FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. NH 23-025

Bankruptcy Case No. 23-10366-BAH

CHRISTINE MARIE ANSIN,
Debtor.

CHRISTINE MARIE ANSIN,
Appellant,

v.

ROBERT ANSIN,
Appellee.

Appeal from the United States Bankruptcy Court
for the District of New Hampshire
(Bruce A. Harwood, U.S. Bankruptcy Judge)

Before
Finkle, Chief U.S. Bankruptcy Appellate Panel Judge;
Lamoutte and Katz, U.S. Bankruptcy Appellate Panel Judges.

Darlene M. Daniele, Esq., on brief for Appellant.
William S. Gannon, Esq., on brief for Appellee.

June 12, 2024

Katz, U.S. Bankruptcy Appellate Panel Judge.

Christine Marie Ansin (the "Debtor") appeals from the bankruptcy court's order denying her motion to convert her chapter 7 case to one under chapter 13. For the reasons discussed below, we **AFFIRM**.

BACKGROUND[1]

I. State Court Contempt Orders

Prior to the Debtor's bankruptcy filing, the state court entered a final decree in a divorce action between the Debtor and her former spouse, Robert Ansin (the "Appellee"). Four months later, in March 2022, the state court entered an order finding the Debtor to be in contempt of the final decree due to her actions in removing (or causing to be removed) virtually all the contents of the former marital home and a storage unit—all of which had been awarded to the Appellee—and selling or giving the property away. The state court remarked that it was "one of the more egregious instances of willful contempt [it] ha[d] seen." In a separate order entered in October 2022, the state court ordered the Debtor to pay the Appellee $195,955.49. The Debtor did not appeal either order (collectively, the "Contempt Orders").

II. Commencement of the Bankruptcy Case

The Debtor filed a chapter 7 bankruptcy petition in July 2023. On her bankruptcy schedules (as amended), the Debtor listed about $30,000 in assets and liabilities totaling about $290,000 (all of which were unsecured). She listed the Appellee as a creditor with a disputed unsecured claim in the amount of $195,955.49 arising from the Contempt Orders.

[1] All references to specific statutory sections are to the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532.

On her Schedule I, the Debtor indicated she was employed as a "[r]ealtor." She did not list any monthly income from wages, salary, or commissions, but listed $983 in net income "from operating a business [or] profession" and $4,000 from "rental assistance" and "family contribut[ions]" once the rental assistance ended. The Debtor did not attach a statement of the "monthly net income" from her operation of a business as required by subparagraph 8a of Schedule I.[2] Consistent with her Schedule I, the Debtor listed no monthly wages, salary, or commissions on her Chapter 7 Statement of Current Income (as amended) but listed $983 in "[n]et income from operating a business [or] profession" and $4,000 in "amounts from any source which are regularly paid for household expenses." In answering the question as to whether the Debtor expected an increase or decrease in income within the year, the Debtor stated, "Debtor just started work as a licensed realtor in January of 2023, and expects her income to increase." The Debtor listed monthly expenses of $4,964 on her Schedule J, leaving less than $19 in monthly net income.

In August 2023, the Appellee filed a two-count complaint against the Debtor seeking a determination that the debt owed to him pursuant to the Contempt Orders was excepted from discharge under § 523(a)(4) (as a debt for embezzlement or larceny) and/or § 523(a)(6) (as a debt for willful and malicious injury).

[2] According to the Appellee, the Debtor produced documentation at the § 341 creditors' meeting reflecting she had received $6,655 in real estate commissions over a nine-month period. It is unclear whether the $983 reflected on Schedule I as monthly income from "operating a business" relates to real estate commissions.

III. Debtor's Motion to Convert to Chapter 13

A. The Motion to Convert

Shortly after the Appellee filed his nondischargeability complaint, the Debtor filed a one-page motion seeking to convert her chapter 7 case to one under chapter 13 pursuant to § 706(a) (the "Motion to Convert"). As grounds, she asserted that, because the Appellee's claim totaled more than 68% of her unsecured, nonpriority claims, "[c]hapter 7 would be of limited benefit to her" if the debt were determined to be nondischargeable. Accordingly, she was seeking to convert her case to one under chapter 13 "to obtain a discharge" of the debt under § 1328.[3] The Debtor did not make any assertions regarding her income, her eligibility to be a chapter 13 debtor, or how she intended to fund a chapter 13 plan.

B. Appellee's Objection to Motion to Convert

The Appellee objected to the Motion to Convert on several grounds. First, he argued that conversion should be denied as the Debtor was ineligible to be a chapter 13 debtor because she did not have "regular income" as required by § 109(e). The Debtor, the Appellee asserted, had testified at the § 341 creditors' meeting that most of her income came from contributions/gifts from unnamed friends. Gifts and monies received on an "as needed" basis, the Appellee contended, are neither "stable" nor "regular" for purposes of § 109(e). Further, the Appellee argued, because the Debtor refused to provide any information regarding the source(s) of those gifts, the court was precluded from determining whether they were sufficiently stable or regular.

---

[3] "The discharge available in chapter 13 is broader than the chapter 7 discharge in that certain debts not dischargeable in chapter 7 are dischargeable in chapter 13" under § 1328, including debts for "willful and malicious injury" under § 523(a)(6). Collier on Bankruptcy ¶ 1328.02[2] (Richard Levin & Henry J. Sommer eds., 16th ed.). However, debts for "embezzlement or larceny"—the basis for the second count in the Appellee's complaint—are nondischargeable in both chapter 7 and chapter 13 cases. See 11 U.S.C. §§ 523(a)(4) and 1328(a)(2).

The Appellee also maintained that the $6,655 the Debtor allegedly earned over a nine-month period from real estate commissions did not constitute "regular income" for eligibility purposes under § 109(e).

Second, the Appellee asserted that the Debtor's schedules reflected she had insufficient income to fund a confirmable plan of reorganization. Even if the Debtor were permitted to include "unsubstantiated gifts from unidentified 'friends'" as "regular income," the Appellee argued, the Debtor's schedules reflected less than $19 per month in net disposable income, which was insufficient to fund a plan that would pay creditors a meaningful dividend. He explained: "[S]preading the Debtor's net disposable income of $18.45 per Schedule I for 60 months or a total of $1,107 over $294,615 in unsecured claims will result in a dividend of three-tenths of 1%, which is virtually indistinguishable from a financial perspective."

Third, the Appellee contended that the bankruptcy court should deny conversion as the Debtor acted "dishonestly and in bad faith" before the petition date, as evidenced by the state court's uncontested findings in the Contempt Orders, and during the chapter 7 case by, among other things, refusing to provide any information regarding the source(s) of the income identified on her Schedule I or the individuals who had taken the Appellee's property. "Clearly, . . . the Debtor has no remorse or an honest and sincere intention to pay [the Appellee] or help him recover his property," the Appellee asserted.

Finally, the Appellee argued that the Debtor was only seeking conversion to try to discharge the debt owed to the Appellee, which would otherwise be nondischargeable under chapter 7. This motivation, the Appellee argued, was "improper" as the Debtor sought only to "maximize the benefit of the bankruptcy case to her" and had no "sincere intention to pay creditors a . . . meaningful dividend."

C. Amended Schedules A/B and C

One week after the Appellee filed his objection to the Motion to Convert, the Debtor filed an amended Schedule A/B to include as an asset a "potential real estate commission for sale of new construction" valued at $12,178.60. The Debtor did not, however, amend her Schedule I to include any real estate commissions as income or to provide additional information about her purported income despite the Appellee's allegations in his objection regarding her lack of sufficiently stable and regular income.

D. Order Denying Conversion

The bankruptcy court conducted a hearing on the Motion to Convert on October 4, 2023. Both the Debtor and her counsel were present at the hearing. At the outset, the bankruptcy court acknowledged the Debtor was seeking to convert her chapter 7 case to one under chapter 13 to try to discharge the debt owed to the Appellee under the broader chapter 13 discharge provisions. The court stressed, however, that while a debt for willful and malicious injury under § 523(a)(6) would be dischargeable in a chapter 13 case, the Appellee's complaint also raised—based on the same conduct—a nondischargeability claim under § 523(a)(4) as a debt for larceny or embezzlement, which would *not* be dischargeable in chapter 13. Accordingly, even if the case were converted to one under chapter 13, the court observed, the Debtor would still have to litigate the § 523(a)(4) count and the debt could ultimately be held nondischargeable under that provision (potentially due to the preclusive effect of the Contempt Orders). Therefore, the court stated, it was unlikely conversion to chapter 13 would accomplish what the Debtor was seeking, i.e., a discharge of the debt owed to the Appellee.

In response, the Debtor's counsel acknowledged that the § 523(a)(4) count would still need to be litigated in a chapter 13 case but insisted the Debtor had a better chance of

successfully defending against that count "based on [the Debtor's] state of mind" at the time the relevant events occurred. Emphasizing the Debtor's efforts to overcome her mental health struggles after the divorce, Debtor's counsel asserted that the Debtor's goal was to "get a fresh start" and she was making strides to "rebuild her life." To that end, counsel explained, the Debtor had recently passed the national real estate exam and was now licensed as a realtor in New Hampshire, Massachusetts, and Rhode Island. Counsel, however, made no representations about the Debtor's current or projected income. Instead, Debtor's counsel stressed that because the debt owed to the Appellee represented 68% of the Debtor's unsecured debt, she would be unable to "rehabilitate herself" if that debt were deemed nondischargeable.

The bankruptcy court reiterated that the debt could still be deemed nondischargeable in a chapter 13 case and expressed skepticism regarding the regularity of the Debtor's income, stating: "**[L]ots of Chapter 13 debtors in this court and other courts . . . are real estate brokers and their income [is] not . . . regular from the standpoint of . . . bi-weekly payments . . . [and] can barely be considered regular in terms of . . . being eligible for a Chapter 13. So I'm not sure about that**." (emphasis added). In response, Debtor's counsel agreed with the court's observation, without offering any argument or explanation about the regularity of the Debtor's income, either from employment as a realtor or from other sources, and without requesting that the court permit the Debtor to testify regarding her income.

When the bankruptcy court expressed further concern that the Motion to Convert seemed to be "more of a litigation tactic" in the adversary proceeding "than anything else," Debtor's counsel represented that conversion was the "best way" for the Debtor to obtain a "fresh start" while "providing a benefit to the creditors, even if it's a small one . . . ." Debtor's counsel insisted that the Debtor had "presented herself in good faith" and that the Debtor had "a plan to

reduce her expenses and increase her income" and wanted an opportunity to present a feasible plan (although no elaboration on these assertions was provided). Citing Cabral v. Shamban (In re Cabral), 285 B.R. 563 (B.A.P. 1st Cir. 2002), Debtor's counsel argued that there were no "extreme circumstances" warranting denial of her "one-time right" to convert her case.

After hearing from the parties, the bankruptcy court denied the Motion to Convert:

> [T]aking all of [what the Debtor said] as true for the purposes of this motion, I still think that on balance the motion in the context of the adversary proceeding and the candid admission that [the] motivation for converting is to get the benefit of a broader discharge under Section 1328 really doesn't get us past the threshold for converting the case . . . .
>
> . . . [T]o me, the issues . . . overlap[] almost to the point of eclipsing each other from the standpoint of what the debtor needs to prove in order to . . . succeed in . . . the complaint. And so I don't know that the benefit to the debtor is sufficiently manifest by converting in the context of the adversary proceeding. **And I don't know that the debtor is really in a position to propose a plan, . . . notwithstanding her . . . efforts to get her life back on track and [reduce] expenses and all of that**.
>
> But I really think in the overall context of this matter that it's hard for me to get past . . . that [it] really is a litigation tactic. And I'm not saying that it's an inappropriate litigation tactic. I'm just saying that I don't think that it carries the burden sufficient to provide cause to convert the case.
>
> So for those reasons, the motion to convert the case to a Chapter 13 is denied. The debtor can still get a fresh start [in chapter 7]. . . . **But . . . at this point in the case,** there's [in]sufficient grounds to grant the motion, so that's why I'm denying it.

(emphasis added).

After the hearing, the bankruptcy court entered an order denying the Motion to Convert "for the reasons stated on the record" (the "Order Denying Conversion").

E. The Appeal

The Debtor timely appealed the Order Denying Conversion. She did not seek a stay pending appeal from either the bankruptcy court or the BAP. She did, however, file a motion with the bankruptcy court seeking to delay the entry of a discharge and the closing of the

bankruptcy case pending the outcome of her appeal, which the bankruptcy court granted. The chapter 7 trustee has since filed a report of no distribution in the bankruptcy case.

POSITIONS OF THE PARTIES

The Debtor advances several arguments on appeal: (1) the bankruptcy court was required, but failed, to conduct an evidentiary hearing on her Motion to Convert; (2) the bankruptcy court's decision was "fatally flawed" because the court did not make any factual findings as to the Debtor's "bad faith" or "extraordinary" or "atypical" conduct as required to justify denial of a motion to convert under the standard set forth in Marrama v. Citizens Bank of Mass., 549 U.S. 365 (2007), or apply the factors for evaluating good faith set forth in Sullivan v. Solimini (In re Sullivan), 326 B.R. 204 (B.A.P. 1st Cir. 2005); and (3) the bankruptcy court abused its discretion by (a) concluding that the Debtor's goal of trying to discharge the debt owed to the Appellee under the broader chapter 13 discharge provisions was "improper" and denying conversion solely on that basis; and (b) "impermissibly shifting the burden to the Debtor on the issue of bad faith."

The Appellee counters that: (1) in the absence of an "affirmative request" by the Debtor for an evidentiary hearing on the Motion to Convert, the bankruptcy court was not required to conduct one; (2) the bankruptcy court was not required to find the Debtor had acted in "bad faith" to justify its denial of the Motion to Convert, as the Debtor's failure to demonstrate her eligibility to be a chapter 13 debtor was a sufficient basis for denying the motion; and (3) while an attempt to discharge a debt in a chapter 13 case that would be nondischargeable in a chapter 7 case "is not per se bad faith," the record reflects the Motion to Convert was "part of an effort to avoid paying Appellee and other creditors a meaningful dividend," which warranted denial of the Motion to Convert under relevant legal authority.

APPELLATE JURISDICTION

We have jurisdiction to hear appeals from final orders of the bankruptcy court. See 28 U.S.C. § 158(a)-(c); see also Ritzen Grp., Inc. v. Jackson Masonry, LLC, 589 U.S. 35, 39 (2020). A bankruptcy court order denying a debtor's motion to convert a chapter 7 case to a chapter 13 case under § 706(a) is a final, appealable order. See Marrama v. Citizens Bank of Mass. (In re Marrama), 313 B.R. 525, 529 (B.A.P. 1st Cir. 2004), aff'd, 430 F.3d 474 (1st Cir. 2005), aff'd, 549 U.S. 365 (2007); see also In re Cabral, 285 B.R. at 571. Therefore, we have jurisdiction to review the Order Denying Conversion.

STANDARD OF REVIEW

We review the bankruptcy court's findings of fact for clear error and its conclusions of law de novo. Jeffrey P. White & Assocs., P.C. v. Fessenden (In re Wheaton), 547 B.R. 490, 496 (B.A.P. 1st Cir. 2016) (citation omitted). Typically, appellate courts review an order denying a motion to convert a chapter 7 petition under § 706(a) for an abuse of discretion. See In re Culp, 681 F. App'x 140, 143 n.3 (3d Cir. 2017) (citing Marrama, 549 U.S. at 375); Silver v. PHH Mortg. Corp. (In re Silver), BAP No. CC-22-1101-LFT, 2022 WL 17848965, at *3 (B.A.P. 9th Cir. Dec. 19, 2022), aff'd, No. 23-60004, 2024 WL 838698 (9th Cir. Feb. 28, 2024); Dale v. Butler, No. 7:19-CV-254-BR, 2020 WL 6817059, at *7 (E.D.N.C. Nov. 18, 2020), aff'd, 857 F. App'x 150 (4th Cir. 2021). "A court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact." Zizza v. Pappalardo (In re Zizza), 500 B.R. 288, 292 (B.A.P. 1st Cir. 2013) (citation and internal quotation marks omitted).

DISCUSSION

I. The Legal Framework

The Debtor sought to convert her chapter 7 case to one under chapter 13 pursuant to § 706(a). This section allows a debtor to convert a case from chapter 7 to another chapter "at any time" if the case has not previously been converted. See 11 U.S.C. § 706(a). The right to convert under § 706(a) is not absolute, however; rather, it is subject to § 706(d), which "expressly condition[s]" a debtor's right to convert on her "ability to qualify as a 'debtor' under Chapter 13." Marrama, 549 U.S. at 372; see also 11 U.S.C. § 706(d) ("Notwithstanding any other provision 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.").

To qualify as a debtor under chapter 13, the debtor must be an "individual with regular income" and cannot exceed certain debt limits. See 11 U.S.C. § 109(e). If a chapter 7 debtor seeking to convert her case to one under chapter 13 fails to meet either of these statutory eligibility requirements, denial of conversion is warranted. See Santiago-Monteverde v. Pereira (In re Santiago-Monteverde), 512 B.R. 432, 445-46 (S.D.N.Y. 2014) ("If the bankruptcy court concludes that there is not sufficiently regular and stable income to make payments under a Chapter 13 plan, then it may deny conversion on that basis alone."); see also Chan v. Frazer, No. 21-16462, 2023 WL 2674635 (9th Cir. Mar. 29, 2023) (affirming bankruptcy court's denial of motion to convert to chapter 13 because debtor failed to meet the statutory debt limits under § 109(e)).[4]

[4] Because a debtor's failure to meet § 109(e)'s eligibility requirements warrants denial of a motion to convert under § 706(a) solely for that reason, we are not swayed by the Debtor's argument that the bankruptcy court's decision was "fatally flawed" because it made no "bad faith" findings or impermissibly shifted the burden to the Debtor to show good faith. Although the Supreme Court recognizes bad faith as a basis for denying conversion under § 706(a), the court is not required to find bad faith to deny a motion to convert. See In re Santos, 561 B.R. 825, 829 (Bankr. C.D. Cal. 2017).

In seeking conversion from chapter 7 under § 706(a), the debtor "bears the initial burden of making a *prima facie* case for conversion by demonstrating that there has been no prior conversion of the case, that the [d]ebtor is eligible for relief under . . . § 109, and that conversion is to achieve a purpose permitted under the proposed chapter." In re Bradley, 649 B.R. 693, 701 (Bankr. D.S.C. 2023) (citations omitted). The burden then shifts to the objecting party to demonstrate by a preponderance of the evidence why the debtor should not be permitted to convert the case to chapter 13. Id. Evidentiary hearings for motions to convert under § 706(a) are not required where, as here, the party seeking conversion does not request an evidentiary hearing and does not contest the core facts upon which the objection to conversion is based. See Marrama, 430 F.3d at 483 (ruling bankruptcy court did not err in denying conversion to chapter 13 under § 706(a) without an evidentiary hearing where debtor neither requested an evidentiary hearing nor identified "what additional material evidence could or would have been adduced at such a hearing") (citation omitted).[5]

II. The Basis for Bankruptcy Court's Ruling

To properly review the Order Denying Conversion, we must first determine the basis for the bankruptcy court's ruling. The parties disagree on that score. The Debtor insists that the sole basis for the court's decision was her asserted goal to try to discharge the debt owed to the Appellee under the broader chapter 13 discharge provisions. The Appellee counters that the

[5] Although the Debtor insists the bankruptcy court was required to conduct an evidentiary hearing on the Motion to Convert, the record reflects that no such hearing was requested, nor was one necessary, as the Debtor had ample notice and opportunity to refute the allegations asserted in the Appellee's objection but failed to respond "with allegations or evidence that contested the facts on which the [Appellee] relied." See Woodberry v. Vara (In re Woodberry), No. 20-1612, 2021 WL 2660488, at *3 (6th Cir. Mar. 18, 2021) (upholding denial of motion to convert "based on the papers and the non-evidentiary hearing" where debtor neither requested an evidentiary hearing nor responded to the objections to conversion "with allegations or evidence that contested the facts on which the [objecting parties] relied").

bankruptcy court did not rely on just that one factor but also concluded that the Debtor had not sustained her burden of proving she was eligible to be a chapter 13 debtor.

The record and the transcript of the October 4, 2023 hearing resolve this debate. In his objection to the Motion to Convert, the Appellee thoroughly discussed multiple grounds for denying conversion, beginning with the Debtor's ineligibility to be a chapter 13 debtor due to her lack of regular income and inability to fund a plan. Therefore, the issue of the Debtor's eligibility was squarely before the court at the hearing. And, while the bankruptcy court's statements at the hearing focused primarily on the Debtor's motivation in seeking conversion, it also expressed concerns regarding the Debtor's eligibility for chapter 13, questioning whether a realtor's income could ever be considered "regular income" and expressing doubt regarding the Debtor's ability to propose a feasible chapter 13 plan "at this point in the case." It follows, therefore, that these eligibility concerns—as well as the Debtor's motivation in seeking conversion—supported the court's decision.

Having ascertained the basis for the bankruptcy court's ruling, we now consider whether the bankruptcy court abused its discretion in denying the Motion to Convert based on these factors.

III. Whether the Bankruptcy Court Abused Its Discretion in Denying the Motion to Convert

A. Chapter 13 Eligibility Requirements Under § 109(e)

As discussed above, to convert her chapter 7 case to one under chapter 13, the Debtor was required to make a prima facie showing that she was eligible to be a debtor under chapter 13. See In re Bradley, 649 B.R. at 701. Section 109(e) mandates that "[o]nly an individual with

regular income" can qualify as a chapter 13 debtor,[6] and § 101(30) defines an "individual with regular income" as one "whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13." 11 U.S.C. §§ 109(e), 101(30). "[T]he burden of establishing the regularity and stability of income is on the debtor." Culp v. Stanziale (In re Culp), 545 B.R. 827, 840 (D. Del. 2016) (citations omitted), aff'd, 681 F. App'x 140 (3d Cir. 2017). Thus, the debtor "bears the burden of proof in establishing the ability to make the payments needed under the plan and must provide a sufficient factual basis for the court to determine both the regularity and stability of the income." Singer Asset Fin. Co. v. Mullins (In re Mullins), 360 B.R. 493, 499 (Bankr. W.D. Va. 2007) (citation omitted); see also Culp v. Stanziale, 545 B.R. at 840 ("There must be some factual basis for the court to determine the regularity and stability of the debtor's income.") (citation and internal quotation marks omitted). "[W]here a debtor fails to produce evidence of the existence of a regular income, [the debtor] does not qualify for Chapter 13 relief under . . . § 109(e)." Culp v. Stanziale, 545 B.R. at 840 (alterations in original) (citation omitted).

B. Waiver

Before evaluating whether the Debtor established her eligibility to be a chapter 13 debtor under § 109(e), we consider, as a threshold matter, whether the Debtor has waived this issue on appeal by failing to raise any arguments regarding her purported income in her opening brief. Although the Debtor acknowledges in her opening brief that she had the initial burden to show she met the eligibility requirements of § 109(e), she does not allege or demonstrate that those requirements were satisfied here. Only after the Appellee highlighted in his brief that the Debtor

[6] While § 109(e) also imposes certain debt limits, there have been no allegations that the Debtor's debts exceeded the statutory limits. Therefore, that issue is not before us in this appeal.

had failed to meet her burden of establishing regular income in the proceedings below did the Debtor attempt to address the income issue in her reply brief, contending she tried to discuss her income at the hearing but the court "changed focus." The Debtor's failure to develop any argument regarding her income in her opening brief may constitute a waiver of any argument that she met § 109(e)'s eligibility requirements. See Dev. Specialists, Inc. v. Kaplan (In re Irving Tanning Co.), 876 F.3d 384, 391 n.7 (1st Cir. 2017) ("[A]rguments developed for the first time in a reply brief are waived.") (quoting Small Justice LLC v. Xcentric Ventures LLC, 873 F.3d 313 (1st Cir. 2017)); see also Nat'l Promoters & Servs., Inc. v. Multinational Life Ins. Co. (In re Nat'l Promoters & Servs., Inc.), BAP No. PR 21-016, 2022 WL 3023686, at *6 n.3 (B.A.P. 1st Cir. July 28, 2022). Even if the issue is not waived, however, the record supports a conclusion that the Debtor did not meet her burden of demonstrating she was qualified to be a chapter 13 debtor under § 109(e), as discussed below.

C. The Debtor Failed to Make a Prima Facie Case for Conversion By Showing She Was Eligible to Be a Chapter 13 Debtor Under § 109(e)

Here, the record reflects the Debtor failed to make a prima facie showing that she had sufficiently stable and regular income as required to be a chapter 13 debtor under § 109(e). In her Motion to Convert, the Debtor did not allege she had sufficiently stable and regular income from which she could make the payments needed under a chapter 13 plan as required by § 109(e). The substance of the Motion to Convert was only six sentences long, made no assertions at all regarding the Debtor's income or ability to fund a plan, cited no law other than a general reference to § 706(a), and contained no affidavits or supporting documents. The Motion to Convert, therefore, lacked any information from which the bankruptcy court could have made findings about the regularity or stability of her income.

The Debtor's bankruptcy schedules were "just as vague." See In re Culp, 681 F. App'x at 143 (looking at bankruptcy schedules to determine whether debtor had regular income under § 109(e) for purposes of conversion where no other evidence was proffered). The Debtor's Schedule I, for example, disclosed her employment as a realtor, but did not list any monthly wages, salary, or commissions from that employment. Additionally, although the Debtor's Schedule I listed $983 in monthly income from "operating a business," the Debtor provided no other information regarding that income—not even the supporting statement "showing . . . total monthly net income" for the business as required by the schedule—from which the court could assess the source of the income or the regularity of it. Furthermore, the Debtor's statement that she "expects her income to increase" is insufficient. See In re Harmon, No. 18-10579, 2022 WL 20451952, at *5 (Bankr. E.D. La. June 9, 2022) (concluding debtor did not establish chapter 13 eligibility in the absence of "a demonstrated track record of earnings as a real estate broker").

Aside from income as a realtor, it is noteworthy that most of the Debtor's income was from unsubstantiated "family contribut[ions]." The Debtor's schedules, however, contained no additional information regarding the source(s) of those contributions and the record reflects that, when questioned at the creditors' meeting, the Debtor staunchly refused to identify her benefactors or to submit any documentation evidencing those gifts. "Generally, gratuitous payments by family members and other third parties have not been held to constitute 'sufficiently stable and regular income'" unless "indicia of stability or regularity are present; for instance, where the contributor . . . has previously demonstrated willingness to assist the debtor[] or possesses a substantial interest in the debtor's successful execution of [a] plan . . . ." In re Santiago-Monteverde, 512 B.R. at 442 (citations omitted); see also Marti v. Macco (In re Jones),

No. 98 CV 6205, 1999 WL 1288951, at *4 (E.D.N.Y. Nov. 8, 1999) (stating that "[g]ratuitous payments from third parties 'motivated solely by generosity' do not typically constitute 'regular income'") (citation omitted).

Not only were the Motion to Convert and the Debtor's schedules devoid of any information regarding the regularity of her purported income, the record also reflects the Debtor did not present any allegations, argument, or evidence about her income at the hearing on the Motion to Convert except to say, without elaborating, that she "had a plan to reduce her expenses and increase her income" and that she had recently passed certain real estate licensing exams. The hearing transcript reflects, however, that no proffers were made to show the Debtor earned any income, let alone sufficiently stable and regular income, as a realtor or from any other source. As stated previously, the Debtor had the initial burden to show she had sufficiently stable and regular income; her purported "proffers" at the hearing regarding her newly acquired real estate licenses, with no allegations or evidence that she earned "regular income," did not satisfy that burden. See In re Harmon, 2022 WL 20451952, at *5.

Accordingly, there was nothing in the record from which the bankruptcy court could find that the Debtor had sufficiently stable and regular income to make payments under a chapter 13 plan as required by § 109(e). As the Debtor failed to meet her threshold burden of demonstrating she was qualified to be a chapter 13 debtor, denial of the Motion to Convert was warranted on this basis alone. See In re Santiago-Monteverde, 512 B.R. at 445-46; Haynes v. Yoo (In re Haynes), No. CV 15-04236-AB, 2018 WL 317808, at *3-4 (C.D. Cal. Jan. 5, 2018) (affirming denial of motion to convert where debtor did not show she had regular income). Therefore, our

analysis ends here, and we need not address whether the bankruptcy court erred in considering the Debtor's motivation in filing the Motion to Convert when denying the motion.[7]

CONCLUSION

The bankruptcy court's denial of the Debtor's request to convert her case to one under chapter 13 is amply supported by the record and relevant legal authority, and we find no abuse of discretion by the bankruptcy court in denying the Motion to Convert. Consequently, we **AFFIRM** the Order Denying Conversion.

[7] Although we need not address the Debtor's motivation in filing the Motion to Convert, we make a few points on that issue as it was an area of concern for the bankruptcy court. As the court recognized, a debtor's desire to convert a chapter 7 case to one under chapter 13 to take advantage of the broader discharge provisions under § 1328 is not impermissible per se. See, e.g., Collier on Bankruptcy ¶ 706.02[1] (recognizing that such a motivation, "by itself, is not an impermissible manipulation of the Code"). It can, however, warrant denial of a motion to convert when "combined with other factors that show an overall effort to avoid paying creditors." In re Nisbet, No. 98-11670-MWV, 1999 WL 33457766, at *2 (Bankr. D.N.H. Nov. 1, 1999) (citation omitted). Some courts have found that, where the record shows it is unlikely the debtor will be able to propose a feasible chapter 13 plan, the debtor's motion to convert is not motivated by a genuine desire to repay creditors and denial of the conversion motion is warranted. See, e.g., In re McNallen, 197 B.R. 215, 220 (Bankr. E.D. Va. 1995) (denying motion to convert chapter 7 case under § 706(a) where record reflected debtor had no legitimate prospect for reorganization and "no genuine motivation to repay his creditors").