

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

IN RE:) In Proceedings
) Under Chapter 11
ERROTT HALFORD and)
JESSIE HALFORD,) No. BK 86-30811
)
Debtors.)

O R D E R

This matter is before the Court pursuant to a motion by the debtors to convert this case to a Chapter 12 proceeding.

The issue before the Court is whether the Family Farm Bankruptcy Act of 1986 provides for conversion of cases filed prior to the effective date of the Act. This issue presents two questions:

- (1) Does the authority exist for the Court to convert an existing Chapter 11 proceeding to a Chapter 12 proceeding?
- (2) If the Court has the power to do so, is conversion equitable under the facts of the case?

The Court need consider only the first question here. The salient provisions of the statute involved are §§302(c)(1), 256 and 1112(d), as amended, of the Bankruptcy Judges, United States Trustees & Family Farmer Bankruptcy Act of 1986, which creates Chapter 12 of 11 U.S.C.;

§302(c)(1) Amendments relating to family farmers -

- (1) The amendments made by subtitle B of Title II shall not apply with respect to cases commenced under title 11 of the United States Code before the effective date ...

§1112(d), as amended by §256

(d) The court may convert a case under this chapter to a case under chapter 12 or 13 of this title only if

(1) the debtor requests such conversion;

(2) the debtor has not been discharged under section 1141(d) of this title; and

(3) if the debtor requests conversion to Chapter 12 of this title, such conversion is equitable.

The debtors argue that an ambiguity is created through conflicting sections in that §1112(d), as amended by §256, allows conversion of a Chapter 11 proceeding to a Chapter 12 proceeding, whereas §302(c)(1) prohibits application of the new act to preexisting bankruptcy proceedings filed before November 26, 1986, thereby prohibiting conversion of preexisting Chapter 11 proceedings to proceedings under Chapter 12.

The debtors maintain that the obvious inconsistency of the two provisions creates an ambiguity in the statute and consequently the Court should examine the legislative history to resolve the ambiguity.

It is well established that if a statute is clear, the legislative history is not to be considered. "There is no need to refer to the legislative history where the statutory language is clear. The plain words and meaning of a statute cannot be overcome by the legislative history. Ex parte Collett, 337 U.S. 55, 61 (1949); Consumer Product Safety Commission v. GTE Sylvania, 447

U.S. 102, 108 (1980).

Section 302(c) provides that the amendments made by the new act shall not apply to cases commenced under the Bankruptcy Code before the effective date. Section 1112(d), as amended by §256, permitting conversion applies only to cases filed after the effective date of the Act.

Any ambiguity in the meaning of Section 302(c)(1) is created, not by the statute itself, but by the language found in the joint explanatory statement of the Conference Committee of the Act. In discussing the applicability of Chapter 12 to pending Chapter 11 and 13 cases, the Committee's statement may be read to infer that these pending cases could be converted to Chapter 12. If this is the sense of the Committee, it is inextricably contrary to the language of the statute itself.

Where the language of a statute is on its face clear, it is improper to look beyond it to accompanying legislative history in an effort to create an ambiguity. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 201 (1975). The Supreme Court has set forth that committee language suggesting an application contrary to the plain words of the statute itself is not sufficiently compelling to justify deviation from the language of the statute itself, United States v. Oregon, 366 U.S. 643, 648 (1961), and thus, this Court will not look beyond the clear and unequivocal words of Section 301(c)(1).

Finally, the debtors argue that the Court should look to the legislative history even in the absence of any ambiguities in the statute because application of the plain meaning of §302(c)(1) leads

to an unjust result.

In rare circumstances, even if the Court finds that the statute is not ambiguous, the Court will look to the legislative history for guidance as to the meaning of a statute, Consumer Products Safety Commission v. GTE Sylvania, 447 U.S. 102, 108 (1980), if literal compliance with the statute produces an absurd or unjust result. United States v. American Trucking Ass'n., Inc., 310 U.S. 534, 542-43 (1940); Pullman-Standard, a div. of Pullman v. I.C.C., 705 F.2d 875, 879 (7th Cir. 1983).

The debtors have failed to convince the Court that it is within the Court's authority to look beyond the plain meaning of the statute. Where the plain wording of the statute supports an interpretation that is reasonably calculated to achieve the statutory purpose, it is not for the judiciary to substitute its judgment for that of Congress by giving the statute a different interpretation, even if the Court is convinced that its approach is better calculated to achieve the goals that Congress had in mind. de los Santos v. Immigration & Naturalization Serv., 525 F.Supp. 655 (S.D. N.Y. 1981).

The result advocated by the debtors may well be desirable, but it is one that cannot be attained under the present statute within the proper limits of the judicial function. Perry v. Commerce Loan Co., 383 U.S. 392 (1966), Harlan, J., dissenting.

IT IS ORDERED that the debtors' motion to convert to Chapter 12 proceeding be, and the same hereby is, denied.

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

ENTERED: February 25, 1987