IT IS ORDERED as set forth below:

Date: November 29, 2007

Paul W. Bonapfel
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF:	:	CASE NUMBER: A04-98160-PWB
	:	
BEVERLY BROWN,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE

ORDER DENYING DEBTOR'S MOTION TO DISMISS

The Debtor seeks dismissal of her chapter 13 case pursuant to 11 U.S.C. § 1307(c). Because the Debtor's case was converted under § 706 to chapter 13 on March 15, 2005, the Debtor may not voluntarily dismiss her case pursuant to § 1307(b). Section 1307(c) provides that on request of a party in interest and after notice and a hearing, the court may convert a chapter 13 case to chapter 7 or dismiss the case "whichever is the best interests of creditors and the estate, for cause." Section 1307(c) then sets forth a nonexclusive list of factors that constitute cause.

The Debtor seeks dismissal of her case due to a decrease in monthly income that will render her unable to make her plan payments. Because of substantial equity in her residence, the

debtor is ineligible for a chapter 13 hardship discharge and is unable to seek a modification of her chapter 13 plan. Where a case was converted from chapter 13 to chapter 7 and there is a subsequent default under the plan the case typically, after notice and a hearing, would be reconverted to chapter 7. No party in interest has sought reconversion at this time. The Debtor does not wish to return to chapter 7 and instead, wishes to "take her chances" with her creditors outside of bankruptcy.

Section 1307(c) clearly and unambiguously states that, in determining whether a case should be converted or dismissed, the court is to consider "whichever is in the best interests of creditors and the estate." The issue raised by the Debtor's motion was recently addressed in *In re Sobczak*, 369 B.R. 512 (9th Cir. B.A.P. 2007). In *Sobczak*, the debtor filed a chapter 7 case in Arizona. Because of BAPCPA's changes to § 522 regarding residency requirements for purposes of claiming exemptions, the chapter 7 trustee contended that the debtor was required to use a different state's exemptions which would result in a much lower homestead exemption claim on the debtor's property. Upon the debtor's voluntary conversion to chapter 13, the chapter 13 trustee joined in the chapter 7 trustee's objection to the debtor's claimed exemptions. The debtor then filed a motion to dismiss her chapter 13 case. The court granted the debtor's motion to dismiss, noting that it was not necessarily "unfair" to creditors to dismiss the case because BAPCPA's changes to the exemption scheme possibly created an "unintended benefit" for creditors in bankruptcy that they would not have under state law (i.e., under state law the debtor would be an Arizona resident entitled to claim Arizona exemptions).

On appeal, the Ninth Circuit Bankruptcy Appellate Panel reversed. The Panel concluded that the bankruptcy court did not have the discretion to consider the best interests of the debtor in deciding whether to dismiss the case. Noting that the debtor may have made a tactical error in the

timing of his bankruptcy, the Panel nevertheless observed that it was in the best interests of creditors for the case to remain open and that "[u]nder § 1307(c) it is not the province of the court to shield a debtor from the consequences of his own actions, however unfortunate, at the expense of his creditors." *Sobczak*, 369 B.R. at 519.

The Debtor's schedules reflect that the Debtor has over $42,000 in equity in her residence. At the time the case was a chapter 7, the chapter 7 trustee estimated a sale of the Debtor's residence, after payment of the mortgage debt, the Debtor's exemption, and costs of sale, would bring $22,705 to the Debtor's estate. (Chapter 7 Trustee's Response to Debtor's Motion to Dismiss Chapter 7 Case, ¶ 4, February 18, 2005). Approximately $25,000 in unsecured claims have been filed, of which the debtor has paid almost $9,000.[1] Based on the equity in the residence, it is apparent that it is in the best interests of creditors that this case not be dismissed. This conclusion is supported by the Court's previous denial of the Debtor's motion to dismiss her case prior to conversion to chapter 13. In its March 7, 2005 Order, the Court noted the potential prejudice to creditors if the case was dismissed because "creditors with the reasonable prospect of receiving a significant payment on their claims may never recover anything if the Debtor regains control of her assets." While the Court is not unsympathetic to the Debtor's plight, § 1307(c) requires the court to determine whether the dismissal of a case is in the best interests of creditors and the estate, not whether it is in the best interests of the debtor.

Having found that dismissal pursuant to § 1307(c) is not in the best interests of creditors

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[1]The Debtor has paid a total of $23,245 to her chapter 13 plan. From these funds, $2,500 has been disbursed to the Debtor's attorney for payment of his fees in full and $10,490.46 has been disbursed to Carmax Auto Finance for its claim on a 2001 Honda Accord in full. The balance of $8,988.48 has been disbursed to two unsecured creditors, eCast Settlement Corporation and Sherman Acquisition LP. The balance on these two remaining unsecured claims is $16,281.25.

and the estate, the Court denies without prejudice the Debtor's motion. In the event this case is converted to chapter 7, the Debtor may file a motion to dismiss for cause with notice to the chapter 7 trustee and all creditors. It is

ORDERED that the Debtor's motion to dismiss is denied without prejudice.

End of Document

Distribution List

Beverly Brown
2108 Hilton Dr.
Decatur, GA 30035

Ralph Goldberg
Goldberg & Cuvillier, P.C.
Suite 600
755 Commerce Drive
Decatur, GA 30030

Mary Ida Townson
Chapter 13 Trustee
Suite 2700 Equitable Bldg.
100 Peachtree Street, NW
Atlanta, GA 30303