

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:)

ROSS MICHAEL CLARK)

CASE NO. 15-40434)

Debtor)

NOT INTENDED FOR PUBLICATION

DECISION AND ORDER DENYING MOTION FOR RELIEF FROM ORDER

On April 27, 2016.

The debtor has filed a motion for relief from the order of April 13, 2016 which dismissed this case on the motion of Co-Alliance, Inc., after the court determined that the debtor was not eligible for relief under Chapter 12. The debtor contends that the court did not hold a hearing on the motion to dismiss and, had it done so, the debtor would have requested conversion to Chapter 11. The motion is committed to the court's discretion and can be disposed of without a hearing and without requiring a response. See, Figgie Int'l, Inc. v. Miller, 966 F.2d 1178, 1179 (7th Cir. 1992); Dunn v. Truck World, Inc., 929 F.2d 311, 313 (7th Cir. 1991) (both discussing Rule 59). See also, N.D. Ind. L.B.R. B-9023-1(b). The motion is DENIED for the following reasons:

1. The motion fails to identify the rule upon which it is based and is not accompanied by a brief in support thereof as required by the local rules of this court. See, N.D. Ind. L.B.R. B-9023-1(a). See also, In re King, 2006 WL 1994679 (Bankr. N.D. Ind. 2006).
2. To the extent the debtor argues that court did not hold a hearing before dismissing the case, that just is not so. The court held a hearing on the motion to dismiss, on notice to all creditors and parties in interest, on March 9, 2016, see, Notice of Hearing, dated Feb. 8, 2016, which was attended by debtor's counsel. See, Order dated Mar. 10, 2016.
3. To the extent debtor argues that he should have been given the opportunity to convert to Chapter 11 before the court dismissed the case, it is not at all certain that conversion from Chapter 12 to Chapter 11 is an available option. Section 1208(c),

the portion of the Bankruptcy Code on which Co-Alliance's motion was based, says nothing about conversion or dismissal – it speaks only of dismissal – and no other portion of § 1208 talks about conversion to Chapter 11. See, 11 U.S.C. § 1208. Indeed, whether a debtor can convert from Chapter 12 to Chapter 11 is a question that divides the courts. Compare, In re Stumbo, 301 B.R. 35 (Bankr. S.D. Iowa 2002); Matter of Roeder Land & Cattle Co., 82 B.R. 536 (Bankr. D. Neb. 1988); In re Christy, 80 B.R. 361 (Bankr. E.D. Vir. 1987) (Bankruptcy Code does not authorize conversion from Chapter 12 to Chapter 11) with In re Orr, 71 B.R. 639 (Bankr. E.D. N.C. 1987); Matter of Bird, 80 B.R. 861 (Bankr. W.D. Mich. 1987) (debtor may convert from Chapter 12 to Chapter 11).

4. The debtor had ample opportunity to express a preference for conversion rather than dismissal prior to the court's decision. Counsel could have done so in the response to Co-Alliance's motion, but did not, see, Objection to Motion to Dismiss, filed Mar. 1, 2016; at the March 9 hearing on the motion, but did not; or in the brief in opposition to Co-Alliance's motion for summary judgment, but did not. See, Objection to Motion for Summary Judgment and Brief in Opposition to Motion for Summary Judgment, both filed Mar. 4, 2016. Having failed to do so when the opportunity presented itself, the debtor may not do so after the court has ruled against it. Figgie, 966 F.2d at 1180 ("Rule 59(e) may not be used to bring a claim that should and could have been raised earlier."); Bally Export Corp. v. Balicar, Ltd., 804 F.2d 398, 404 (7th Cir. 1986) ("a motion for reconsideration is an improper vehicle . . . to tender new legal theories."); Frietsch v. Refco, Inc., 56 F.3d 825, 828 (7th Cir. 1995) ("motions for reconsideration [are not] to enable a party to complete presenting his case after the court has ruled against him."). See also, In re Rivera, 517 B.R. 140, 144 (9th Cir. BAP 2014) (once a case is dismissed, the debtor can no longer convert); In re Rodriguez, 516 B.R. 177, 185 (1st Cir. BAP 2014) (conversion no longer possible after dismissal); In re Garcia, 434 B.R. 638, 643-44 (Bankr. D. N.M. 2010) (conversion after dismissal not possible).

5. The court did not attach any type of prejudice to the dismissal and so there would seem to be nothing to prevent the debtor from filing a case under Chapter 11. See, 11 U.S.C. § 349(a). See also, Rodriguez v. Washington, 1995 WL 593081 (N.D. Ill. 1995) (dismissal without prejudice gives no just cause to complain).

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court