

SIGNED.



Dated: November 29, 2007

James M. Marlara
JAMES M. MARLAR
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 7
KURT ALTON GALPIN,)
Debtor.) No. 4:07-bk-01089-JMM
MEMORANDUM DECISION

Before the court is the Debtor's motion for reconsideration of an order which re-converted the case to one under chapter 7. The court, pursuant to FED. R. BANKR. P. 9023, treats this as a motion to alter, amend, or set aside its order of November 1, 2007 (Dkt. #44).

PROCEDURAL BACKGROUND

The Debtor filed a voluntary chapter 7 liquidation proceeding on June 15, 2007. A Trustee was appointed who, over the next 2 1/2 months, began administering the Debtor's estate.

As the Trustee began to investigate certain matters in the Debtor's pre-petition handling of his affairs, and filed an adversary proceeding to set aside a vehicle lien, the Debtor decided to convert his case to a proceeding under chapter 13. On September 5, 2007, the Debtor filed a motion to convert to chapter 13.

Believing the matter to be a routine conversion, the court signed the lodged order five days later, on September 10, 2007 (Dkt. #24). However, the chapter 7 Trustee, properly believing he had five days within which to object, pursuant to ARIZ. LOCAL RULE 9014-2(b)(3), filed an objection to the

1 conversion on the same day as the court signed the order, but it was docketed later in the day, and after the
2 court signed the conversion order. The Trustee's objection was within the five days permitted by local rule.

3 Thus, the court's premature order and the and the Trustee's timely objection "crossed in the
4 mail."

5 The next event that occurred was that the court then set the Trustee's objection for hearing
6 on October 29, 2007. The Debtor filed no response, and made no appearance on October 29, 2007, to
7 oppose the Trustee's objection. The court then ordered the chapter 13 case re-converted to chapter 7, and
8 signed that order on November 1, 2007 (Dkt. #44).

9 The Debtor, apparently having gotten wind of the unfavorable outcome of the October 29,
10 2007 hearing, filed a motion to set aside the re-conversion order (Dkt. #43), even before the court's order
11 was docketed. That motion was then set for hearing on November 26, 2007, at which time all parties
12 appeared and argued their respective positions.

13
14 **THE LAW**

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16 Before February 21, 2007, it was an "anomaly" in the law (as well as a conflict between the
17 Circuits) as to whether a chapter 7 debtor had an automatic right to convert a chapter 7 case to a chapter
18 13 at any time. 11 U.S.C. § 706(a)

19 Then, on February 21, 2007, the United States Supreme Court filed its decision in
20 *Marrama v. Citizens Bank of Mass.*, _ U.S. __, 127 S. Ct. 1105 (2007). In that case, the court was
21 specifically confronted with whether such relief was an automatic entitlement, or whether a judicial decision
22 was needed if such relief was challenged.

23 In a 5-4 decision, the Court concluded that a debtor did not have an absolute right to convert
24 from a chapter 7 proceeding to a chapter 13. Now, a debtor's opposed motion to convert requires a court's
25 ruling as to whether the debtor has evidenced the good faith necessary to convert from one chapter to
26 another.

27 In the instant case, the court order granting the conversion motion occurred within five days
28 of the motion. The chapter 7 Trustee's opposition thereto was filed later that same day. Thus, the legal

1 question is: did a five-day delay in entering what, at the time, appeared to be an unopposed and routine
2 motion, allow such "reasonable notice and opportunity for a hearing [to] . . . the party against whom relief
3 is sought."

4 The court concludes that it did not. The local rules require that a five-day period intervene
5 between the filing of a motion and an opposition before a court rules on what should otherwise be a
6 contested matter under FED. R. BANKR. P. 9014. ARIZ. LOCAL RULE 9014-2(b)(3). In this case, the
7 chapter 7 case had been pending over 2 1/2 months; the § 341(a) meeting had been concluded five weeks
8 earlier; the Trustee had engaged counsel; the Trustee had commenced an adversary proceeding to recover
9 assets seven weeks earlier (Adv. No. 4-07-ap-00056); and the case appeared to be moving toward the
10 prompt liquidation and collection of non-exempt assets.¹

11 Under the circumstances, the court acted improvidently in moving too quickly to allow
12 conversion without an opportunity for the chapter 7 Trustee to timely respond, and to be heard in opposition
13 thereto.

14 Whatever problems were created, however, by the too-quick conversion to chapter 13 have
15 now been remedied by the November 1, 2007 order which moved the case back into chapter 7. Should the
16 Debtor seek another attempt at converting the case into chapter 13, then, in accordance with *Marrama*, he
17 should file a new motion, accompanied by a request for evidentiary hearing, and prove that his request is
18 not improperly motivated.

19 There is no need to set aside the order of re-conversion. The case has been returned to the
20 appropriate procedural posture, awaiting only a future showing, should the Debtor desire, that satisfy the
21 *Marrama* standards for chapter 13 eligibility.

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28 ¹ The adversary proceeding sought to set aside a preference, and recover a lien for the
benefit of creditors. §§ 547, 550, and 551.

RULING

The Debtor's motion to set aside the conversion order of November 1, 2007 will be denied.

A separate order will be entered. FED. R. BANKR. P. 9021.

DATED AND SIGNED ABOVE.

COPIES served as indicated below on the date signed above:

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