

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION**

IN RE: Benny Alton and Lori Jean HEAD, Debtors

**No. 2:12-bk-71366
Ch. 11**

ORDER

Before the Court is the *United States Trustee's Motion to Dismiss or Convert Case* filed on March 29, 2013. The Court set the motion for hearing on May 15, 2013, at which time Richard Sforzini appeared for the U.S. Trustee and Don Brady appeared for the debtors. The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(A). For the reasons stated below, the Court grants the United States Trustee's motion.

Prior to presenting their respective arguments, the parties stipulated to the following relevant facts in this case:

- * The debtors filed their voluntary petition on April 3, 2012.¹
- * The debtors' case was converted to chapter 11 on February 22, 2013.
- * This is a small business case as defined by 11 U.S.C. § 101(51C).

Counsel for the debtors also stated that although a chapter 11 plan and disclosure statement have not been filed, the debtors have prepared the plan and disclosure statement and are ready to file them upon resolution of the U.S. Trustee's motion to dismiss or convert.

In a small business case, the bankruptcy code requires the debtor to file a plan and

¹ The parties agreed on the date of filing. The Court notes that the debtors filed a voluntary chapter 7 case on April 3, 2012. On May 21, 2012, the debtors moved to voluntarily convert their case to chapter 13 "to be able to pay for their property in their Chapter 13 plan." The Court granted the conversion to chapter 13 on June 19, 2012. On January 30, 2013, the debtors moved to voluntarily convert their case to chapter 11 because "the Debtors would be better able to reorganize under a chapter 11 Plan." The Court granted the conversion to chapter 11 on February 22, 2013.

disclosure statement “not later than 300 days after the date of the order for relief.” 11 U.S.C. § 1121(e)(2). The Court may extend the time to file a plan only if specific conditions are met, one of which is that an order extending the time is signed by the Court prior to the expiration of the initial 300 days, which did not occur in this case. *See* 11 U.S.C. § 1121(e)(3). According to the parties, the sole legal issue presented to the Court is a legal determination of when the 300 days referenced in § 1121(e)(2) begins to run in a case that converts to a chapter 11 small business case after the original petition was filed: either (1) on the date of the initial order for relief--April 3, 2012, in this case--or, (2) on the date of conversion to chapter 11--February 22, 2013, in this case.

Both parties cited § 348 in support of their respective positions concerning the effect of conversion to § 1121(e). The U.S. Trustee argues that under the language of § 348(a), the original date of filing the debtors’ chapter 7, which constituted an order for relief in the chapter 7 case, is also the date that constituted an order for relief in the chapter 11 case after the Court converted the debtors’ case to chapter 11. Hence, the U.S. Trustee argues that April 3, 2012, is the date from which the 300 days begins to run. The debtors argue that under § 348(a), conversion of the debtors’ chapter 13 case to chapter 11 constituted an additional order for relief and created, in effect, a “battle of the orders for relief.”

The plain language of § 348(a) supports the U.S. Trustee’s position. Section 348 provides, in relevant part:

(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 subsections (b) and (c) 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), 727(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1201(a), 1221, 1228(a), 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.

11 U.S.C. § 348.²

Filing a voluntary petition constitutes an order for relief under the chapter in which the petition was filed. 11 U.S.C. § 301(b). When a debtor converts from one chapter to another chapter, because the initial filing constituted an order for relief under the *original* chapter, recognition of an order for relief in the new chapter is required. As previously recognized by this Court in an earlier case, § 348(a) satisfies that requirement by stating that conversion “constitutes an order for relief under the chapter to which the case is converted.” See *In re Hamilton*, 383 B.R. 469, 471 (Bankr. W.D. Ark. 2008) (“§ 348(a) is necessary to recognize an order for relief under the chapter to which the case is converted”).


The answer to the legal issue presented to the Court also appears in § 348(a) in the same sentence: Conversion “constitutes an order for relief under the chapter to which the case is converted, *but*, except as provided in subsections (b) and (c) 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.*” 11 U.S.C. § 348(a) (emphasis added). In other words, although conversion constitutes an order for relief in the new chapter under which the case will proceed, it does not change the date the petition was filed, the date the case was commenced, or the date of the order for relief. Subsections (b) and (c) contain the only exceptions to subsection (a) and, as recognized by the parties, § 1121(e)--the small business case statutory requirements--does not appear in these subsections. Subsection (b) lists the sections of the code in which conversion of a case has an effect on either the date of the filing of the petition, the commencement of the case, or the order for relief. *In re Willis*, 408 B.R. 803, 807-08 (Bankr. W.D. Mo. 2009) (citing *In re Kerr*, 2007 WL 2119291, at *3 (Bankr. W.D. Wash. 2007), which stated: “[T]he clear intent of the

² The parties stipulated that subsection (b) is not applicable in this case. However, the Court includes subsection (b) to illustrate the difference between subsections (a) and (b).

section [§ 348(a)] is to retain the original filing date of the ‘filing of the petition,’ ‘commencement of the case,’ or ‘order for relief’ except in the circumstances provided for in subsections (b) and (c), where these terms are instead deemed to refer to the conversion date.”). If conversion of the debtors’ case to a small business chapter 11 affected the date of the order for relief in the small business case, § 1121(e) would have been included in the exception provision under § 348(b).

For these reasons, the Court finds that the 300 days referenced in § 1121(e)(2) begins to run from the date the initial petition was filed, regardless of when the debtors converted their case to a chapter 11 small business case. The debtors filed their voluntary petition on April 3, 2012. Because more than 300 days have passed since that date and the debtors have not filed a plan and disclosure statement as required by § 1121(e)(2), the Court grants the U.S. Trustee’s motion to dismiss or convert. The debtors shall have 14 days from the entry of this order to file a motion to convert their case to a case under chapter 7 pursuant to Federal Rule of Bankruptcy Procedure 1017(f)(2). If the debtors fail to file a motion within the time allowed, the U.S. Trustee shall be entitled to an order of dismissal.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 05/21/2013

cc: Richard H. Sforzini
Don Brady