

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 12
DORR PARTNERSHIP,)
) No. BK 87-30660
Debtor(s).)

MEMORANDUM AND ORDER

This matter is before the Court on two competing motions filed under section 1208 of the Bankruptcy Code. On February 1, 1988 debtor filed a Motion to Voluntarily Dismiss Bankruptcy Proceedings under section 1208(b). Production Credit Association ("PCA") and the Federal Land Bank ("Bank") then filed, on February 2, 1988, an Objection to Motion to Dismiss and Motion to Convert under section 1208(d). Both motions were scheduled for hearing on March 9, 1988. Before proceeding to a hearing on these matters, however, the Court believes that it is first necessary to determine whether a Chapter 12 debtor has an absolute right to voluntarily dismiss his case if there is no pending motion to dismiss and/or convert under 1208(d).

Section 1208(b) provides as follows:

On request of the debtor at any time, if the case has not been converted under section 706 or 1112 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

11 U.S.C. §1208(b). The Court could find no Chapter 12 cases construing this provision of the Code and addressing the specific issue now before the Court. However, Chapter 13 cases involving similar statutory provisions provide some guidance.

Section 1307(b), like section 1208(b), provides that if the debtor so requests and if the case has not been converted under section 706, 1112 or 1208 of the Code, "the court shall dismiss a case under this chapter." 11 U.S.C. §1307(b). In the case of In re Benediktsson, 34 B.R. 349 (Bankr. W.D. Wa. 1983), the court held that a Chapter 13 debtor's right of dismissal was absolute, and that nothing in the legislative history of 1307(b) "support[s] the notion that the Court may exercise discretion in considering a debtor's request to dismiss where the Chapter 13 case has not been converted." Id. at 351. See also, In re Merritt, 39 B.R. 462, 465 (Bankr. E.D. Pa. 1984) (right of dismissal is absolute); Matter of Hearn, 18 B.R. 605, 606 (Bankr. D. Neb. 1982) (court is required to honor debtor's request for dismissal). Collier agrees that the Chapter 13 debtor's right of dismissal is absolute, stating that "although not specifically mentioned in 1307(c), the court may not convert a case originally commenced under chapter 13 to chapter 7 ... if the debtor has requested dismissal of the chapter 13 case under section 1307(b)." 5 Collier on Bankruptcy ¶1307-01 at 1307-6 (15th ed.).

In Chapter 12 cases, the Court will automatically grant a motion for voluntary dismissal where the debtor files a motion to dismiss and there is no pending motion to convert under 1208(d) at the time debtor's motion is filed. If, on the other hand, a motion to convert under 1208(d) is pending at the time debtor's motion is filed, the Court will consider all motions and will make a decision based on the applicable law and on the facts as set forth by the parties. This method affords interested parties an opportunity to file a motion to

convert, yet precludes the debtor from filing a motion to dismiss that could thwart an attempted conversion. At the same time, this method protects the debtor's right to dismiss by requiring that a motion to convert be filed before debtor's request for dismissal.

In light of this holding, the objection to dismissal and motion to convert filed by the Bank and PCA cannot be allowed since such motion was not pending at the time debtor moved for dismissal. Accordingly, IT IS ORDERED that debtor's Motion to Voluntarily Dismiss is GRANTED. The Objection to Motion to Dismiss and Motion to Convert filed by the Bank and PCA is DISMISSED as moot. The February 10, 1988 Notice setting debtor's motion for hearing is STRICKEN.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: March 2, 1988