

12/23/05

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. A05-79109-REB
	:	
GLORIA P. COTTON,	:	CHAPTER 7
	:	
Debtor.	:	JUDGE BRIZENDINE

ORDER CONVERTING CASE TO A CASE UNDER CHAPTER 7

Debtor commenced the above-styled case on October 3, 2005 as a case under Chapter 13, Debtor having previously filed a case under Chapter 12, Case No. 96-10436 (S.D.Ga.) filed March 1, 1996 and later dismissed. Debtor filed a motion to dismiss herein seeking to voluntarily dismiss this case, which matter came on for hearing, along with several other matters (to wit; a motion for relief from automatic stay filed on behalf of the Estate of W. Norris Bryans, a motion for approval of settlement filed by Ernest Harris on behalf of Debtor's former counsel in related state court litigation, David Crowe, and the Chapter 13 Trustee's objection to confirmation of plan). Based upon a review of the record, arguments and statements of counsel at the hearing, and the relevant law, the Court finds and concludes as follows.

Given the allegations and statements made at the hearing held on December 21, 2005, it appears that this case was filed in part by Debtor as a misplaced litigation strategy with respect to challenging the judgment obtained by Lewis Winter. Further, based on the various inaccuracies in the Debtor's schedules, as well as possible transfers of property to Debtor's spouse in the past, and the questionable treatment of the unpaid claims of creditors, addressed not by funding a repayment plan and administering same through the Trustee, but through the liquidation of certain real property, it appears a dismissal of this case is not warranted. In light

of these findings, the Court concludes that although debtors ordinarily have the right to dismiss a case under Chapter 13 under 11 U.S.C. § 1307(b), the underlying factual allegations herein compel the Court to conclude that it is in the best interests of creditors that this case be converted to a case under Chapter 7 for administration of this estate therein.

The Court recognizes that some courts, holding to a strict reading of Section 1307(b), conclude that a debtor has the absolute right to dismiss a Chapter 13 case regardless of alleged discrepancies in debtor conduct. *See Barbieri v. RAJ Acquisition Corp. (In re Barbieri)*, 199 F.3d 616 (2^d Cir. 1999); *In re Nieman*, 257 B.R. 105 (Bankr. S.D.Fla. 2001). Other courts, however, read Section 1307(b) along with the provisions of Section 1307(c) and hold that in certain factual situations if a dismissal would result in an abuse of the bankruptcy process and harm creditor interests in frustration of congressional intent, it should not be allowed. *See Molitor v. Eidson (In re Molitor)*, 76 F.3d 218 (8th Cir. 1996); *In re Johnson*, 228 B.R. 663 (Bankr. N.D.Ill. 1999). In other words, the right to dismiss is not unconditional but subject to certain limitations based on Debtor conduct and the operation of Section 1307(c). As provided in this subsection, “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....” In short, congressional intent as evidenced in the structure of Section 1307 as a whole warrants a construction of these provisions that allows the court to act in the best interests of creditors when faced with a voluntary dismissal by a debtor.

Accordingly, based upon the above reasons, it is

ORDERED that the Debtor’s motion to dismiss the above case be, and same hereby is, **denied**, and given the statements presented to the Court regarding this Debtor and her estate,

it is

FURTHER ORDERED that the above case be, and same hereby is, **converted** to a case under Chapter 7 with said case to be administered therein as provided by law. In view of said conversion, it is

FURTHER ORDERED that motion for relief from automatic stay filed on behalf of the Estate of W. Norris Bryans, and the motion for approval of settlement filed by Ernest Harris on behalf of David Crowe will be **reset** by further order of the Court, and the Chapter 13 Trustee's objection to confirmation of plan is **dismissed** as moot.

The Clerk is directed to serve a copy of this Order upon Debtor, Debtor's counsel, the Chapter 13 Trustee, the Chapter 7 Trustee, the U.S. Trustee, and all creditors and parties in interest herein.

IT IS SO ORDERED.

At Atlanta, Georgia this 23rd day of December, 2005.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE