

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
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In re )  
)  
JAMES B. SIMMONS, and ) Case No. 6:11-bk-09983-KSJ  
CYNTHIA C. SIMMONS ) Chapter 7  
)  
Debtors. )  
\_\_\_\_\_ )

**ORDER DENYING DEBTORS'  
MOTIONS TO VACATE DISCHARGE AND TO RECONVERT CASE**

Debtors, James and Cynthia Simmons, filed a Motion to Vacate Discharge<sup>1</sup> and a Notice of Reconversion<sup>2</sup> to Chapter 13 in an effort to convert their case back to a Chapter 13 case in an apparent effort to reassert control over a statutory “bad faith” insurance claim asserted under § 624.155 of the Florida Statutes (“Bad Faith Claim”) against State Farm Insurance Company (“State Farm”). In a separate Memorandum Opinion, entered concurrently with this Order, the Court concluded that the Bad Faith Claim is property of the estate and approved the Trustee’s settlement of that claim.<sup>3</sup> The Court denies the Debtor’s requests to convert back to Chapter 13.<sup>4</sup>

First, the Debtors have not identified a provision of the Code that would permit the Court to vacate their discharge. Section 727 permits the Chapter 7 Trustee, a creditor, or the United States Trustee to seek revocation of a debtor’s discharge, but only in certain limited situations.<sup>5</sup> Debtors have provided no legitimate reason or argument as to why they could revoke their

<sup>1</sup> Doc. No. 167.

<sup>2</sup> Doc. No. 168. Debtors’ characterization of this motion as a “notice” is improper; as discussed, Debtors cannot voluntarily reconvert back to Chapter 13 from Chapter 7. 11 U.S.C. 706(a). The Court will treat this filing as a motion to seek reconversion to Chapter 13.

<sup>3</sup> Doc. No. 183.

<sup>4</sup> State Farm filed a response to the Debtors’ two motions. (Doc. No. 173.)

<sup>5</sup> 11 U.S.C. § 727(d), (e).

discharge voluntarily. Creditors likely have written off discharged debt or taken other actions in reliance of the Debtors' discharge since it was granted on February 3, 2014.<sup>6</sup> Even if the Court were permitted to vacate the discharge in this instance, the Debtors have not offered any reason warranting such action.

Second, the Debtors' are not entitled to reconvert to Chapter 13. After converting to Chapter 7 from a Chapter 13 case, a debtor is not free to convert back to a Chapter 13 upon his or her own discretion. Section 706(a) provides that a debtor may only convert a case from Chapter 7 to Chapter 13 "if the case has not been converted under section . . . 1307 of this title."<sup>7</sup> Many courts interpret this provision as an absolute rule preventing debtors from reconverting to Chapter 13 after they have already converted to a Chapter 7 from a Chapter 13.<sup>8</sup>

Debtors converted their case to Chapter 7 via § 1307.<sup>9</sup> Even if the Court had the discretion to allow the Debtors to reconvert to Chapter 13, the Debtors have not offered any reasons why I should allow it in this instance. Debtors received their discharge eight months ago. The Chapter 7 Trustee has actively administered the case and has obtained a \$100,000 settlement of the Bad Faith Claim against State Farm. Creditors are entitled to these funds, not the Debtors.

Debtors' attempt to vacate their discharge and reconvert clearly is an attempt to assert control over the Bad Faith Claim. Nothing compels the Court to vacate the discharge and reconvert the case to a Chapter 13, even if it could do so. Accordingly, it is

**ORDERED:**

1. Debtors' Motion to Vacate Discharge (Doc. No. 167) is denied.

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<sup>6</sup> Doc. No. 158.

<sup>7</sup> 11 U.S.C. § 706(a).

<sup>8</sup> *E.g., In re Baker*, 289 B.R. 764, 766 (Bankr. M.D. Ala. 2003); *In re Hanna*, 100 B.R. 591, 592 (Bankr. M.D. Fla. 1989); *In re Richardson*, 43 B.R. 636, 638 (Bankr. M.D. Fla. 1984).

<sup>9</sup> Doc. No. 140.

2. Debtors' Motion of Reconversion (Doc. No. 168) is denied.

DONE AND ORDERED in Orlando, Florida, December 2, 2014.



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KAREN S. JENNEMANN  
Chief United States Bankruptcy Judge

John Meininger, attorney for the Trustee, is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.