UNITED STATES BANKRUPTCY APPELLATE PANEL

FOR THE FIRST CIRCUIT

BAP NO. NH 23-025

Bk Case No. 23-10366-BAH

CHRISTINE MARIE ANSIN, DEBTOR

CHRISTINE MARIE ANSIN, Appellant

V.

ROBERT ANSIN, Appellee

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEW HAMPSHIRE

REPLY BRIEF OF APPELLANT

Christine Marie Ansin

March 7, 2024

For the Appellant:
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

APPELLANT'S REPLY ARGUMENT

I. REPLY TO APPELLEE'S CHALLENGES TO THE STATEMENT OF THE CASE

A. Exclusion of Documents in Appellant's Appendix:

Appellee alleges that certain documents included in the Appellant's Appendix are not in the record and should be disregarded or stricken (Appellee Brief[1].p.3) Specifically, Appellee challenges the inclusion in the record, and consideration of, the following documents:

1. Decree of Divorce (Appellant App'x. p. 9);
2. Final Decree on Petition for Divorce (Appellant App'x p. 10);
3. Final Order on Petition for Divorce (Appellant App'x p. 14).

Appellant states that the documents are in the record. In fact, those three documents were filed by Appellee as Exhibit C in his Adversary Complaint, *Robert Ansin v. Christine Marie Ansin* (Adv. Pro. 23-01011-BAH), which is part of the docket, and is appropriately included, in accordance with Fed.. R Bk. Pro. Rule 8009 (a) (4).

The Appellee provides no reason for the exclusion of these documents, other than that they are not in the record. "The record should contain the documentation necessary to afford the reviewing court a complete understanding of the case." *In re Byrne*[2], Bankruptcy Case 22-10117-MAF, BAP EB 23-004, 8 (B.A.P. 1st Cir. Oct 06, 2023) (quotes omitted) Under that standard, it is appropriate for the Panel to include these documents in the record.

B. Exclusion of Statements:

The Appellee challenges the inclusion of statements included in Appellant's Statement of The Case. (Appellee Brief, p. 3). Specifically, Appellee requests that the following statements be stricken, all of which appear on page 3 of Appellant's Brief:

[1] References to Appellee's Brief are to the brief Appellee refiled on February 23, 2024.
[2] Unpublished decision.

1. "In short, Ms. Ansin was left homeless, without health insurance, without money, a cell phone, or any other resources, and with only a used vehicle."
2. "In December of 2021, as required by the Decree, Ms. Ansin moved out of the marital home in Derry, New Hampshire, and went to Florida to stay with family. Her mental state was very precarious, and she was distraught to the point of being suicidal".
3. "While Ms. Ansin was in Florida, her family members and friends took property from the marital home, and also from a storage unit that the parties had in Londonderry, New Hampshire. Ms. Ansin is not aware of where most of the property went, nor who distributed it or received it."

Each of these challenged statements contains a reference to the Transcript, and each was made by counsel at the Hearing on October 4, 2023 as an Offer of Proof, with the Debtor present. While Appellant's counsel understands that Appellee disagrees with these Offers of Proof, they should not be stricken from the record.

II. REPLY TO THE APPELLEE'S ARGUMENT

A. Regardless of whether the Debtor requested an evidentiary hearing, the Debtor was in the Courtroom at Hearing and willing to testify, but the Judge failed to make the appropriate inquiries to determine her eligibility for Chapter 13, whether by examining her directly, or taking evidence through offers of proof.

Appellant agrees that a bankruptcy litigant is entitled to notice and a hearing, under 11 U.S.C. {102 (1)(A). But, based on *DeJounghe v. Mender*, 334. B.R. 760 (B.A.P. 1st Cir. 2005), Appellee argues that, if the Debtor wanted an evidentiary hearing, the Debtor had the affirmative duty to request one. (Appellee Br. p. 8). Appellee also goes on to note that a full evidentiary hearing is not always required, so long as the parties had a fair opportunity to offer relevant facts and arguments to the court and to confront their adversaries' submissions. *Prebor v. Collin (In re I Don't Trust),* 143 F. 3d 1,3 (1st Cir. 1998). While that is true, the New Hampshire Bankruptcy Court typically holds full evidentiary hearings on Motions to Convert under 706 (a) *In re Visconti*, 448 BR 617 (Bankr. D.N.H. 2011) *In re Borriello*, 2009 BNH 039, and makes specific findings

of fact as to each of the factors outlined in *Sullivan v. Solimini (In re Sullivan)*, 326 B.R. 204, 212 (1st Cir. BAP 2005)

The Appellee argues that the Debtor was required to request an evidentiary hearing[3]; and that her failure to do so bars her from raising the issue on Appeal (Appellee Brief pp. 8-11) Regardless of the type of hearing held, and whether or not the Debtor requested it, the Bankruptcy Court's limited inquiry into the facts[4], and misplaced reliance on a single factor in deciding the outcome, requires reversal and remand.

B. The Appellant was not required to file post-hearing Motions and Requests in order to Appeal the Court's Order.

The Appellee, without citing to authority, argues that the Appellant was required to file post-hearing Motions and/or Requests for Findings prior to filing her Notice of Appeal, and that such failure prevents the Appellant from appealing the Bankruptcy Court's findings. Although it's not clear, the Appellee seems to imply that the Appellant did not properly appeal from a final Order of the Court, in accordance; however, Appellee certified in his Brief that he acknowledged Appellant was appealing from a Final Order (Appellee Brief p. 1)

Appellee cites no authority whatever for his proposition that Appellant was required to file post-hearing Motions and/or Requests for Findings, in order to challenge the findings in the lower Court's Order; this argument is without legal basis and is superfluous.

C. Contrary to Appellee's assertion, the Appellant did offer evidence of her qualification as a Debtor under Chapter 13, per 11 U.S.C. {706 (a).

Contrary to Appellee's assertion, Appellant addressed at hearing evidence of her eligibility to be a Chapter 13 Debtor. As discussed in her Brief, Appellant acknowledges that in order to convert from Chapter 7 to Chapter 13, a Debtor must be eligible for Chapter 13, i.e. the Debtor must meet the requirements of 11 U.S.C. {109 (e) and {1307 (c). (Appellant's Brief, p. 7) The

[3] Without citing authority, Appellee also argues that the Appellant was required to respond in writing to his Objection to the Motion to Convert (Appellee Br. pp.13-14)

[4] See discussion, *infra* at p. 5, regarding the Court's admission on the record as to insufficient evidence at hearing.

former includes the Chapter 13 Debt limits and 'regular income" and the latter includes "good faith".

Although the Appellee claims she did not, Debtor did, in fact, attempt to address the issue of 'regular income' at hearing. Through counsel, the Debtor offered proof of her efforts to establish herself financially, having passed the national, New Hampshire, Massachusetts and Rhode Island real estate licensing examinations[5]. (Tr. P. 5) However, the Court changed focus and asked counsel about the "(a)(4)" Count[6] of the Adversary Complaint. Even though the Court did refocus on the issue of regular income, but again switched the discussion to that of "litigation tactic". (Tr. Pp. 5-6) Perhaps the Court did not adequately explore the facts concerning the Debtor's "regular income" in order to make a conclusion on that issue, the Debtor did offer the information via offers of proof.

And although the Court was required to make a finding of whether or not the Debtor had regular income, the Court was also required to conduct a fact-intensive inquiry as to the Debtor's "good faith", which it failed to do. *Marrama v. Citizens Bank of Massachusetts (In re Marrama)*, 313 BR 525, 529 *(*1st Cir. BAP 2004*) aff'd* 430 F. 3d 374 (1sr Cir. 2005), *aff'd* 549 U.S. 365, 372 127 S. Ct. 1105, 1110-11166 L. Ed. 2d 956 (2007)

D. Although Rule 7052 applies to Adversary Proceedings, and not specifically to a Motion to Convert, the Court's failure to make findings pursuant to *Marrama* on the Debtor's eligibility as a Debtor under 11 U.S.C. {706 (a) was not "harmless error".

Appellee cites to Fed. R. Bank. Pro. Rule 7052, and the Bankruptcy Court's non-compliance with that Rule, characterizing it as "harmless error". As far as Appellant's counsel is aware, Rule 7052, which requires the Court to make separate Findings of Fact and Rulings of Law technically applies only to Adversary Proceedings and certain Motions therein. However, appellant's counsel argues that, even if the Court was required to make specific findings on the issues of Debtor's eligibility as a Chapter 13 Debtor under {706(a), its failure to do so was not "harmless error". The Court was required to make a fact-intensive inquiry, and findings, as to (1)

[5] Debtor's then-current income as a Real Estate broker was not reflected on Schedule I.
[6] The Count brought under 11 U.S.C. {523 (a)(4).

whether the Debtor's debts were within the Chapter 13 income limits; (2) whether the Debtor had "regular income"; and (3) whether the Debtor's request for conversion was made in good faith *See* discussion *supra* at C, p. 3)

Even the Court itself acknowledged that it had "[in]sufficient evidence to grant the Motion" to Convert, and that was the specific reason for denying it. (*Tr.* P. 11)

CONCLUSION

The fundamental flaw in the Appellee's position is that he doesn't address the "totality of the circumstances" that the Court is required to consider when evaluating a Motion to Convert from Chapter 7 to 13, which is required by ***Marrama***, and is enumerated in ***Sullivan***. Appellee seeks to distract from this issue by raising various procedural issues, which he alleges constitute "harmless error." The Court failed to address the ***Sullivan*** factors, and (as argued in her brief), improperly shifted the burden of proof to the Debtor on the issue of bad faith.

Date: March 7,, 2024

Respectfully submitted,
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By her attorney,

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CERTIFICATE OF COMPLIANCE-RULE 8015(a)

The undersigned hereby certifies that the Appellant's brief complies with the type-volume limitation of Fed. R Bk Pro. Rule 8015(a)(7)(A) and (B):

The brief contains less than 15 pages/6500 words, excluding the sections that are exempted by Fed. R. Bk. Pro Rule 8015(a)(7)(B)(iii). This certificate is based upon the word-count function provided in Microsoft Word 365 software.

The brief complies with the typeface requirements of Fed. R. Bk. Pro. Rule 8015 (a)(5), (6), by using Times New Roman 12 point, a proportionally spaced typeface, in Microsoft Word version 365.

Date: March 7, 2024

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I provided a copy of the foregoing Appellant's Reply Brief to all interested parties, as follows:

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