief from Automatic Stay (the "Motion for Relief from Stay"), seeking to have the automatic stay lifted as to the Residence so as to permit Carrington to pursue foreclosure.[7] In its motion, Carrington asserted a lack of adequate protection of its security interest in the Residence because its claim exceeds the value of the Residence and Debtor has failed to make her monthly mortgage payments for October 1, 2015 onwards.[8] Debtor did not file an objection to the Motion for Relief from Stay, and the Chapter 7 trustee withdrew his objection to the motion after Debtor filed the Motion to Convert. Accordingly, Carrington filed the appropriate Certification of Default, and the Court granted the requested relief from stay on July 8, 2025.[9] Later that day, after the Order Granting Relief from Automatic Stay was entered

[6] ECF Nos. 12, 16. The gross revenue reported in the amended Statement of Financial Affairs is consistent with the year-to-date earnings recorded in a pay stub that Debtor filed with a pay date of April 25, 2025. *See* ECF No. 16.
[7] ECF No. 19. Though not mentioned in the Motion for Relief from Stay, evidence produced by the UST indicates that Carrington Mortgage has a pending foreclosure action for the Residence in Aiken County Circuit Court. *See* UST Ex. 14.
[8] The attachments to Carrington's Motion for Relief from Stay, however, only show a list of payments due, starting in October 2015 and continuing to the Petition Date, without accounting for payments made during Debtor's fourth case (C/A No. 19-05485-hb) when ongoing mortgage payments were being disbursed by the Chapter 13 trustee according to Debtor's confirmed conduit plan.
[9] ECF No. 29.

on the case docket, Debtor called the Clerk's office and asked a case administrator if her house could be taken now that the Carrington's motion had been granted. The case administration informed Debtor that court staff could not give her legal advice, and to the extent she wished to request some form of relief from the Court, she would need to file a formal request in writing for it to be considered.

Debtor filed the Motion to Convert on July 3, 2025—after Carrington filed its Motion for Relief from Stay but before the relief from stay was granted. The UST filed an objection to the Motion to Convert (the "Objection to Conversion"), arguing that Debtor cannot convert the case to Chapter 13 because (1) she is not eligible to be a debtor under that chapter, and (2) if converted, her case would be subject to reconversion or dismissal.[10] The Objection to Conversion points to Debtor's apparent omissions of material information from her schedules and statements and asserts that Debtor has engaged in bad faith conduct, suggesting that she lacks the good faith required to have a Chapter 13 plan confirmed.

Concurrently with the Objection to Conversion, the UST filed the Motion to Dismiss, requesting the dismissal of Debtor's case with prejudice pursuant to 11 U.S.C. § 707(a). The UST argues that cause for dismissal exists because, among other things, Debtor has unreasonably delayed recovery for creditors by filing several bankruptcy cases that were each dismissed with little to no funds paid to creditors. In particular, the UST points to the 2023 Case, in which Debtor also filed *pro se* under Chapter 7 and, after the case had been pending for several months already, moved to convert the case to Chapter 13, only for it to be dismissed within two months of conversion. The UST also asserts that Debtor has exhibited bad faith conduct, abusing the bankruptcy system to delay foreclosure of the Residence since 2017 and avoid repaying creditors.

[10] ECF No. 34, filed July 11, 2025.

The Motion to Dismiss highlights Debtor's failure to disclose several assets and other information required by official forms and indicates that Debtor acknowledged the deficiencies in her schedules at the § 341 meeting of creditors. The UST raises the striking similarities between Debtor's conduct in this case and the 2023 Case, suggesting a pattern of delay tactics and a lack of effort to make meaningful progress towards plan confirmation or discharge. Debtor filed an objection to the Motion to Dismiss (the "Objection to Dismissal"), stating that she does not want to be "forced to dismiss my chapter 7 case because I am saving all my assets" and was in the process of gathering information to update her schedules "soon."[11] The Objection to Dismissal also indicates that Debtor was "appealing the decision not to convert my case into chapter 13 from chapter 7" even though the Court had not yet ruled on the Motion to Convert.

The hearing on the Motion to Convert was originally scheduled to occur on July 29, 2025, and the Motion to Dismiss hearing was set for August 14, 2025. On July 21, 2025, Debtor filed a request for the Court to conduct the July 29th hearing via Zoom because she was "scheduled to teach a class July 28, 2025."[12] The Court denied the request, finding that Debtor's vague explanation did not raise exigent circumstances that would prevent Debtor from appearing in person to prosecute her motion.[13] However, the Court indicated that Debtor could request to continue the hearing to August 14th to coincide with the hearing on the Motion to Dismiss. Debtor thereafter filed a motion to continue the July 29th hearing to August 14th, which the Court granted in an order specifying that the continued hearing would be conducted in person and the parties were "expected to appear in person absent further order of the Court."[14]

[11] ECF No. 47, filed July 31, 2025.
[12] ECF No. 36.
[13] ECF No. 37, entered July 21, 2025.
[14] ECF Nos. 39, 41.

Within the 48 hours prior to the August 14th hearing, Debtor made what appeared to be several last-minute attempts to salvage her case and delay the Court's adjudication of the UST's Motion to Dismiss. First, at 4:09 p.m. on August 12, 2025, Debtor filed a request for permission to appear remotely at the August 14th hearing.[15] In her request, Debtor stated:

> I am currently in Florida due to a mandatory class I attended last week, which was necessary for my personal and professional development. Unfortunately, I do not receive my paycheck until Friday, and at this time I am unable to afford transportation costs such as gas to attend the hearing in person.

The Court denied Debtor's request, noting that Debtor was made aware when the July 29th hearing was continued—at her request—that the August 14th hearing would require her in-person appearance.[16] The Court's order denying the request also explained that "[b]ecause Debtor's credibility—as a potential witness—could be determinative of the outcome of the hearings, and because court policies limit her ability to provide sworn testimony by remote means, her relatively last-minute request to appear remotely would unnecessarily delay the hearings to the detriment of creditors." Accordingly, the Court reiterated that the August 14th hearing would be in person and warned that "[t]he parties are expected to appear in person to present arguments and provide evidence in support of their respective positions, or the Court may deny the Motion to Convert for failure to prosecute and grant the relief that the UST seeks."

Second, Debtor filed several amended schedules and documents before the August 14th hearing, the latest of which were uploaded to EDSS on the morning of August 14, 2025.[17] As the AUST noted at the hearing later that day, the schedules were amended to include assets and information that Debtor had failed to previously disclose and was asked about at the § 341 meeting

[15] ECF No. 55.
[16] ECF No. 60, entered Aug. 13, 2025.
[17] ECF Nos. 56-58, 61-64, 70, 71; *see also* UST Exs. 7 (Amended Voluntary Petition), 8 (Amended Schedules A/B and C and Amended Creditor List), 8A (Amended Statement of Financial Affairs).

of creditors held on June 6, 2025.[18] For example, Schedule A/B was amended to add three interests in real property: (1) Debtor's 100% interest in the Residence; (2) an interest in land at 161 Ussery Road in Williston, South Carolina (the "Ussery Road Property"), which Debtor noted as being associated with "FREEAF non profit (working)"; and (3) a 50% interest in the Lybrand Street Property that was only previously disclosed in Debtor's fourth case.[19] The amended filing ("Amended Schedule A/B") also added, among other things: a 2019 Jeep Wrangler, by which Debtor noted, "This belongs to FREEAF"; several more categories of personal property than were previously disclosed, including electronics, firearms, jewelry, and recreational equipment; funds held in two bank accounts, two investment accounts, and a 401(k); and a $10,440 federal tax refund. Debtor also changed her answers in Part 5 of Schedule B to indicate that she owns interests in business-related property, though she did not name the businesses or their assets. Debtor's amended Schedules I added $3,496 in gross monthly income, with $2,100 in gross wages from her job as an Instructor for Gold Coast Schools ($1,546 take home pay after payroll deductions), $350 in unemployment compensation, and a $1,600 contribution from "roommates." With monthly expenses of $1,796.08 listed in the amended Schedule J, Debtor's new filings reported a monthly net income of $1,699.92.[20] Additionally, Debtor filed a second amended Statement of Financial Affairs (the "Amended SOFA")—on the form used for non-individuals—that still indicated she was not involved in any legal actions during the year leading up to her filing of this case.[21] The Court issued a deficiency notice with respect to the amended Schedules E/F, I, and J because,

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[18] The AUST indicated that at the § 341 meeting, Debtor acknowledged her schedules were incomplete and was told at that time that she needed to file the amendments to proceed with her case. The case docket also reflects that on June 6, 2025, the Chapter 7 trustee entered a notice of further action required, which listed the filing deficiencies Debtor was told to correct by June 16, 2025. Debtor did not file any of the requested amendments until August 12, 13, and 14, 2025—nearly two months after the deadline.

[19] ECF No. 63; UST Ex. 8.

[20] ECF No. 71.

[21] ECF No. 57; UST Ex. 8A.

among other reasons, Debtor did not file a declaration page signing under penalty that the amended forms were true and correct.[22]

Third—and perhaps most unsurprisingly—Debtor filed correspondence at 1:07 p.m. on August 14, 2025, requesting to continue the August 14th hearing scheduled to begin at 2:00 p.m. (the "Continuance Request").[23] The Continuance Request indicated that Debtor had "now submitted all amendments requested by the trustee in good faith" and asked for "an extension of 14 days to allow the court to review the amended schedules before any decision is made regarding dismissal." Debtor also stated she would be unable to attend the hearing in person because she did not have gas money and would not be paid until the next day, her change oil light was on, and her tires were old. In addition to filing the last-minute Continuance Request, Debtor called the Clerk's office around 1:25 p.m. and told a case administrator that she would not make it to the hearings due to car troubles. According to the Court's records, Debtor stated at one point during the call that her car broke down, then indicated later in the call that she did not have gas. The Court denied the Continuance Request on the record at the hearings, noting that Debtor's last-minute attempts to delay the hearings mirrored what occurred in Debtor's last case.[24]

Additionally, the Court received further documents from Debtor after the August 14th hearing concluded, some of which appeared to be responsive to the deficiency notices issued for the Continuance Request and amended schedules.[25] The post-hearing filings included a revised version of the Continuance Request that elaborated upon the assertions made in the pre-hearing

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[22] ECF No. 72.
[23] ECF No. 68.
[24] The Clerk of Court also issued a deficiency notice for the Continuance Request because it was not signed as required by the local bankruptcy rules. ECF No. 69.
[25] ECF Nos. 79-82. The documents were filed via EDSS at 9:42 p.m. on August 14, 2025—following the hearing and the Court's ruling that the case would be dismissed with prejudice. Debtor also filed a "Motion to Accept Electronic Signature and for Equal Access" and an unemployment benefit eligibility determination letter from the South Carolina Department of Employment and Workforce on August 17, 2025. ECF Nos. 85, 86.

version. As explained below, the Court had already ruled on the record to dismiss Debtor's case before such documents were filed; accordingly, they do not factor into the Court's decision, though even if they were timely, they would not be enough to salvage Debtor's case.

Debtor failed to appear at the August 14th hearing. The AUST appeared with a bankruptcy analyst from her office and introduced several exhibits, which were all admitted into evidence without objection.[26] The bankruptcy analyst's proffer was admitted to establish the foundation for the exhibits. The exhibits included public records that the AUST used to highlight material omissions and inconsistencies in Debtor's schedules (both the original and amended versions). One such document, UST Exhibit 9, contains records printed from the South Carolina Secretary of State's Business Entities Online database showing a list of six business entities for which LaKendra Eubanks is the registered agent—only one of which entities was referenced in Debtor's amended schedules. Additional records on each of the six entities indicate that all are currently in good standing and list the registered agent's address as one of the three real properties Debtor added to Amended Schedule A/B. The most recently formed entity, a nonprofit operating under the name "Free AF," filed Articles of Incorporation on February 25, 2025, and lists the registered agent's address as the Ussery Road Property. Though Debtor's Amended Schedule A/B indicates the Ussery Road Property is associated with Free AF and contains no improvements to land, the AUST introduced a copy of the Barnwell County online property tax payment records (UST Exhibit 10) that list the name on the Ussery Road Property as LaKendra Eubanks LLC—one of Debtor's other registered businesses—and describes the property as including a 1987 Fleetwood mobile home. Amended Schedule A/B also listed a 2019 Jeep Wrangler that "belongs to

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[26] UST Exs. 1-17.

FREEAF," but a 2025 Aiken County tax payment record for that vehicle—reflecting August 1, 2025 as the date the tax was paid—identifies Debtor as the vehicle owner.[27]

The AUST also presented Aiken County public records of legal actions concerning Debtor and/or the Residence which were not fully or accurately disclosed in Debtor's schedules and statements. The Amended SOFA lists the Residence as property that was "repossessed by a creditor, sold at a foreclosure sale, transferred by deed in lieu of foreclosure, or returned to the seller." However, the Aiken County Circuit Court docket for the case of JPMorgan Chase Bank National Association v. Eubanks (No. 2017-CP-0202556), admitted as UST Exhibit 14, indicates that the Foreclosure Action for the Residence remains pending, and the Residence has not yet been sold at a foreclosure sale or otherwise disposed of. The AUST noted that the docket shows the Foreclosure Action has been pending since October 2017 and a foreclosure sale was most recently scheduled to occur on May 5, 2025, but was cancelled when Debtor filed this case on May 1, 2025.[28] Additionally, while both the original and Amended SOFAs indicate that Debtor was not "involved in any capacity" in any legal actions within one year before she filed this case, UST Exhibit 15 shows Aiken County court records for a rule to vacate (*i.e.* eviction) action Debtor commenced on February 14, 2025, against a defendant whose address is listed as the Residence while Debtor's address is listed as the Sunny Isles Beach, Florida address she used as her mailing address on her Voluntary Petition.

In arguing that Debtor has exhibited a pattern of bad faith conduct providing cause for the Court to dismiss this case with prejudice, the AUST referenced the Order Denying Reconsideration entered in the 2023 Case, presented as UST Exhibit 17. The Order Denying Reconsideration

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[27] *See* UST Ex. 16.

[28] *See* UST Ex. 13 (Affidavit of Publication filed in the Foreclosure Action). The Foreclosure Action docket also shows that an order and notice of foreclosure sale was issued on July 31, 2023, just over one month prior to when Debtor filed the 2023 Case on September 1, 2023. UST Ex. 14.

described what occurred in that Chapter 7 case, and the AUST drew comparisons between Debtor's actions in the 2023 Case and her similar conduct in this case. Both cases were filed under Chapter 7 without the assistance of counsel and subsequently moved to convert to Chapter 13. Debtor filed inadequate schedules and statements and failed to make meaningful progress in both cases, and the 2023 Case was dismissed after pending for seven months with no payments to creditors. Additionally, as she did in this case before the July 29th and August 14th hearings on her Motion to Convert, Debtor submitted a last-minute request for remote appearance less than half an hour before the hearing on her motion to reconsider dismissal in the 2023 Case. Likewise in that case, Debtor explained that she could not attend the hearing in person because she was "out of town."[29]

The AUST ultimately requested that the case be dismissed with prejudice so as to bar Debtor from refiling for two years. Considering the entire record before it, the Court ruled on the record that Debtor's Motion to Convert would be denied—both on the merits and for lack of prosecution—and Debtor's case would be dismissed with prejudice for a period of two years.

CONCLUSIONS OF LAW

I. Conversion from Chapter 7 to Chapter 13 is Not Warranted

Under the facts of this case, Debtor has failed to show that conversion of her case to Chapter 13 is justified. Section 706(a) of the Bankruptcy Code states that "[t]he debtor may convert a case under this Chapter to a case under Chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1209 or 1307 of this title." 11 U.S.C. § 706(a). However, a debtor's right to convert from Chapter 7 to Chapter 13 is not absolute. *In re Elmore*, 668 B.R. 122, 129 (Bankr. D.S.C. 2025). While § 706(a) appears to give a debtor broad authority to convert to a different chapter, in *Marrama v. Citizens Bank of Massachusetts*, the United States Supreme

[29] UST Ex. 17, at 2.

Court analyzed § 706(a) alongside § 706(d), which specifies that "[n]otwithstanding any other provisions of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such Chapter." 549 U.S. 365, 371 (2007) (quoting 11 U.S.C § 706(d)). Analyzing 11 U.S.C. §§ 109(e), 1307(c), and 105, the Supreme Court concluded that a debtor does not have an absolute right to convert to Chapter 13 under § 706(a) if the debtor (1) is not eligible for Chapter 13 under the requirements and limits of § 109(e), or (2) has engaged in bad faith conduct—either pre-petition or during the pendency of the Chapter 7 case—sufficient to constitute "cause" that would warrant dismissal or reconversion of the Chapter 13 case under § 1307(c). *Id.* at 272-74; *Elmore*, 668 B.R. at 129 (citing cases).

Marrama thus made clear that "a chapter 7 debtor forfeits the right to convert to chapter 13 if he or she has engaged in bad faith conduct." *In re Autry*, No. 24-50215, 2024 WL 4131856, at *3 (Bankr. M.D.N.C. Aug. 15, 2024). Though the Supreme Court did not specify what constitutes lack of good faith when considering a motion to convert from Chapter 7 to Chapter 13, it recognized that a court may take appropriate action and deny conversion where the purpose of the "fresh start" to be provided to the "honest but unfortunate debtor" is abused:

> We have no occasion here to articulate with precision what conduct qualifies as "bad faith" sufficient to permit a bankruptcy judge to dismiss a Chapter 13 case or to deny conversion from Chapter 7. It suffices to emphasize that the debtor's conduct must, in fact, be atypical. Limiting dismissal or denial of conversion to extraordinary cases is particularly appropriate in light of the fact that lack of good faith in proposing a Chapter 13 plan is an express statutory ground for denying plan confirmation.

Marrama, 549 U.S. at 375 n.11. "Numerous decisions . . . have found that a debtor's concealment of assets and transfers can constitute bad faith sufficient to deny conversion." *Autry*, 2024 WL 4131856, at *3 (citing cases).

The movant—here, Debtor—bears the initial burden of proving that conversion to Chapter 13 is warranted. *In re Bradley*, 649 B.R. 693, 701 (Bankr. D.S.C. 2023). To satisfy that burden, the debtor must make a *prima facie* case for conversion by demonstrating that (1) there has been no prior conversion of the case, (2) the debtor is eligible under 11 U.S.C. § 109 to be in Chapter 13, and (3) conversion is to achieve a purpose permitted under Chapter 13. *Id.* (citing *In re Broad Creek Edgewater, LP*, 371 B.R. 752, 757 (Bankr. D.S.C. 2007); *In re Ansin*, 659 B.R. 715, 723 (B.A.P. 1st Cir. 2024)). Then, the burden shifts to the objecting party—here, the UST—to demonstrate that the debtor should not be permitted to convert under *Marrama*. *Bradley*, 649 B.R. at 701. The substance of Debtor's two-sentence Motion to Convert does not make any assertions as to Debtor's ability to fund a Chapter 13 plan, cites no law, and was not supported by an affidavit or other supporting documents. Moreover, Debtor did not appear at the continued hearing on August 14th to present arguments or evidence. Therefore, the Court can deny the Motion to Convert solely on the basis of Debtor's failure to prosecute.

Even considering the entire record before the Court, the Court finds that the Motion to Convert should also be denied on the merits. While this case has not been previously converted, Debtor has failed to make a *prima facie* showing as to her eligibility to proceed in Chapter 13. The Court first notes that it is unclear whether Debtor is even eligible to be a debtor in bankruptcy given the requirements of 11 U.S.C. § 109(h). That section of the Bankruptcy Code provides:

> [A]n individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency . . . an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

11 U.S.C. § 109(h)(1). Though Debtor indicated on Part 5 of the Voluntary Petition that she received the required credit counseling briefing within 180 days *before* filing this case at 3:41 p.m.

EDT on May 1, 2025, the Certificate of Credit Counseling filed the next day reflects that she received her online credit counseling briefing *post-petition* on May 1, 2025, at 9:31 p.m. PDT (*i.e.* 12:31 a.m. EDT on May 2, 2025). Because the record suggests that Debtor did not complete her credit counseling briefing before filing the Voluntary Petition, it appears Debtor is ineligible for bankruptcy relief under any chapter, let alone Chapter 13.

Additionally, Debtor's inconsistent statements regarding her income and last-minute filing of amended schedules that were not signed under penalty of perjury have made it difficult to determine the true state of her financial affairs, leaving the record devoid of sufficient evidence to establish Debtor's eligibility to be in Chapter 13. Section 109(e) of the Bankruptcy Code states that "only an individual with regular income" owing less than the statutory maximum amounts of secured and unsecured debt is eligible to seek relief under Chapter 13. 11 U.S.C. § 109(e). In her original schedules filed with the Voluntary Petition, Debtor reported no employment or income on Schedule I but listed earnings of $1,800 per month on the Chapter 7 Statement of Current Monthly Income. About two weeks after the Petition Date, Debtor filed an amended Chapter 7 Statement of Current Income reporting gross monthly wages of $2,160 as well as a pay stub and amended Statement of Financial Affairs indicating year-to-date gross revenue of $11,835. She did not amend Schedule I until months later, on the day of the August 14th hearing on her Motion to Convert. The Amended Schedule I reported gross monthly income of $3,496, with $2,100 in gross wages ($1,546 net after payroll deductions), $350 in unemployment compensation, and $1,600 from "roommates." However, it was not signed under penalty of perjury on the official declaration form required to be filed with any amended schedules or statements. Altogether, the documents do not provide a clear, reliable picture of Debtor's income with which the Court can make a finding that Debtor is an individual with regular income, which is necessary to determine whether reorganization under Chapter 13 will even be feasible. *See*, *e.g.*, *Ansin*, 659 B.R. at 725-26 (denying a motion to convert after finding that the debtor failed to make a *prima facie* case for conversion by showing that she had sufficiently stable and regular income required to be a Chapter 13 debtor).

Aside from her eligibility to proceed in Chapter 13, Debtor has failed to show that she seeks conversion to achieve a purpose permitted under Chapter 13. Debtor's conduct in the 2023 Case and in prior cases gives the Court cause for concern about Debtor's intention in seeking to convert her case and the further delay to creditor recovery that would likely result. Debtor's 2023 Case was pending for seven months, during which time creditors received no payments. Even after converting to Chapter 13, Debtor created unnecessary delay by failing to file all required documents, and her proposed Chapter 13 plan was riddled with deficiencies that were never corrected. It seems that Debtor used the conversion process in the 2023 Case merely to delay creditors from recovering on their claims, as she made no meaningful progress to suggest she was making good faith efforts to pay for her debts. *See In re Tiongson*, No. 22-11540-KHK, 2025 WL 1549921, at *11 (Bankr. E.D. Va. May 30, 2025) (concluding the debtor filed for conversion in bad faith after she was dishonest about the status of her home ownership and filed a motion to convert to delay creditors from recovering on their claims through a Chapter 7 sale of the property). The Court has no reason to believe that the same would not happen again if Debtor is allowed to convert this case.

Grounds to deny conversion also exist based on Debtor's bad faith omission of assets and other material information and making false statements under penalty of perjury. "Accurate disclosures are a foundational expectation of those seeking bankruptcy relief." *In re Bulger*, No. 21-31333-BPC, 2021 WL 5991750, at *7 (Bankr. M.D. Ala. Dec. 17, 2021) (citing Fed. R. Bankr.

P. 1008, which requires verification or unsworn declaration for "all petitions, lists, schedules, statements and amendments thereto"); *see also Autry*, 2024 WL 4131856, at *3 (citing Official Forms 101, 106, and 107) ("A debtor's schedules are filed under penalty of perjury, and the official forms repeatedly instruct debtors to '[b]e as complete and accurate as possible.'"). As the UST's objection points out, Debtor's original schedules and statements did not disclose her interests in real property, her interests in multiple categories of personal property, and her ownership of six businesses registered with the South Carolina Secretary of State that are still in good standing. Such omissions alone can constitute bad faith sufficient to deny conversion. *See Autry*, 2024 WL 4131856, at *4 (finding that debtors moved to convert their case in bad faith after they failed to disclose assets and did not accurately estimate their current expenses by omitting homeowners' insurance and property taxes on their Schedule J). Though she filed amended schedules to disclose her real and personal property interests, the amendments were not filed until just before the August 14th hearing—months after Debtor acknowledged the deficiencies in her original filings at the § 341 meeting and was instructed to file amended disclosures by June 16, 2025—and they were not signed under penalty of perjury on the required declaration form. Moreover, filing amended documents does not necessarily absolve a debtor's bad faith in omitting or concealing required information in the first place. *See Bulger*, 2021 WL 5991750, at *7 (finding that notwithstanding the debtor's filing of amended schedules, his behavior was "indicative of bad faith because his omissions and inaccuracies reveal an intent to mislead the Court, Trustee, and creditors"). For all these reasons, the Court concludes that the Motion to Convert should be denied.

II. Cause Exists for the Case to Be Dismissed with Prejudice

Section 707(a) of the Bankruptcy Code provides a non-exhaustive list of examples for what may constitute sufficient "cause" to dismiss a Chapter 7 case, including "unreasonable delay by the debtor that is prejudicial to the creditor" and "failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee." 11 U.S.C. § 707(a)(1), (3).[30] Though not listed as an enumerated factor in § 707(a), a debtor's bad faith in filing the case may also constitute cause for dismissal. *In re Norman*, 665 B.R. 26, 31 (Bankr. D.S.C. 2024); *In re Perch at Overbrook, LLC*, 664 B.R. 701, 704 (Bankr. D.S.C. 2024) (*citing Janvey v. Romero*, 883 F.3d 406, 412 (4th Cir. 2018)). "Whether to dismiss the case for cause under section 707(a) is within the Court's discretion, and in making such a decision, the Court should consider the totality of the circumstances." *Norman*, 665 B.R. at 31-32 (quoting *In re Del Zotto*, 609 B.R. 581, 587 (Bankr. D.S.C. 2018)). As the Fourth Circuit has noted, the bar for finding bad faith is a high one, and dismissal on those grounds is generally reserved for cases where the "petitioner has abused the provisions, purpose, or spirit of bankruptcy law." *Janvey*, 883 F.3d at 412 (*quoting In re Tamecki*, 229 F.3d 205, 207 (3d Cir. 2000)); *Perch at Overbrook*, 664 B.R. at 705 (noting that bad faith exists, for example, where the debtor has concealed or misrepresented assets and/or sources of income or shows an intention to avoid a large single debt through conduct akin to fraud, misconduct, or gross negligence).[31]

[30] Another enumerated basis for dismissal is "nonpayment of any fees or charges required under chapter 123 of title 28 . . . ." 11 U.S.C. § 707(a)(2). While not determinative here, the Court notes that Debtor has not paid certain fees required for adding creditors to the creditor matrix that were not previously disclosed. *See* ECF No. 72.

[31] As the Court set forth in *In re Del Zotto*, factors that courts have considered in determining whether good faith on the part of a debtor exists include: (1) the debtor reduced creditors to a single creditor in the months prior to the filing of the petition; (2) the debtor failed to make lifestyle adjustments or continued living an expansive or lavish lifestyle; (3) the debtor filed the case in response to a judgment pending litigation; (4) the debtor made no efforts to repay her debts; (5) the unfairness of the use of Chapter 7; (6) the debtor has sufficient resources to repay her debts; (7) the debtor is paying debts to insiders; (8) the schedules inflate expenses to disguise financial well-being; (9) the debtor transferred assets; (10) the debtor's over utilization of the protections of the Code to the unconscionable detriment of creditors; (11) the debtor employed a deliberate and persistent plan of evading a single major creditor; (12) the debtor failed to make candid and full disclosure; (13) the debts are modest in relation to assets and income; and (14) there are multiple bankruptcies or other procedural "gymnastics." 609 B.R. at 587.

The facts in the record support dismissal of Debtor's case. Here, Debtor has filed six cases since 2012—five in the last 10 years—and the Foreclosure Action for Debtor's Residence has been pending since 2017. Debtor's prior cases were all dismissed for either failure to make Chapter 13 plan payments, failure to file required information, or failure to file a confirmable plan. In her prior Chapter 13 cases, the total disbursements made to creditors were minimal, with Debtor's mortgage creditor receiving the equivalent of only a few months of payments during the past near decade she has been in default. The Court agrees with the UST that dismissal is in creditors' best interest because it will remove the protection of the automatic stay and allow creditors to pursue recovery under state law whereas continuation of the case would likely cause further delay that is prejudicial to creditors. Therefore, the Court finds that cause for dismissal of the case exist under § 707(a)(1).

Additionally, under the totality of the circumstances, the Court finds that cause for dismissal exists based on Debtor's bad faith in filing this case. The UST's evidence shows that Debtor filed this case days before a foreclosure sale for the Residence was scheduled to occur. Such filing was the latest in a series of bankruptcy cases that have delayed the Foreclosure Action multiple times since it commenced in 2017. While the Foreclosure Action has been pending, Debtor has made only a handful of ongoing mortgage payments and had multiple cases dismissed for nonpayment. These facts suggest Debtor is abusing the bankruptcy process to evade paying her creditors, particularly Carrington. As discussed above, Debtor has also acted in bad faith by failing to timely make candid and full disclosures. Altogether, the record reflects an abuse of the bankruptcy system that this Court will not allow to continue.

Dismissing this case outright without penalty, however, would leave the door open for further potential abuse. At the hearing on the Motion to Dismiss, the AUST requested that this case be dismissed with prejudice for a period of two years to give creditors sufficient time to pursue state law remedies without the delay of further bankruptcy filings. Under 11 U.S.C. § 349(a) and the Court's inherent power to sanction parties who abuse the litigation process in bad faith, the Court has the discretion to dismiss Debtor's case with prejudice for "cause." *See Noman*, 665 B.R. at 32 (citing *Law v. Siegel*, 571 U.S. 415, 134 (2014); *Kestell v. Kestell* (*In re Kestell*), 99 F.3d 146, 149 (4th Cir. 1996)); 11 U.S.C. § 105(a) (authorizing bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [Title 11]," including taking action "to prevent an abuse of process"); 11 U.S.C. § 349(a) (noting that dismissal of a bankruptcy case is without prejudice "[u]nless the court, for cause, orders otherwise").

The Fourth Circuit has recognized that a debtor may be barred from refiling other bankruptcy cases when there is evidence of bad faith. *In re Pressley*, 518 B.R. 867, 872 (Bankr. D.S.C. 2014) (citing *Colonial Auto Ctr. v. Tomlin (In re Tomlin)*, 105 F.3d 933, 937 (4th Cir. 1997)). "The general rule is that dismissal with prejudice is warranted when there is 'egregious behavior' that prejudices creditors and is abusive of the bankruptcy system." *Id.* (quoting *Tomlin*, 105 F.3d at 937). The duration of any prejudice period is also within the bankruptcy court's discretion, and a two-year bar to refiling has previously been imposed in cases where the debtor acted in bad faith. *See*, *e.g.*, *Norman*, 665 B.R. at 34-35 (dismissing a Chapter 7 debtor's case with prejudice for two years after the debtor omitted his assets and prior bankruptcy filing and made false statements about his finances under penalty of perjury); *In re Caldrello*, No. 24-20209-JJT, 2024 WL 1707481, at *3-4 (Bankr. D. Conn. Apr. 19, 2024) (finding that the debtor's bad faith and abuse of the bankruptcy process warranted dismissal with a two-year bar to refiling under any chapter in any district in order to "deter the proliferation of abusive, redundant, and wasteful litigation proceedings"); *Bulger*, 2021 WL 5991750, at *9 (determining dismissal with prejudice for two years pursuant to §§ 707(a) and 349(a) was appropriate given the debtor's pre- and post-petition bad faith conduct, which was evidenced in part by a lack of full and accurate disclosures).

Here, the Court finds that dismissal with a bar to refiling for two years is warranted under the circumstances. The record suggests that Debtor has engaged in bad faith conduct by omitting material information, making false statements under penalty of perjury, and repeatedly filing bankruptcy cases for the purpose of delaying Carrington and other creditors in recovering what Debtor owes them. If this case is dismissed without prejudice, Debtor may refile her case under Chapter 13 to invoke the automatic stay again, thereby circumventing the Court's denial of the Motion to Convert and requiring Carrington to yet again seek relief from stay to proceed with the Foreclosure Action. To ensure further prejudice does not result to creditors seeking to exercise their state law rights, dismissal of this case shall be with prejudice to prevent Debtor from filing another bankruptcy case for a period of two years.

IT IS THEREFORE, ORDERED that Debtor's Motion to Convert is denied and this case is hereby dismissed with prejudice for a period of two (2) years from the entry of this Order, during which time Debtor is barred from filing any petition for relief under any chapter of the Bankruptcy Code.

AND IT IS SO ORDERED.

FILED BY THE COURT
08/28/2025

Entered: 08/28/2025

Elisabetta G. M. Gasparini
US Bankruptcy Judge
District of South Carolina