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Duties and Obligations upon Conversion

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CONCURRENT SESSION

2020

DUTIES AND OBLIGATIONS UPON CONVERSION

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The effect of converting a case:

11 U.S.C. § 348:

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsection [… (b)] of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

(b) Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10), [chapter 11 and 12 provisions omitted]… 1301(a), and 1305(a) of this title, "the order for relief under this chapter" in a chapter to which a case has been converted under section 706, 1112, 1208, or 1307 of this title means the conversion of such case to such chapter.

"Does not effect a change in the date of the filing of the petition…" If a debtor is under a some sort of chapter 7 discharge bar when a 13 is filed (e.g., the eight-year bar of § 727(a)(8), or the six-year bar of § 727(a)(9), you can't convert the case to chapter 7 after the bar lifts and expect to obtain a discharge in the converted chapter 7.

Converting a chapter 13 to a chapter 7:

1. How to convert a case voluntarily

Quick punch list; more details below: File (1) a notice of conversion, (2) statement of intention, (3) contemporary means test (as of the date the case was converted), (4) amended Rule 2016 disclosure (if any supplemental payment has been received, or is expected), and (5) a statement of post-petition debts.

In addition, you should file any schedules or statements that would be properly amended or supplemented, to reflect the Debtors' circumstances as of the date of the conversion. As discussed more below, after-acquired property and income is property of the chapter 13 estate (if not the eventual chapter 7 estate) but, as always, bankruptcy should be a process of disclosure and transparency. "The debtor must furnish enough information to put the trustee on notice of the wisdom of further inquiry." *Payne v. Wood*, 775 F.2d 202 (7th Cir. 1985). Err on the side of too much disclosure, too much updating, rather than not enough.

Easiest thing first: File the notice of conversion.

11 U.S.C. § 1307(a): The Debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

Prior conversions may limit a debtor's right to dismiss a case under §1307(b), but do not restrict conversion to chapter 7. *In re Green*, 2013 WL 5550125 (Bankr. D.D.C. Oct. 8. 2013) (unpublished).

Federal Rule of Bankruptcy Procedure 1017(f)(3): A chapter 12 or chapter 13 case shall be converted without court order when the debtor files a notice of conversion under §§ 1208(a) or 1307(a). The filing date of the notice becomes the date of the conversion order for the purposes of applying § 348(c) and Rule 1019. The clerk shall promptly transmit a copy of the notice to the United States trustee.

In re Young, 2017 WL 2627913 (Bankr. N.D. Ga., June 16, 2017): Voluntary conversion from chapter 13 to chapter 7 is instantaneous and automatic under Bankruptcy Rule 1017(f)… No court order is required and a motion to convert will be treated as a notice of conversion.

"At any time": If a motion to dismiss a case is orally granted in court, but the notice of conversion is docketed before the order of dismissal is entered, the case is converted (though, as you might assume, this case was glitchy for multiple reasons). *Rivera v. Curry (In re: Rivera)*, 517 B.R. 140, 144-45 (9th Cir. B.A.P. 2014). *Compare Rodriguez v. Banco Popular De P.R. (In re: Rodriguez)*, 56 B.R. 177, 185 (8th Cir. B.A.P. 2014): "[T]he Debtors did not file their motion to convert from chapter 13 to chapter 7 until after the bankruptcy court had entered its… Dismissal Order, at which point conversion was no longer possible…."

It's important to remember that while chapter 7 cases are usually "cleaner," and have a higher rate of success (whatever "success" might mean to a debtor), the debtor and the estate are subject to the powers of the chapter 7 Trustee and the U.S. Trustee in unique ways. For that reason, caselaw holds that the limitations on a debtor's right to convert from 7 to 13 (to be discussed below) don't hold water when considering a conversion from 13 to 7. The reasoning of *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007)… "does not directly translate to conversions under § 1307(a) because there is no cause for concern that a debtor may use that provision to 'escape the consequences of bad faith conduct or for abuse of process.'" *Taylor v. Danielson (In re: Taylor)*, 472 B.R. 570, 574 (C.D. Cal. 2012). Unlike in the event of a dismissal, "the debtor's case continues, the court retains jurisdiction over the debtor and the debtor's estate, and the court has continuing power to address any improprieties that may result from the change in the nature of the proceedings…" *Nady v. DeFrantz (In re: DeFrantz)* 454 B.R. 108, 113-14 (9th Cir. B.A.P. 2011).

File a Statement of Intention:

Federal Rule of Bankruptcy Procedure 1019(1)(B): If a statement of intention is required, it shall be filed within 30 days after entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier.

File a contemporary, as of the date of conversion, "means test":

The § 707(b) means test applies at conversion from Chapter 13 to Chapter 7, though the matter is subject to some debate. *See generally, In re: Kruse*, 545 B.R. 581 (Bankr.E.D.Wi. 2016). In the Northern District of Illinois, this requirement does not seem to be regularly enforced, except by some panel trustees, but you should be ready for it.

"[T]here are unmistakable indications in the Code that Congress intended § 707(b) to apply to converted cases… Congress intended the current version of § 707(b) to be a potent tool for bankruptcy courts to expeditiously dismiss Chapter 7 petitions filed by debtors with income sufficient to pay their creditors… Congress expressly excluded converted cases from the reach of other sections of the Code, but not from § 707(b)…. Congress knew how to exclude certain categories of cases from provisions within § 707(b) but did not do so with converted cases…. [W]hen Congress passed BAPCPA, it left unaffected Federal Rule of Bankruptcy Procedure 1019(2)(A), which sets a new time period for filing a motion under § 707(b) in a case that has been converted from Chapter 13 to Chapter 7."). *Pollitzer v. Gebhardt*, 860 F.3d 1334, 1338-40 (11th Cir. 2017). "If section 707(b) did not apply to a case unless the case was filed under chapter 7, that would open a huge loophole for debtors to simply file their case in chapter 13 or 11, convert to chapter 7, and then be immune from dismissal under section 707(b)." *Kruse*, 545 B.R. at 588.

File an amended disclosure of compensation, if any new payment is being made:

Pursuant to Federal Rule of Bankruptcy Procedure 2016(b): Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

Furthermore, of course, pursuant to the Northern District of Illinois' Local Rule 2016-1, any new agreement, providing for compensation, presently or in the future, must be a written agreement, signed by the Debtor and the attorney. Such agreement shall be attached to the statement, or filed as a supplement to that statement within 14 days of the date the agreement is entered into.

File a schedule of postpetition debts:

Rule 1019(5)(B)(i) provides that the debtor, not later than 14 days after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim.

Pursuant to 11 U.S.C. 348(d), a claim against the estate or the Debtor that arises after the order for relief but before conversion [other than an administrative expense], shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

Takeaway with that: As if these were prepetition claims, dischargeable debts can be discharged, and if the chapter 7 trustee administers assets, priority creditors can be paid first.

2. Conversion to chapter 7 for cause

Section 1307(c) provides: [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including…

(1) unreasonable delay by the debtor that is prejudicial to creditors;
(2) nonpayment of any fees and charges required under chapter 123 of title 28;
(3) failure to file a plan timely under section 1321 of this title;
(4) failure to commence making timely payments under section 1326 of this title;
(5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
(6) material default by the debtor with respect to a term of a confirmed plan;
(7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
(9) … failure of the debtor to file [the requisite list of creditors, schedules, statement of financial affairs, statement of intention, etc.]…
(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

The Internal Revenue Service has brought § 1307(c) motions if a debtor is incurring big tax liabilities postpetition, and failing to pay them as they come due. If a Chapter 7 asset case converts to Chapter 13 and the debtor fails to prosecute the case, the Chapter 13 trustee will likely move to convert the case back to chapter 7, instead of moving to dismiss. If Chapter 13 trustee is confronted with an obviously questionable situation (a voidable lien granted to someone's daughter immediately prepetition, for one example), and some § 1307(c) criteria are met, the Chapter 13 Trustee will likely move to convert.

It's also important to note that, under § 1307(g), a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter. In practice, however, this often means less than it says: Let's say a debtor in a converted case may be subject to dismissal under §§ 707(a) or (b) – dismissal is usually discretionary, not mandatory.

The court "may dismiss a case…" A debtor can't fail to participate in the conversion and hope to evade the administration of the chapter 7. Also, as a matter of note, a debtor who is not entitled to a discharge may still be a debtor, if, for example, the Court finds that there are assets to administer for the best interest of creditors and the estate.

3. The chapter 13 estate vs. the chapter 7 estate

The chapter 13 estate, and a good-faith conversion scenario:

The constitution of any bankruptcy estate always starts with 11 U.S.C. § 541(a). The estate is broad, and includes all legal or equitable interests of the debtor in property as of the commencement of the case, wherever in the world that property may be, by whomever held.

Section 541(a)(5) contains an "expansion" of the estate. If the Debtor receives property that would have been property of the estate if the Debtor had it as of the petition date, that the debtor acquires or becomes entitled to acquire within 180 days of the commencement of the case, by "bequest, devise, or inheritance," or as a result of a property settlement with the debtor's spouse in an interlocutory or final divorce decree, or as a beneficiary of a life insurance policy or a death benefit plan, that property is swept into the estate as well.

Section 541(b) includes some exemptions to estate property, but the only one a consumer practitioner is likely to encounter would be, funds placed in an educational IRA or prepaid state tuition plan more than one year before the case was filed, for which the designated beneficiary was a child or grandchild (or stepchild or stepgrandchild) of the debtor. 11 U.S.C. §§ 541(b)(5), (b)(6). These exceptions have limitations and exceptions of their own.

Furthermore, in chapter 13, property of the estate includes, in addition to property specified under 541, all property that the debtor acquires after the chase is filed, but before the case is closed, dismissed, or converted, and all of the Debtor's wages. 11 U.S.C. § 1306(b).

(Digression: In the Seventh Circuit, absent extraordinary circumstances, estate property vests in the debtor upon confirmation. *In re: Steenes*, 942 F.3d 834 (7th Cir. 2019). What "vesting" means vis-à-vis the existence of the estate is a prickly issue, for which at least five tests have been devised. *See* Keith M. Lundlin, Lundin on Chapter 13, 120.3, lundinonchapter13.com (last visited October 22, 2020).)

The 180-day time limit in § 541(a)(5) is not a limitation on § 1306. If someone acquires property by bequest, devise, or inheritance (etc.) more than 180 days after the commencement of the case, the chapter 13 estate incorporates that new property. There is no serious dispute on this point. *In re: Murdock*, 547 B.R. 475 (Bankr. S.D. Ga. 2015), *In re: Mizula* 525 B.R. 569 (Bankr. D.N.H. 2015), *In re Lybrook*, 951 F.3d 136 (7th Cir. 1991).

However: Under § 348(f)(1)(A), property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion. Accordingly, if the debtor acquires something that would be property of the estate under § 1306, and the case is converted to chapter 7, the chapter 7 estate does not include that new, postpetition property.

In *In re Rosenberg*, 303 B.R. 172 (8th Cir. B.A.P. 2004), the chapter 13 Debtor had a claim – that had arisen postpetition – for wrongful termination when he converted to chapter 7. The Court held that the Debtor's claim remained the Debtor's property and not property of the chapter 7 estate. "The idea is that absent bad faith, the estate should not be larger than if the Debtor had originally filed Chapter 7 instead of Chapter 13." Ginsberg & Martin on Bankruptcy, 5th Ed. Vol. 2 section 15.07[c][3].

This may prove very beneficial to the Debtor. A $10,350.00 tax refund has been found to remain the Debtor's property upon conversion. *Shields v. Adams (In re: Adams)* 453 B.R. 774 (Bankr.N.D.Ala. 2011).

If, during the pendency of the chapter 13, estate property has appreciated, there is risk that the property could be "revalued" as of the date of conversion, possibly leading to liquidation by the chapter 7 Trustee. In the Seventh Circuit, powerful caselaw augurs against this outcome, however: In *Polis v. Gateways, Inc. (In re: Polis)*, 217 F.3d 899, the Seventh Circuit found that under § 522(a)(2), the value of exempt property is the fair market value as of the date of the filing of the petition.

Nevertheless, the leading national case on the matter is *In re: Hyman*, 967 F.2d 1316 (9th Cir. 1992), in which the Trustee tried to sell the debtor's principal residence simply on account of its increase in value since the petition date; this request would be granted: The Code is best satisfied "if the debtor is guaranteed the full exemption amount on the date of sale, regardless of the vicissitudes of the real estate maret or the timing of the sale." *Id.* at 1321. (Compare *In re Lynch,* 363 B.R. 101, 106 (9th Cir. BAP 2007) (holding in a case converted from chapter 13 to 7, the relevant date for determining the value of a debtor's residence is the chapter 13 petition date), *and Pisculli v. T.S. Haulers, Inc. (In re Pisculli),* 426 B.R. 52, 63 (E.D.N.Y. 2010) (holding creditors not entitled to postpetition appreciation in converted chapter 7), *aff'd,* 408 F. App'x 477 (2nd Cir. 2011), *with In re Goins,* 539 B.R. 510 (Bankr. E.D. Va. 2015) (holding debtor is not entitled to appreciation in property that accrues during chapter 13 case), *and Leo v. Burt (In re Burt),* No. 09-40016-JJR, 2009 WL 2386102 (Bankr. N.D. Ala. July 31, 2009) (unpublished) (same).)

If property is transferred out of the chapter 13 estate without proper authorization, Courts hold that the transferred funds are still part of the chapter 7 estate, even without a finding of bad faith conversion. In *Brown v. Barclay (In re: Brown)*, 953 F.3d 617 (9th Cir. 2020), Jason Brown filed a bankruptcy and scheduled an anticipated inheritance of $2,500. A few months later, he received an inheritance of $55,487.97. Jason almost immediately, and without the approval of the chapter 13 Trustee, transferred $12,372 to each of his three brothers. Upon learning of the unauthorized transfers, the Trustee sought conversion as a sanction. (As the conversion was on the Trustee's motion, thus, it was a "for cause" conversion, but the "bad faith conversion" provision of § 348(f)(2), discussed below, was not implicated.) The chapter 7 Trustee pursued the transfer, and Kenneth Brown, one of the brothers, appealed from judgment for the Trustee. The 9th Circuit found that because the Debtor transferred funds with the fraudulent purpose of avoiding payment to creditors – "[t]he brothers may, for example, have intended to give the money back to the debtor Jason after the bankruptcy was over" – the transferred funds remained within Jason's *constructive* possession or control, and so should be considered property of the converted estate. As such, the chapter 7 Trustee was permitted to collect from the brothers.

Exemptions:

Upon conversion of a chapter 13 case to chapter 7, a new time period for a party in interest to object to the Debtor's claim of exemptions commences, unless, either, the case was converted to chapter 7 more than one year after the entry of the plan confirmation order, or the case was previously pending in chapter 7 and the time to object to the exemption had expired in that chapter 7 case. Federal Rule of Bankruptcy Procedure 1019(2)(B). In these instances, then, the chapter 7 Trustee may be stuck with the exemptions allowed by the chapter 13 Trustee.

This rule does not clearly bind a chapter 13 Trustee, who may, as such, always attempt a timely objection to exemptions. *In re Sharkey*, 560 B.R. 470, 475 (Bankr.E.D.Mich.).

Bad faith conversion:

In § 348(f)(2), Congress added an exception for debtors who convert in bad faith: "If the debtor converts a case [initially filed] under chapter 13 . . . in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of the conversion." The layout of the chapter 7 estate, as such, depends on whether the case was converted in good faith or bad.

Defining bad faith is nebulous, but usually involves borrowing from the analysis of "good faith" found throughout 11 U.S.C. § 1325(a). "Good faith" is a term incapable of precise definition, and the good faith inquiry is a fact-intensive determination that involves the totality of circumstances. *Matter of Love*, 957 F.2d 1350, 1355 (7th Cir. 1992). If a debtor fails to disclose assets, fails to schedule debts accurately, acts dishonest and isn't forthright, etc., bad faith may be found by the Court. *In re Seigfried*, 219 B.R. 581, at 584-86 (Bankr. D. Colo. 1998).

4. Funds on hand with the standing Trustee at the time of conversion should go back to the debtor - with two (possible) exceptions.

In *Harris v. Viegelahn*, 575 U.S. __ (2015) the Supreme Court held that, because conversion terminates the service of the chapter 13 Trustee (11 U.S.C. § 348(e)), and because absent bad faith, § 348(f) limits a converted chapter 7 estate to property belonging to the debtor "as of the date" the original chapter 13 was filed, and because postpetition wages don't fit that bill, undistributed wages collected by a 13 trustee do not become part of a converted chapter 7 estate. They go back to the debtor. This usually means that all funds held by the Trustee, but not paid to creditors, are refunded upon conversion.

The first possible exception: Proceeds of asset sales in the chapter 13 Trustee's possession. If property was sold and the proceeds paid to the chapter 13 Trustee, that would be property belonging to the debtor as of the date the chapter 13 was filed, and the *Viegelahn* exception for postpetition wages, on its face, doesn't apply. Caselaw is thin. The chapter 7 Trustee may be entitled to turnover from the chapter 13 Trustee.

The second possible exception: The Debtor's chapter 13 attorney's fees!

The majority of cases say that the Trustee's obligation to refund money to the Debtor supercedes the Trustee's obligation to pay administrative costs. The Code contains no mechanism for payment of attorneys' fees before return to the Debtor of the balance held by the Trustee. Section 1326(a)(2) governs the trustee's payment of claims in a Chapter 13 case—including administrative claims for attorney's fees. That section of the Code mandates that plan payments made to the trustee '*shall* be retained by the trustee until confirmation or denial of confirmation.'… And confirmation of the plan is what allows the trustee to begin distributing those payments… There is no other mechanism in Chapter 13 of the Code to allow the trustee to distribute plan payments.") *In re Lettie*, 597 B.R. 637 (Bankr. E.D.Wi. 2019).

But, a minority of cases permit allowance of attorney's fees, and provision for payment. Section 1326(a)(2) provides that "if a plan is not confirmed, the Trustee shall return any such

payments not previously paid and not yet due and owing… to the debtor, [after deducting any unpaid administrative claim.]." *Harris* did not address what a Trustee should do about unpaid expenses of administration when a case is converted from chapter 13 to chapter 7. Obviously, a case converted prepetition is not confirmed, so allowed attorneys fees should be paid. *In re: Arnold*, 2020 WL 2462525 (Bankr. E.D.Mi., May 12, 2020), *In re: Simmons*, 2019 WL 1048938 (Bankr. D.Md., March 4, 2019).

5. Claims from the chapter 13

Under Federal Rule of Bankruptcy Procedure 1019(3), claims filed before conversion are deemed filed in the chapter 7. They are payable by the chapter 7 Trustee without refiling, or amendment. (If everything has been paid pro rata by the chapter 13 Trustee, all the math should still work out.)

However, valuations of property are no longer binding in a chapter 7. Under § 348(f)(1)(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan.

Furthermore, § 348(f)(1)(C) provides, with respect to cases converted from chapter 13—

> (i) the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and
> (ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law…

Takeaway: If a Debtor's attorney diminished the treatment of a secured creditor in the chapter 13, when compared to applicable nonbankruptcy law, the Debtor may end up in trouble with respect to collateral, if the Debtor wants to keep the collateral. Money that has been paid on a secured claim stays paid, of course, but if, say, an automobile was crammed-down, the debtor may end up with a sizable arrearage coming to life all at once, as of the moment of conversion. Interest at the contractual rate would have been accruing for the whole duration of the chapter 13.

Nothing would stop a debtor from working out a private resolution with the lender or, if possible, redeeming their collateral under § 727. (And, yes: In at least one case, a converted debtor has unsuccessfully tried to argue that they effectuated a § 727 redemption before converting to chapter 7, by paying the creditor's secured claim through the chapter 13 plan. *In re: Lewis*, 2010 WL 2025773 (Bankr.N.D.Ga. 2010).)

The Debtor needs to understand the risk of losing his collateral or being obliged to pay a large amount in short order, if the debtor has been – oh, let's hypothetically say – underpaying a secured claim so as to speed payments to the Debtor's attorney's fees.

If the property appreciated post-petition, the Supreme Court has suggested in dicta that secured creditors would be the appropriate beneficiaries of that appreciation. "Any increase over the judicially determined valuation during bankruptcy rightly accrues to the benefit of the creditor, not to the benefit of the debtor and not to the benefit of other unsecured creditors whose claims have been allowed and who had nothing to do with the mortgagor-mortgagee bargain." *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992).

6. A debtor's attorney's obligation under the CARA

In the Northern District of Illinois, an attorney can be awarded $4,500.00 "no-look" fees, if the attorney and the chapter 13 Debtor entered into the "Court-Approved Retention Agreement."

The CARA provides that one of the tasks that the attorney agrees to is to "Prepare, file, and serve a notice of conversion to chapter 7, pursuant to § 1307(a) of the Bankruptcy Code and Local Bankruptcy Rule 1017-1." (This Local Rule requires proof of service on the chapter 13 trustee and the U.S. Trustee, and payment of any required fee.)

Comments are currently being sought on an updated CARA. This would provide: "If the debtor and the lawyer decide that the case should be converted to a case under chapter 7, the lawyer must file the notice of conversion." It further clarifies that the presumptively-approved attorneys' fees do not cover representing the debtor in the chapter 7 case, if the case is converted to chapter 7.

All told, the Northern District of Illinois' practices generally forbid charging a fee to convert, but may allow a Debtor's attorney to charge a fee for the supplemental work seeing a chapter 7 through to discharge and closure. As a matter of practice, though, there's so little work involved with the chapter 7 conversion, you wouldn't be shooting yourself in the foot if you just did it. You'll have already earned your $4,500.00, but in a way you'll have concluded the chapter 13 case that much sooner. Depending on the circumstances, handling the chapter 7 for free might be a better option than staying in business with your client for years.

Converting a chapter 7 to a chapter 13:

1. How to convert a case voluntarily (but, of course, *Marrama*)

Section § 706(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 under this subsection is unenforceable.

However, though the Code language remains the same between § 1307(a) and § 706(a), Federal Rule of Bankruptcy Procedure 1017(f)(2) provides that conversion under § 706(a) shall be on motion, filed and served as required by Federal Rule of Bankruptcy Procedure 9013. Federal Rule of Bankruptcy Procedure 2002(a)(4) provides that a motion, to convert from 7 to 13, shall be on twenty-one days' notice.

Section 706(d), however, contains the same limitation as § 1307(g): A case may not be converted to a case under another chapter unless the debtor may be a debtor under such chapter.

In *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007), the Supreme Court used this exception to deny Robert Marrama's request to convert to chapter 13. He had filed a chapter 7, and made a number of statements about his real estate that were misleading or inaccurate. He disclosed that the value of the trust that owned his property was zero, and falsely denied that he had transferred any property outside the ordinary course of business. (He had transferred that property to the trust.) To evade the chapter 7 Trustee's efforts to administer the property, he endeavored to convert to chapter 13.

Section 706(d), then, ultimately acts to deny Marrama's effort to convert, because Marrama cannot be a debtor under chapter 13. "Marrama does not qualify as such a debtor under § 1307(c), which provides that a Chapter 13 proceeding may be either dismissed or converted to a Chapter 7 proceeding 'for cause.'"

And while prepetition bad-faith conduct is not among the enumerated lists of reasons justifying relief in § 1307(c), bankruptcy courts routinely treat dismissal for prepetition bad-faith conduct as implicity authorized by § 1307's "for cause." As such, Marrama was not eligible to be a chapter 13 debtor because of his prepetition bad faith conduct, and his request to convert to chapter 7 was denied.

Relatedly, another limitation to conversion from 7 to 13 is § 109(e)'s requirement that the debtor be an individual (or an individual and spouse) with regular income and secured debts less than $1,257,850.00 and unsecured debts less than $419,275.00.

Anyway, that said, if a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and that 14-day deadline may not be extended except for cause shown and on notice as the court may direct, pursuant to Federal Rule of Bankruptcy Procedure 3015(b). However, one of the practicalities inhering in the notice-and-motion paradigm is that a Debtor may need to propound a draft plan, and schedules backstopping that plan's feasibility, as a condition for authority to convert to chapter 13.

Just as in a 13-to-7 conversion, a 7-to-13 conversion terminates the Trustee's standing to prosecute or settle proceedings. Upon conversion of a chapter 7 case to a chapter 13 case, all property of the chapter 7 estate "… returns to the debtor under the guidance of the Chapter 13 trustee." *Cable v. Ivy Tech State College*, 200 F.3d 467, 475 (7th Cir. 1999).

2. Conversion under § 707

Under § 707(b)(1), the Court may (but, again, is not required to) dismiss a case filed by an individual debtor whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or chapter 13, if it finds that granting relief under chapter 7 would be an abuse. "With the debtor's consent" is further backstopped by § 706(c), which provides that the court may not convert a chapter 7 to a case under chapter 12 or 13 unless the debtor requests or consents to such conversion.

Again, the Eleventh Circuit has recently held that being converted from chapter 13 does not immunize a case from the § 707(b) analysis. As such, the Debtor is subject to the means test and the examination of the totality of the Debtor's circumstances. *Pollitzer*, 860 F.3d at 1339.

Section 707(a) is less relevant to the analysis at hand; it provides that the Court may dismiss a case after notice and hearing, only for cause. As such, conversion to chapter 13 is not a form of relief available under § 707(a) if "cause" is shown, but conversion is available under § 707(b) as a remedy for "abuse."

Converting late in the game:

As a final note, a Debtor's right to convert a chapter 13 to a 7, or a chapter 7 to a 13, can be an extremely useful tool no matter the posture of the pending bankruptcy. Converting a chapter 13 to a chapter 7 can be a remedy if the debtor is ineligible for a chapter 13 discharge (consider the national "all payments under the plan" contretemps of § 1328(a), with which all of our attendees are likely intimately familiar) or if postpetition debts have rendered rehabilitation difficult after the chapter 13 discharge; consider a homeowner, seeking to "surrender" their home – in Illinois, a state-court foreclosure process can take many years, but postpetition homeowner's or condo association dues are not dischargeable, pursuant to § 523(b)(16).

In an August 7, 2020 opinion, *In re: Pike*, the Southern District of Illinois Bankruptcy Court even considered what happened to claims filed in a converted chapter 13, if the case was converted to a chapter 13 after the issuance of a chapter 7 discharge. The Debtor was permitted to convert the case to chapter 13 in May of 2019, in response to a chapter 7 Trustee's motion to compel, but the Debtor's chapter 7 discharge was issued in December of 2017. The Debtor objected to all the claims in the chapter 13. However, the Southern District of Illinois held that, because § 524(a)(2)'s discharge only enjoins collection efforts "as a personal liability of the debtor," it does not eliminate a creditor's claim against the bankruptcy estate. Claims, if objected to, are determined "as of the filing of the petition," under § 502(b).