

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF: )  
)  
JERRY L. ANDERSON, ) CASE NO. BK95-81832  
) A  
DEBTOR(S). ) CH. 7  
Filing No. 88, 91  
)  
)  
Plaintiff(s) )  
vs. )  
)  
Defendant(s) )

MEMORANDUM

Hearing was held on April 12, 1999, regarding Motion to Convert to Chapter 13 by Debtor. Appearances: Richard Rowland, Debtor, and Donald Roberts, Credit Union. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A).

Factual Background

This debtor obtained confirmation of a Chapter 13 plan in February of 1996. The plan requires payments over a period of 60 months and proposes to pay all secured and unsecured debt in full. Pursuant to the plan, the debtor was to pay \$1,743 each month for 60 months.

At the time of confirmation, the debtor owed Omaha Firefighters Credit Union over \$70,000 on one loan. That debt was secured by a lien on a 1986 Cadillac and by a lien on certain certificates of deposit owned by the debtor's mother. The plan provided that the debt would be paid in full without interest.

The credit union did not object to the plan treatment of the secured debt and the plan was confirmed. Payments have been

made to the credit union by the Chapter 13 trustee and the principal amount of the debt has now been reduced to approximately \$26,900. The credit union has received no interest on that claim. The credit union has released some collateral as the principal of the secured debt was reduced. The debtor also owed the credit union on several unsecured notes, some of which were cosigned by his mother and son.

In late 1998, the Debtor had a conversation with an official at the credit union. The substance of the conversation is in dispute, with the debtor claiming that he obtained an agreement from the credit union that would permit him to reduce his monthly payments on the debt if he were to convert his Chapter 13 case to a Chapter 7. The credit union official testified that no such conversation took place, although there was a conversation about the actual amount due and how the payments had been applied in the past.

In February of 1999, the debtor did move to convert the Chapter 13 case to a Chapter 7 case. Immediately or shortly thereafter, the credit union brought suit against the debtor's mother on a cosigned note and against the debtor's son on a cosigned note. The debtor was surprised by the actions of the credit union and filed a motion to reconvert the case to Chapter 13. That motion was resisted by the credit union.

It is the position of the credit union that there was no agreement between the debtor and the credit union with regard to a reduction in monthly payments or with regard to anything else at the time the case was converted to Chapter 7. The credit union desires that the case remain in Chapter 7 because it will be allowed to foreclose on its collateral and, if the principal and accrued interest of the remaining certificate of deposit is sufficient, it will receive not only full payment of the principal on its secured claim, but will also receive accruing interest. In addition, one of the notes is cosigned by the debtor's mother, the owner of the CD and, through appropriate state court procedures, the remaining balance of the CD may be attached to pay the full balance of the cosigned debt. In other words, Chapter 7, in this case, is very good for the credit union.

#### The Statute

The statutory provision concerning a conversion from Chapter 7 to Chapter 13 is found at 11 U.S.C. § 706(a). That provision

states:

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.

That statutory provision limits the right of the debtor to convert a case to Chapter 13 which has already been converted from Chapter 13 to Chapter 7. That limitation appears to require notice and hearing and an opportunity for interested parties to resist the conversion.

In this case, notice was give, resistance was filed, and a hearing was held.

#### Decision

The motion of the debtor is granted. This case is reconverted to Chapter 13. Whether the original plan is reinstated by this conversion is a question left to another day.

#### Discussion

The reason this motion is granted is because there was obviously a misunderstanding by the debtor with regard to what his relationship with the credit union would be following a conversion to Chapter 7. There was absolutely no practical reason for the debtor to convert to Chapter 7 and expose the collateral owned by his mother to the collection efforts of the credit union, unless he completely misunderstood his situation with regard to the credit union.

The significance of the conversion to Chapter 7 is that the credit union, if the Chapter 7 case remains in effect, receives a windfall to the detriment of the mother of the debtor. The term "windfall" is used because, through no cause of the debtor, the credit union did not participate in the original confirmation process and, by failing to participate, lost its right to the payment of interest on its secured claim. Only through a mistake by the debtor can the credit union rectify its earlier failure to complain about its plan treatment. By allowing the reconversion to Chapter 13, both parties are placed in the same position they were in at confirmation and before the misunderstanding occurred. The credit union shall not be

allowed to better its position simply because of a mistake by the debtor, when there is no evidence of fraud or manipulation of the bankruptcy code.

The motion is granted.

DATED: July 15, 2003

BY THE COURT:

/s/Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

Donald Roberts (15)  
\*Richard Rowland (86)

Copies mailed by the Court to:

United States Trustee

Movant (\*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF: )  
)  
JERRY L. ANDERSON, ) CASE NO. BK95-81832  
) A  
DEBTOR(S). )  
) CH. 7  
) Filing No. 88, 91  
Plaintiff(s) )  
vs. ) JOURNAL ENTRY  
)  
)  
)  
) DATE: May 6, 1999  
Defendant(s) ) HEARING DATE: April 12, 1999 at 2:30

Before a United States Bankruptcy Judge for the District of  
Nebraska regarding **Motion to Convert to Chapter 13 filed by the  
Debtor; Objection by Omaha Firefighters Credit Union**

APPEARANCES

Richard Rowland: Debtor  
Donald Roberts: Credit Union

( ) Copy to Law Clerk ( ) Exhibits received  
( ) NO HEARING HELD ( ) WITHDRAWN ( ) SETTLED

IT IS ORDERED:

( ) Under Advisement ( ) Deferred (X) Granted ( ) Denied

BY THE COURT:

/s/Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

Donald Roberts (15)  
\*Richard Rowland (86)

Copies mailed by the Court to:  
United States Trustee

Movant (\*) is responsible for giving notice of this journal entry to all other  
parties (that are not listed above) if required by rule or statute.