

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS**

In Re:)
)
DONAL GREGORY, SR. (DECEASED)) **Bk. No. 03-33321**
AND MARY GREGORY,)
Debtors.)
)

OPINION

Before the Court is the Chapter 7 Trustee's objection to the Debtors' (Donal Gregory, Sr., deceased,¹ and Mary Gregory) claim of exemptions as originally filed by the Debtors in their Chapter 13 case prior to its conversion to a Chapter 7 case. For the following reasons, the Chapter 7 Trustee's objection to the Debtors' claim of exemptions is DENIED.

On August 13, 2003, the Debtors filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code. Their claim of exemptions on Schedule C included, among other things, real property identified as lots 213 and 209 St. John Street, Collinsville, Illinois, and trailer that sits on lot 209 St. John Street. On their Schedule C, the Debtors specified that 735 ILCS 5/12-1001(b) provided for these exemptions. Following the Debtors' filing of their voluntary petition, a meeting of creditors was held on September 10, 2003. On September 22, 2003, the Debtors' Chapter 13 plan was confirmed.

On January 6, 2005, after the death of Donal Gregory, Sr., Mary Gregory filed a Motion to Convert to Chapter 7. Following a meeting of creditors, the Chapter 7 Trustee filed her objection to the Debtors' claim of exemptions on Schedule C, as discussed *supra*. The Trustee contends that 735 ILCS 5/12-1001(b), the statute relied on by the Debtors in claiming their exemptions, provides only for exemptions of personal property, not real property. At a hearing before this Court, the

¹Donal Gregory, Sr. passed away after the Chapter 13 case was filed.

Debtor, Mary Gregory, contended that the Trustee's objection was filed too late and that any objections should have been filed in the Chapter 13 proceedings.

At issue is whether a Chapter 7 Trustee of a case converted from Chapter 13 can object to a claim of exemptions, which was not objected to in the original Chapter 13 case. This Court has been unable to find any Seventh Circuit opinions addressing this issue. However, this Court's conclusion that conversion does not cause a new objection period to arise is consistent with the majority position, followed by the Second, Ninth, and Eleventh Circuits, as well as several bankruptcy courts. See *In re Fonke*, 321 B.R. 199, 201 (Bankr.S.D.Tex. 2005) (citing *In re Bell*, 225 F.3d 203 (2nd Cir. 2000); *In re Smith*, 235 F.3d 472 (9th Cir. 2000); *In re Ferretti*, 230 B.R. 883 (Bankr.S.D.Fla. 1999), subsequently *aff'd*, 268 F.3d 1065 (11th Cir. 2001); *In re Rogers*, 278 B.R. 201 (Bankr.D.Nev. 2002); *In re Page*, 240 B.R. 548 (Bankr.W.D.Mich. 1999); and *In re Brown*, 178 B.R. 722 (Bankr.E.D.Tenn. 1995)).

In general, when a debtor files a voluntary bankruptcy petition, he/she is entitled to claim certain exemptions provided for by state or federal law. 11 U.S.C. § 522(b); Fed.R.Bankr.P. 4003(a). However, the debtor's right to claim these exemptions is not unlimited because "[a] party in interest may file an objection to the list of property claimed as exempt," so long as they do so "within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." Fed.R.Bankr.P. 4003(b).

The objection period is based on the conclusion of the § 341(a) meeting of creditors, which provides that this meeting of creditors must be convened by the United States trustee "within a reasonable time after the order for relief in a case under this title...." 11 U.S.C. § 341(a). The procedure for this meeting of creditors is provided for in Bankruptcy Rule 2003(a), which states in

relevant part that “[i]n a chapter 13 individual’s debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 50 days after the order for relief.” Fed.R.Bankr.P. 2003(a). As discussed above, it is after this meeting of creditors, held pursuant to § 341(a), that a “party in interest” can object to claimed exemptions. Any property claimed by the debtor as exempt, which is not objected to by a party in interest within the requisite time period, will be exempt. 11 U.S.C. § 522(l) (providing that “[u]nless a party in interest objects, the property claimed as exempt...is exempt”).

In this case, in order to determine whether the Trustee’s objection to the Debtors’ claimed exemptions is timely filed, it must be determined whether conversion from Chapter 13 to Chapter 7 gives rise to a new period for objections. Section 348(a) states that:

Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

11 U.S.C. § 348(a). Clearly, § 348(a) provides that conversion is an order for relief. Consequently, several bankruptcy courts have held that since conversion is an order for relief, it requires a new meeting of creditors, and because the objection period is based on the date on which the meeting of creditors is concluded, a new period for objections is provided for by the language of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. *See In re Bell*, 225 F.3d 203, 210-11 (2d Cir. 2000) (citing, e.g., *In re Havanec*, 175 B.R. 920 (Bankr.N.D.Ohio 1994); *In re de Kleinman*, 172 B.R. 764 (Bankr.S.D.N.Y. 1994); *Matter of Bergen*, 163 B.R. 377 (Bankr.M.D.Fla. 1994); *In re Leydet*, 150 B.R. 641 (Bankr.E.D.Va. 1993)).

For the following reasons, this Court declines to follow the analysis in these cases, instead, agreeing with the Second Circuit in *Bell* that such a holding would be “incompatible with both the

language and the purposes of the Code.” *Id.* at 211. First, as the *Bell* Court noted, allowing a “party in interest” to object to exemptions that were claimed and allowed in the pre-conversion case is contrary to the language of the Code because there is only one meeting of the creditors pursuant to Rule 2003(a), following which objections to exemptions may be made. *Id.* As discussed *supra*, § 348(a) explicitly provides that conversion constitutes an order for relief. However, equally explicit in the language of § 348(a) is that, except as provided in §§ 348(b) and (c) (neither of which is applicable in this case), conversion has no effect on the date of the order for relief. 11 U.S.C. § 348. Accordingly, since conversion has no effect on the date of the order for relief, the date of the order for relief continues to be the commencement of the voluntary case. *See* 11 U.S.C. § 301 (“The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.”). Since § 348(a) undoubtedly provides that conversion does not change the date of the order for relief, “all provisions of the Code that are keyed to that date are also unaffected by conversion.” *Bell*, 225 F.3d at 211. One of the key provisions that is tied to the date of the order for relief is the meeting of creditors provided for by § 341(a) and Rules 2003(a) and 4003(b). As discussed above, this meeting of creditors must be convened by the United States trustee “no fewer than 20 and no more than 50 days after the order for relief” in Chapter 13 cases. Fed.R.Bankr.P. 2003(a). Thus, a meeting of creditors held pursuant to Rule 2003(a), must be held no fewer than 20 days and no more than 50 days after the commencement of a voluntarily filed bankruptcy petition. *See Bell*, 225 F.3d at 212 (noting that “[b]ecause there is one date of the order for relief (regardless of conversion), [citations omitted], there can only be one deadline...from that date for the meeting of creditors to be held pursuant to Rule 2003(a)”). Accordingly, because there can only be one deadline for the meeting of creditors held pursuant to Rule 2003(a) and § 341(a), any meeting of creditors held post-petition could not be followed by a period of objections to exemptions, by a “party in interest,” because a meeting of creditors held post-conversion is not a meeting of creditors

held pursuant to Rule 2003(a). *See id.* (citing *In re Halbert*, 146 B.R. 185, 189 (Bankr.W.D.Tex. 1992)). Accordingly, it follows that objections to exemptions can only be deemed timely filed if done so within 30 days after the original meeting of creditors that was held upon a debtor's voluntary petition. *Id.* ("Rule 4003(b) allows as timely filed only those objections filed 'within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a).'"). In this case then, the meeting of the creditors held pursuant to Rule 2003(a) was held on September 10, 2003. The Debtor's conversion of her case, although an order for relief, is not an order for relief pursuant to Bankruptcy Rule 2003(a). Thus, any objections filed after October 10, 2003, would be untimely. Therefore, the Chapter 7 Trustee's objection to the Debtor's claimed (and allowed) exemptions, which was filed March 5, 2005, is not timely filed.

As the *Bell* Court discussed, another reason that it would be inconsistent with the Bankruptcy Code and Rules to provide a "party in interest" with an opportunity to object to exemptions that are already exempted post-conversion is that there are enumerated exceptions to § 348(a), which provides that conversion has no effect on the date of the order for relief, and missing from the list of exceptions is the period for objection to exemptions. Bankruptcy Rule 1019 implements § 348 and must be read in conjunction with § 348. *Bell*, 225 F.3d at 213. Rule 1019(1)(A) provides that "[l]ists, inventories, schedules, and statements of financial affairs theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise." Fed.R.Bankr.P. 1019(1)(A). Rule 1019(2), regarding new filing periods, states that "[a] new time period for filing claims, a complaint to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence pursuant to Rules 3002, 4004, or 4007...." Fed.R.Bankr.P. 1019(2). By its language, Rule 1019(2) explicitly provides for new time periods for filings under Rules 3002, 4004, and 4007, but absent from this list are filings under Rule 4003(b). To understand the relevance of this, it is also important to understand that "[t]he purpose of section 348 is to preserve actions already taken

in the case before conversion.” *Bell*, 225 F.3d at 213. Thus, it “is designed to avoid [] the resetting of deadlines and the reopening of limitations periods....” *Id.* To ensure that this purpose is properly implemented, the general rule of § 348(a) specifies that dates of filings, commencement of the case, and order for relief remain unchanged, despite conversion. 11 U.S.C. § 348(a). Sections 348(b) and (c) list specific exceptions to the general rule that the date of the order for relief remains unchanged. 11 U.S.C. §§ 348(b) and (c). Since Rule 1019 implements § 348, it can only give effect to these enumerated exceptions set forth in §§ 348(b) and (c). Clearly, § 341, which provides for the meeting of creditors which is followed by the objections period, is absent from this list of enumerated exceptions.

Keeping in mind the purpose of § 348 and Rule 1019, and the absence in both of an explicit exception providing new time periods for filing objections to exemptions post-conversion (where both provided new filing periods for other circumstances), it is clear that Congress could not have accidentally left out an exception to provide a new time period for filing objections. *See Bell*, 225 F.3d at 214 (“We cannot regard it as accidental or unintentional that Congress omitted section 341 from its precisely drafted list of circumstances as to which conversion triggers a new date for the order for relief.”). Accordingly, this court finds that providing a new time period for filing objections is contrary to the purpose and letter of § 348 and its implementing rule, Rule 1019.

The third reason this Court finds that there is no new objection period following conversion is because this would require the Court to improperly read in a substantive effect that would be incompatible with the rest of the Code. Where a statute is ambiguous, it should be read so as not to “produce[] a substantive effect [and so] that [it] is compatible with the rest of the law.” *Id.* at 215 (citing *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988)). The Code, at § 541(a)(1) provides that:

- (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located

and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 541(a)(1). Any property acquired post-commencement, 11 U.S.C. § 541(a)(7), as well as “[p]roceeds, product, offspring, rents, or profits of or from property of the estate,” 11 U.S.C. § 541 (a)(6), are property of the estate. As discussed above, federal and state law permit some of this “property of the estate” to be claimed as exempt by the debtor. So long as no party in interest objects to the debtor’s claimed exemptions, such property will be exempt. 11 U.S.C. § 522(l) (“Unless a party in interest objects, the property claimed as exempt on such list is exempt.”). Exemption is important because it “remove[s] property from the estate and [] vest[s] it in the debtor.” *Bell*, 225 F.3d at 215. Thus, once property is exempt, it belongs to the debtor, and a subsequent conversion has no effect on this. *Id.* at 216. The only way a creditor could object to exempt property upon conversion is if the exempt property was somehow restored to the estate. Generally, when converting from Chapter 13 to Chapter 7, absent bad faith in converting to Chapter 7, even property that the debtor acquired post-petition is the debtor’s property and not that of the estate’s. *Id.* at 216-17.

In this case, it is clear that once the Debtors’ claimed exemptions were not objected to by the Chapter 13 Trustee within the requisite objection period, the property became exempt and became the Debtors’ property, rather than property of the estate. As discussed above, this result is unaffected by conversion. The Chapter 7 Trustee has made no showing of bad faith in converting. Accordingly, there is no new objection period. To hold otherwise would produce a substantive effect that would be incompatible with § 522(l). *See Id.* at 218 (“[A] new period for objections would derogate a debtor’s substantive property rights in property timely exempted under 11 U.S.C. § 522 (l).”).

For these reasons, this Court finds that conversion of the Chapter 13 case to Chapter 7 did

not provide a new period for the Chapter 7 Trustee to object to the Debtors' previously allowed exemptions.

ENTERED: June 8, 2005

/s/ William V. Altenberger
UNITED STATES BANKRUPTCY JUDGE