



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Lauren Reno,
Debtor.

Case No.: 2:18-bk-25031-ER
Chapter: 7

**MEMORANDUM OF DECISION
DENYING DEBTOR'S MOTION TO
CONVERT FROM CHAPTER 7 TO
CHAPTER 13**

[No hearing required pursuant to Federal Rule
of Civil Procedure 78(b) and Local Bankruptcy
Rule 9013-1(j)(3)]

The Court has reviewed the Debtor's motion seeking to convert this case from Chapter 7 to Chapter 13 (the "Motion").¹ The Chapter 7 Trustee (the "Trustee") and all creditors received notice of the Motion, and no party submitted a timely objection to the Motion. As explained below, the Debtor is not eligible to convert to Chapter 13 because she has already received a discharge. For that reason, the Motion is DENIED.

I. Background

Lauren Reno (the "Debtor") filed a voluntary Chapter 7 petition on December 30, 2018. On April 15, 2019, the Debtor received a discharge.² On August 20, 2019, the Trustee filed a notice advising creditors to file proofs of claim because assets would be administered.³ Shortly thereafter, the Debtor filed a motion seeking to convert the case to Chapter 13, which the Court

¹ Doc. No. 40.

² Doc. No. 23.

³ Doc. No. 33.

denied without prejudice⁴ because it was not served upon the Debtor's creditors as required by LBR 1017-1(a)(4).⁵ The Debtor subsequently filed this renewed Motion seeking conversion to Chapter 13, which was properly served upon all creditors and the Trustee. No timely objections to the Motion have been filed by either the Trustee or creditors.

II. Discussion

Section 706(a) provides that the “debtor may convert a case under this chapter to a case under chapter ... 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title.” In *Marrama v. Citizens Bank of Massachusetts*, the Supreme Court held that § 706(a) did not provide the Debtor an absolute right to convert to Chapter 13. 549 U.S. 365, 372 (2007). Conversion can be denied where the converted case will subsequently be dismissed or immediately returned to Chapter 7 “for cause” under § 1307(c). *Id.* at 372-73. Bad-faith conduct is cause for dismissal or conversion under §1307(c), and is therefore cause for denying a motion to convert. *Id.* Conversion may also be denied “to prevent an abuse of process.” *Id.* at 375.

To determine whether bad faith sufficient to deny a motion to convert is present, the Court must consider “the totality of the circumstances.” *Khan v. Barton (In re Khan)*, 846 F.3d 1058, 1065 (9th Cir. 2017). Appropriate factors relevant to this determination include whether the Debtor “unfairly manipulated the Bankruptcy Code” and “whether egregious behavior is present.” *Id.*

Where, as here, the Debtor has received a discharge, conversion to Chapter 13 permits the Debtor to unfairly manipulate the Bankruptcy Code. Such unfair manipulation constitutes an abuse of process sufficiently severe to require denial of the Debtor's Motion for conversion. The reason is that post-discharge conversion allows the Debtor to retain non-exempt property that would otherwise have been administered by the Trustee but for the conversion. As explained by the court in *In re Jeffrey*: “A Chapter 7 case involves a *quid pro quo*: debtors receive a discharge and, in exchange, ... surrender their nonexempt assets to the trustee for liquidation and distribution among creditors.” 176 B.R. 4, 5 (Bankr. D. Mass. 1994). Permitting post-discharge conversion to Chapter 13, the *Jeffrey* court explained, would constitute an abuse of the bankruptcy process because the conversion would terminate the chapter 7 case before all assets had been liquidated for the benefit of creditors. *Id.* at 6. The reasoning in *Jeffrey* was echoed in *In re Santos*, a case decided in this district:

[O]btaining a discharge and then prohibiting the Trustee from administering the case is unfair to creditors, and is a manipulation and abuse of the Bankruptcy Code. Therefore, cause would exist to convert the case under § 1307(c). Cause does not require “fraudulent intent” or any bad conduct by Debtors....

⁴ See Order Denying Motion to Convert Without Prejudice for Lack of Proper Service [Doc. No. 39].

⁵ Unless otherwise indicated, all “Civil Rule” references are to the Federal Rules of Civil Procedure, Rules 1–86; all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all “Evidence Rule” references are to the Federal Rules of Evidence, Rules 101–1103; all “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.

The Court ... finds that cause would exist to convert or dismiss a Chapter 13 case that was converted to Chapter 13 post-discharge, prior to closing, when administration of the Chapter 7 estate was still occurring. Specifically, Debtors' proposed conversion ... would result in an abuse of process. Because *Marrama* allows the Court to deny conversion "for cause" under § 1307(c), the Debtors are ineligible to be debtors under Chapter 13 at this time.

In re Santos, 561 B.R. 825, 831 (Bankr. C.D. Cal. 2017).

Other courts have come to the same conclusion. See *In re Hauswirth*, 242 B.R. 95, 96 (Bankr. N.D. Ga. 1999) ("Debtor's conversion to Chapter 13 before the Chapter 7 Trustee has completed the administration of the estate but after the discharge order is entered thwarts the proper operation of the Code, as it interrupts the complete administration intended by Congress"); *In re Marcakis*, 254 B.R. 77, 82 (Bankr. E.D.N.Y. 2000) ("To permit a discharged debtor to convert his Chapter 7 case to a Chapter 13 case is ludicrous as Debtor no longer has any meaningful debts to repay pursuant to a Chapter 13 plan."); *In re Lesniak*, 208 B.R. 902, 906 (Bankr. N.D. Ill. 1997) (imposing a bright-line rule prohibiting conversions from Chapter 7 to Chapter 13 if the request is made post-discharge).

In the Motion, the Debtor has not sought revocation of the discharge. Even if such a request had been made, the Court would be powerless to grant it. Section 727(d) provides that a discharge may be revoked upon "request of the trustee, a creditor, or the United States trustee" under certain circumstances. In *In re Markovich*, the Ninth Circuit BAP concluded that, based on the plain language of § 727(d), a "debtor does not have standing to seek revocation of a discharge." 207 B.R. 909, 912 (9th Cir. BAP 1997) (citing *Collier on Bankruptcy* ¶ 727.15[1][b] (15th ed. 1996)). The *Markovich* court further found that bankruptcy courts lack "the inherent equitable power to revoke a discharge outside the framework of § 727(d)," given that the court's equitable powers "cannot be used to override specific statutory provisions in the Code." *Id.* at 913.

The vast majority of courts addressing the issue follow *Markovich*. In *Matter of Calabretta*, the debtor sought to revoke a discharge and dismiss the case in order to maintain control over the prosecution of a "substantial tort claim." 68 B.R. at 862 (Bankr. D. Conn. 1987). Apparently the debtor's initial attorney did not realize that the tort claim was property of the estate subject to liquidation by the Chapter 7 Trustee. *Id.* The Debtor obtained a new attorney and filed a motion to revoke the discharge. *Id.* The *Calabretta* court denied the motion, reasoning that it lacked authority to revoke the discharge on either statutory or equitable grounds. *Id.* at 863-64. The fact that the *Calabretta* debtor had received poor legal advice was insufficient to override the express provisions of the statute.

Similarly, in *In re Wyciskalia*, 156 B.R. 579, 579 (Bankr. S.D. Ill. 1993), the debtor sought revocation of a discharge, explaining that poor legal advice had led to the filing of the bankruptcy petition. While expressing sympathy for the debtor's situation, the court explained that it was "without authority, either statutory or equitable, to grant the debtor's request to revoke the discharge." *Id.* at 580. See also *In re Fischer*, 72 B.R. 111, 113-14 (Bankr. D. Minn. 1987) ("The plain wording of the statute grants standing to request revocation of discharge only to the Chapter 7 Trustee, a creditor, or the United States Trustee. A debtor has no authority under the Code to request revocation of discharge on his own motion."); *In re Gruber*, 22 B.R. 768, 769 (Bankr. Ohio 1982) ("There is no provision in § 727(d) or elsewhere in the Bankruptcy Code ... for setting aside a discharge on request of debtor"); *Matter of Morgan*, 668 F.2d 261, 263 (7th

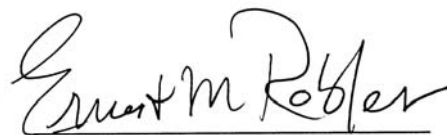
Cir. 1981) (“[B]ankruptcy courts have neither statutory authority nor an inherent equitable power to revoke discharges”); *Matter of McQuality*, 5 B.R. 302, 303 (Bankr. D. Ohio 1980) (“There is no provision for the setting aside of a discharge upon the insistence of the debtors themselves”); *In re Brinkman*, 123 B.R. 611, 612 (Bankr. N.D. Ind. 1991) (“Revocation of a discharge is governed by § 727(d) of the United States Bankruptcy Code. By the specific language of this section only the trustee, a creditor, or the United States Trustee are authorized to seek such relief. Furthermore, the circumstances necessary to justify the revocation of a discharge are quite limited. A discharge may only be revoked if it was obtained through fraud or because of some type of debtor misconduct during the case.”); *In re Leiter*, 109 B.R. 922, 925 (Bankr. N.D. Ind. 1990) (“Revocation of a discharge can only be by the timely request of a trustee or a creditor”).

III. Conclusion

Because post-discharge conversion constitutes an abuse of the bankruptcy process, and because the Debtor lacks the ability to obtain revocation of her discharge, the Motion is **DENIED**. The Court will enter an order consistent with this Memorandum of Decision.

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Date: October 1, 2019

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is fluid and cursive, with the first name "Ernest" and last name "Robles" clearly legible.

Ernest M. Robles
United States Bankruptcy Judge