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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:20-cv-05069-RGK Date December 2, 2020

Title *In Re: Antoine R. Chamoun*

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Joseph Remigio

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) Order Re: Appeal from the Order of the Bankruptcy Court Denying Debtor's Motion to Convert Case from Chapter 7 to Chapter 13

I. INTRODUCTION

Debtor Antoine Chamoun ("Debtor" and/or "Appellant") filed a Chapter 7 bankruptcy petition on June 26, 2018. Under Chapter 7, a trustee controls a debtor's nonexempt assets and may liquidate the assets to pay creditors. But under Chapter 13, the debtor retains possession of his property so long as he has a regular income to maintain a successful repayment plan. On March 6, 2020, Debtor filed a Motion to Convert from Chapter 7 to Chapter 13 ("Motion"). The bankruptcy court issued a tentative ruling denying Debtor's Motion on April 16, 2020 and adopted the tentative ruling as a final order on May 7, 2020.

Debtors now appeal the bankruptcy court's Order Denying Debtor's Motion to Convert Case from Chapter 7 to Chapter 13 ("Order").

For the following reasons, the Court **AFFIRMS** the bankruptcy court's Order.

II. JURISDICTIONAL BASIS

The Court has jurisdiction over this Appeal pursuant to 28 U.S.C. § 158(a).

III. FACTUAL BACKGROUND

Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on June 26, 2018. Bankruptcy Petition, ECF No. 15-2. David Seror ("Trustee") was appointed as the Chapter 7 trustee.

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In his Chapter 7 petition, Debtor stated that he lived at 16935 Blackhawk Street, Unit 9, Granada Hills, CA 91344 (the “Blackhawk Property”). Petition at 2, ECF No. 15-2. Yet, Debtor claimed a homestead exemption for another property—1706 Empty Saddle Road, Simi Valley, CA 93063 (the “Empty Saddle Property”). Schedule C, ECF No. 15-3. But Debtor “swore under penalty of perjury that he lives at the Blackhawk Property.” Tentative Ruling at 1, ECF No. 15-10. There were also discrepancies in Debtor’s filing about the rental income Debtor receives from the Empty Saddle Property, since he rents the property to his ex-wife, Patricia Chamoun (“Patricia”). *See* Tentative Ruling at 1.

On September 16, 2019, Trustee filed a complaint to avoid fraudulent transfers against Walid Chamoun (“Walid”), Debtor’s brother, and Patricia. Complaint, ECF No. 15-4. The complaint alleged that Debtor issued a deed of trust in favor of Walid to encumber the Empty Saddle Property, and that Debtor received no value in return for the deed. *Id.* The complaint also averred that Debtor and Patricia entered into a marital settlement agreement to avoid Debtor’s creditors. *Id.* In addition, Debtor allegedly did not receive the Empty Saddle Property’s fair market rental value by renting the property to Patricia. *Id.* Instead, he only charged her the rent necessary to cover the property’s mortgage payment. *Id.* Trustee eventually went to mediation with Walid and Patricia regarding the complaint. Tentative Ruling at 2. They could not come to a resolution. *Id.* Trustee thereafter filed an application to employ a broker to sell the Empty Saddle Property. *Id.* Debtor then filed the Motion. Motion, ECF No. 15-8. Trustee opposed the Motion. Opp’n, ECF No. 15-9. And Debtor filed a Reply on April 7, 2020. Reply, ECF No. 16-14. Nowhere in Debtor’s initial Motion or Reply does Debtor request an evidentiary hearing.

In her tentative ruling, Bankruptcy Judge Victoria Kaufman denied Debtor’s Motion on two grounds: 1) Debtor was ineligible to be a Chapter 13 Debtor because he had already received a discharge; and 2) Debtor’s conduct indicated bad faith. Tentative Ruling at 4–6. On May 7, 2020, Judge Kaufman adopted her tentative ruling as her final order. Order, ECF No. 15-11.

IV. QUESTIONS PRESENTED

1. Whether the bankruptcy court erred in denying Debtor’s motion for conversion from Chapter 7 to Chapter 13 bankruptcy.
2. Whether the bankruptcy erred in failing to consider Debtor’s status at the time of the motion rather than at the time of initial filing.
3. Whether the bankruptcy court erred in failing to provide Debtor with a full evidentiary hearing.

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4. Whether the bankruptcy court erred in failing to consider whether creditors would receive at least as much as they would in a Chapter 7 case in the converted Chapter 13 case.
5. Whether Debtor's discharge in a pending Chapter 7 case preclude him from converting to a Chapter 13.

V. STANDARD OF REVIEW

The district court reviews a bankruptcy court's conclusions of law de novo and reviews its factual findings for clear error. *Nichols v. Birdsell*, 491 F.3d 987, 989 (9th Cir. 2007). The bankruptcy court's factual findings regarding a determination of an exemption claim are reviewed under the "clearly erroneous" standard. *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 16 (B.A.P. 9th Cir. 2003).

An order regarding conversion is review for abuse of discretion. *In re Johnson*, 149 B.R. 158, 160 (9th Cir. BAP 1992) (citing *In re Klein/Ray Broadcasting*, 10 B.R. 509, 511 (9th Cir. BAP 1987)); see also *In re Rosson*, 545 F.3d 764, 771 (9th Cir. 2008). A court's decision whether to hold an evidentiary hearing is also reviewed for an abuse of discretion. *In re Clinton*, 449 B.R. 79, 84 (B.A.P. 9th Cir. 2011) (citing *Zurich Am. In s. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 939–40 (9th Cir. 2007)). "To determine whether the bankruptcy court has abused its discretion, we conduct a two-step inquiry: (1) we review de novo whether the bankruptcy court 'identified the correct legal rule to apply to the relief requested' and (2) if it did, whether the bankruptcy court's application of the legal standard was illogical, implausible or 'without support in inferences that may be drawn from the facts in the record.'" *In re Ellsworth*, 455 B.R. 904, 914 (B.A.P. 9th Cir. 2011) (citing *United States v. Hinkson*, 585 F.3d 1247, 1261–62 & n. 21 (9th Cir. 2009) (en banc)); see also *USAA Fed. Sav. Bank v. Thacker (In re Taylor)*, 599 F.3d 880, 887–88 (9th Cir. 2010).

VI. DISCUSSION

The bankruptcy court began its analysis with the Supreme Court's decision in *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 374–75 (2007), which held that there was no absolute right to conversion. A debtor may not convert when the debtor would be ineligible to be a debtor to the chapter which he or she wishes to convert, and a debtor forfeits his or right to convert from Chapter 7 to Chapter 13 if the debtor engages in bad faith conduct. See *id.* at 372–74. The parties do not contend that the bankruptcy court applied the wrong law.

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Title *In Re: Antoine R. Chamoun***A. Denial of Motion to Convert***1. Debtor's Chapter 13 Eligibility*

Under 11 U.S.C. § 1307(a), a debtor may convert his or her case at any time. But § 1307(c) permits a court to deny the conversion “for cause.” 11 U.S.C. § 1307(c). The Supreme Court explained that a court may deny conversion “for cause” to “prevent an abuse of process.” *Marrama*, 549 U.S. 365 at 375.

Here, the bankruptcy court denied Debtor’s Motion “for cause” because permitting conversion post-discharge, but prior to Trustee’s completing administration of the Chapter 7 estate, would result in an abuse of process. Tentative Ruling at 4–6. The court analogizes this case to *In re Santos*, 561 B.R. 825 (Bankr. C.D. Cal. 2017). *Id.* at 4. The *Santos* court denied a Chapter 7 to Chapter 13 conversion “for cause” because the conversion was initiated after the debtor had received a discharge, but while administration of the Chapter 7 estate was still occurring. *Santos*, 561 B.R. at 826. The court concluded that granting the conversion would permit the debtor to “receive[] all of the benefits of Chapter 7 without any of the burdens, because he regains his nonexempt property, and his debts have all been discharged.” *Id.* (quoting *In re Rigales*, 290 B.R. 401, 407 (Bankr. D.N.M. 2003)). Those same circumstances are present here because Debtor also sought to convert his case post-discharge, but while administration of his Chapter 7 estate was ongoing. Debtor would therefore receive “the benefits of a discharge without the attendant burdens, i.e., administration of Debtor’s estate.” Tentative Ruling at 5. Thus, permitting conversion at this time, would “amount to an abuse of process and lead to reconversion to a chapter 7 case under U.S.C. § 1307(c).” *Id.* at 5–6. The Court finds no issues with the bankruptcy court’s legal analysis.

2. Debtor's Bad Faith Conduct

The bankruptcy court also denied the Motion on other grounds: Debtor’s bad faith. Tentative Ruling at 6. First, the bankruptcy court found that the debtor provided inconsistent information in his schedules and statements. *Id.* For example, Debtor stated that he resided at the Blackhawk Property, even though he sought a homestead exemption at the Empty Saddle Property. *Id.* Debtor also claimed that Patricia paid the mortgage “on the home”—supposedly the Empty Saddle Property—so that he had no expenses. But Debtor does not explain how he resided at the Blackhawk Property with zero expenses. *Id.* Finally, Debtor initially indicated in his Schedule I that he receives \$1,118.48 in monthly income, yet in his Statement of Financial Affairs, he stated he had no income from 2016 until June 2018. *Id.*

Second, the timing of Debtor’s Motion to Convert suggests an attempt to frustrate Trustee’s efforts to liquidate the Empty Saddle Property. Debtor did not file the Motion until after the

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unsuccessful mediation between Trustee, Walid, and Patricia. *Id.* Coupled with Trustee’s allegation that Debtor had given Walid a deed of trust to encumber the Empty Saddle Property, the bankruptcy court found that Debtor’s conduct demonstrated bad faith.

Taking these facts together, the bankruptcy court did not err by concluding that Debtor had acted in bad faith.

3. *Conclusion*

The bankruptcy court gave two distinct and sufficient reasons for denying the Motion. The Court therefore affirms the bankruptcy court’s denial of Debtor’s Motion.

B. Failure to Consider Debtor’s Current Financial Status

Debtor argues that the bankruptcy court failed to consider Debtor’s current status when deciding the Motion. Debtor’s Opening Brief, ECF No. 14. The Court disagrees for numerous reasons.

First, the bankruptcy court did consider Debtor’s financial status when it denied the Motion—Debtor’s discharge was one of the main reasons for denial.

Second, it is unclear what part of Debtor’s current financial status Debtor believes the bankruptcy court overlooked. Debtor did not file any new statements regarding his income. And in Debtor’s response to the Motion, Debtor focuses on the fact that his total secured claims amount to \$643,557.14. Debtor does not explain what the bankruptcy court should have concluded from that information.¹

Finally, Debtor argues that the “court’s failure to make findings as to stability and regularity of debtor’s income precluded meaningful review” and cites to *In re Santiago-Monteverde*, 512 B.R. 432 (S.D.N.Y. June 27, 2014). Debtor’s Opening Brief at 5. But *Santiago-Monteverde* is not controlling authority. And even if it were, it is neither factually applicable to this case, nor does it stand for Debtor’s proposition. In *Santiago-Monteverde*, the bankruptcy court denied a motion to convert a case from Chapter 7 to Chapter 13 because, for one reason, it doubted that debtor’s income could support a Chapter 13 plan. *Id.* at 437. The district court ultimately held that this “sufficiency requirement” was

¹ It should be noted that the bankruptcy court did in fact consider the amount of Debtor’s unsecured and secured claims. *See* Tentative Ruling at 12, n.1. The bankruptcy court, however, denied the Motion on other grounds.

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not proper. *Id.* at 443. On remand, the bankruptcy court could only consider whether the debtor had a “regular and stable income to make payments under a Chapter 13 plan.” *Id.* at 445–46. If the bankruptcy court found that the debtor did not have a regular income, then it could deny the motion to convert. *Id.* at 446. Nowhere does the *Santiago-Monteverde* court require a finding on the stability and regularity of income to rule on a motion to convert. In fact, the district court noted other avenues to deny motions to convert such as “for cause” or bad faith. *See id.* at 437 (“[I]f a debtor’s chapter 13 case would be subject to dismissal or conversion by the bankruptcy court pursuant to section 1307(c) of the Bankruptcy Code, then a debtor’s right to convert may be forfeited [O]ne such cause recognized by bankruptcy courts is ‘bad faith’ on the debtor’s part.”). Here, the denial was not based on any sufficiency requirement—the bankruptcy court does not comment on Debtor’s income. The bankruptcy court denied the Motion “for cause” because allowing conversion at this time would result in an abuse of process, and because of Debtor’s bad faith.

Accordingly, the bankruptcy court did not commit reversible error.

C. Debtor’s Remaining Arguments

The crux of Debtor’s appeal stems from the bankruptcy court’s denial of the Motion. The Court now addresses the remaining issues presented by Debtor.

1. Debtor’s Lack of Evidentiary Hearing

A court’s decision whether to hold an evidentiary hearing is reviewed for an abuse of discretion. *In re Clinton*, 449 B.R. 79, 84 (B.A.P. 9th Cir. 2011) (citing *Zurich Am. In s. Co. v. Int’l Fibercom, Inc. (In re Int’l Fibercom, Inc.)*, 503 F.3d 933, 939–40 (9th Cir. 2007)). Here, Debtor did not request an evidentiary hearing regarding his financial status with the bankruptcy court. Nor does Debtor cite to any authority that would have required the bankruptcy court to conduct an evidentiary hearing had he requested one. Accordingly, the Court finds no error in Debtor’s lack of an evidentiary hearing.

2. Creditors’ Payment Under Chapter 7 and Chapter 13

Debtor contends that the bankruptcy court erred in failing to consider that Debtor’s creditors would receive the same amount under a Chapter 7 as they would have under a Chapter 13 case. But Debtor does not cite to any authority for this requirement. Even if this finding were required, Debtor does not indicate what evidence the bankruptcy court should have relied on to come to this conclusion. Debtor presents no additional information in his Motion or Opposition. Finally, the bankruptcy court gave two sufficient reasons for denying the Motion—permitting conversion at this time would result in an abuse of process and debtor’s bad faith conduct. There was therefore no need for the bankruptcy

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court to consider how much Debtor’s creditors would receive. Thus, the bankruptcy court did not commit reversible error.

3. *Discharge Precluding Conversion*

Finally, Debtor argues that the bankruptcy erred by holding that a discharge precluded conversion. However, that is not what the bankruptcy court held. The bankruptcy court prohibited the conversion “at this time.” Tentative Ruling at 12 (“Debtor is not eligible to be a chapter 13 debtor *at this time.*”). The Court does not further consider this issue.

VII. CONCLUSION

For the foregoing reasons, the Court **AFFIRMS** the bankruptcy court’s Order.

IT IS SO ORDERED.

Initials of Preparer

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cc: Bankruptcy Court case number: 1:18-bk-11620-VK
BAP case number: CC-20-1121