

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
LEE BURKES HOLLOWAY, JR.) CASE NO. 05-62794 JPK
) Chapter 7
Debtor.)

ORDER DENYING DEBTOR'S MOTION TO CONVERT CASE TO CHAPTER 13

On June 21, 2005, the debtor, by counsel, filed a motion to convert his Chapter 7 case to a case under Chapter 13.

The record establishes that this case began as a joint Chapter 13 case under case number 02-60107. By order entered on May 25, 2005, the case of Lee Burke Holloway, Jr. was severed from the original joint Chapter 13 case which he had filed with his wife Constance Holloway, and the case of Lee Burkes Holloway, Jr. was converted to a case under Chapter 7 (case number 05-62794), while the case of Constance Holloway continued as a case under Chapter 13 in the original case under case number 02-60107.

The issue which arises with respect to the debtor's motion filed on June 21, 2005 is whether 11 U.S.C. § 706(a) allows the "reconversion" back to a case under Chapter 13 if the debtor has previously converted the same case from Chapter 13 to Chapter 7.

11 U.S.C. § 706(a) states:

(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.
(emphasis supplied)

Most courts which have reviewed the issue before this Court have deemed the emphasized phrase to be ambiguous: Is the debtor totally precluded from reconverting to Chapter 13, or are there circumstances in which the bankruptcy court may allow a reconversion? There is split in authority in cases throughout the country on this issue. The emerging majority view is that a debtor in the circumstances of Mr. Holloway cannot in any context reconvert a Chapter 7 case to a case under Chapter 13. The minority view is that the debtor is not absolutely precluded from reconversion, but that reconversion is subject to the discretion of the Court. This split in authority is addressed in the cases of

In re Banks, 252 B.R. 399 (Bankr. E.D. Mich. 2000); *In re Hardin*, 301 B.R. 298 (Bankr. C.D. Ill. 2003); and *In re Baker*, 289 B.R. 764 (Bankr. M.D. Ala. 2003). The Court will not expand this opinion with a discussion of the analyses of the competing lines of cases: the authors of these decisions have done a far better review and analysis than could this author.

Admittedly, 11 U.S.C. § 706(a) is not absolutely clear, and a reasonable argument can be made for each of the two primary divergent views which divide courts over the issue of whether or not reconversion is absolutely precluded or can be allowed under certain circumstances within the discretion of the court.

This Court is of the opinion that the courts which have determined that reconversion is absolutely precluded by 11 U.S.C. § 706(a) are correct. This Court specifically adopts the reasoning of *In re Banks*, supra, as the rationale for its decision, subject to the caveat that the Court does not adopt the reasoning of that decision with respect to a debtor's absolute right to convert a case initially from a case under Chapter 7 to a case under Chapter 13 pursuant to 11 U.S.C. § 706(a): See, *In re Kuhn*, 322 B.R. 377 (Bankr. N.D. Ind. 2005).

The Court thus holds that having once converted a Chapter 13 case to a case under Chapter 7 under 11 U.S.C. § 1307, a debtor's request to convert the case back to a Chapter 13 case is absolutely precluded by 11 U.S.C. § 706(a).

On August 1, 2005, an order was inadvertently entered by which the case was converted; that order was entered in error.

IT IS ORDERED that the Court's order of August 1, 2005, Order Converting Case Under Chapter 7 to Case Under Chapter 13, is hereby vacated.

IT IS FURTHER ORDERED that the debtor's motion filed on June 21, 2005 is DENIED, and that the case of Lee Burkes Holloway, Jr. shall remain as a Chapter 7 case.

Dated at Hammond, Indiana on August 10, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor, Trustee, US Trustee
All Creditors