


ORDERED.

Dated: March 10, 2017


Cynthia C. Jackson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

DANNY R. DUGGER and
BARBARA JO DUGGER,

Chapter 7
Case No.: 6:16-bk-04010-CCJ

Debtors.
_____ /

ORDER GRANTING DEBTORS' NOTICE OF CONVERSION OF CASE

This case came before the Court for hearing on the Debtors' Notice of Conversion of Case from Chapter 7 to Chapter 13 (Doc. No. 32; the "Motion"). The Motion is granted for the following reasons.

The Debtors seek to convert this case back to a Chapter 13 case in an effort to retain the non-exempt equity in their homestead property.¹ The Debtors initially filed this case under Chapter 13, but voluntarily converted the case to Chapter 7 when Mr. Dugger became unemployed. The Debtors receive social security income.² At the hearing on the Motion, counsel for Mr. Dugger

¹ The Debtors' amended bankruptcy schedules list unencumbered real property located in Sebastian, FL with a value of \$50,000 and cite Missouri law to claim \$15,000 of the property value as exempt (Doc. No. 27). The Debtors resided in Missouri 730 days immediately preceding the bankruptcy filing. *See* 11 U.S.C. §522(b)(3).

² Amended Bankruptcy Schedule I (Doc. No. 35).

represented that Mr. Dugger had a job lined up and that together with social security, would have sufficient income to allow reconversion to Chapter 13. The Court takes judicial notice of amended schedules filed by the Debtors with the Court two days after the hearing which indicate that Mr. Dugger is now employed by The Home Depot.³ The Debtors' bankruptcy schedules list unsecured creditors totaling \$260,987, of which \$107,400 is owed to the Debtors' family and friends.⁴ A discharge has not been entered in the Chapter 7 case.

Robert E. Thomas, the Chapter 7 Trustee (the "Trustee"), appeared at the hearing and opposed converting the case back to Chapter 13. The Trustee argues that the Debtors do not have an absolute right to convert this case back to Chapter 13. The Trustee asserts that the Court should not reconvert the case because the Debtors cannot propose a feasible Chapter 13 plan that pays unsecured creditors in accordance with Section 1325(a)(4) of the Bankruptcy Code. The Trustee contends that if the case remains in Chapter 7, the estate will receive between \$35,000 and \$45,000 from a sale of the homestead.

Section 706(a) of the Bankruptcy Code allows a debtor to convert a Chapter 7 bankruptcy case to a Chapter 13 bankruptcy case at any time, if the case has not been converted under sections 1112, 1208 or 1307 of the Bankruptcy Code.⁵ Some courts construe Section 706(a) of the Bankruptcy Code to prohibit conversion if a debtor previously converted the bankruptcy case.⁶ Other courts interpret Section 706 of the Bankruptcy Code to allow conversion of a previously converted bankruptcy case in the Court's sole discretion.⁷ After a thorough analysis of the case

³ Amended Bankruptcy Schedule I (Doc. No. 35).

⁴ Bankruptcy Schedule E/F (Doc. No. 1).

⁵ 11 USC §706(a).

⁶ *In re Hanna*, 100 B.R. 591, 592 (Bankr. M.D. Fla. 1989)(Proctor, J.); *In re Simmons*, 2014 WL 6808613, *1 (Bankr. M.D. Fla. 2014) (Jennemann, J.) ("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.") *In re Banks*, 252 B.R. 399 (Bankr. E.D. Mich. 2000).

⁷ *In re Schweickert*, 2016 WL 1603187 (Bankr. M.D. Fla. 2016)(Funk, J.); *In re Povah*, 455 B.R. 328 (Bankr. D. Mass. 2011); *In re Sensibaugh*, 9 B.R. 45 (Bankr. E.D. Va. 1981).

law discussing the issue as well as the legislative history of Section 706 (a) and (c), the Court agrees with those courts that hold that Section 706(c) of the Bankruptcy Code allows conversion of a previously converted bankruptcy case at this Court's discretion.

The only argument made by the Trustee in opposition to the reconversion is his belief that the Debtors cannot propose a feasible plan. The Court finds that the issue of feasibility is one better examined at confirmation. The Court should not assume what the Debtors' plan will propose or how the plan will be funded. The Debtors may be able to increase their income or reduce expenses and create disposable income to fund the plan. The possible inability to confirm a plan should not be the sole reason to disallow reconversion.⁸

Finally, equity supports reconversion of this case. The sale of the Debtors' homestead property greatly impacts the Debtors and outweighs the prejudice to creditors. The Debtors will no longer have a home if the case remains in Chapter 7. On the other hand, if converted, the unsecured creditors will still receive payment for the non-exempt value of the homestead property, but over a longer period of time. The bankruptcy case has been pending less than a year, and the Debtors have not received a discharge. The Debtors do not appear to be abusing the system and should have an opportunity to keep their homestead. Upon consideration of the pleadings, the arguments of the parties and for the reasons stated above it is ORDERED that:

1. The Motion is granted;
2. This case is reconverted to a case under Chapter 13 of the Bankruptcy Code.

Attorney Armando E. Rosal 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.

⁸ See *In re Sensibaugh*, 9 B.R. at 47.