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

IN RE:	)	
	)	
RUSSELL E. SINCLAIR, SR.,	)	
AND M. MARGUERITE SINCLAIR,	)	
	)	
Debtors,	)	
	)	
RUSSELL E. SINCLAIR, SR.,	)	
AND M. MARGUERITE SINCLAIR,	)	BK No. 85-50136
	)	
Plaintiff-Appellant,	)	
	)	
-vs-	)	NO. 87 5196
	)	
STATE BANK OF JERSEYVILLE,	)	
	)	
Defendants-Appellee,	)	

ORDER

This matter is before the court on debtors' appeal from the denial of two motions by the bankruptcy court. Debtors appeal from denial of a request to dismiss their previously filed Chapter 11 proceeding with leave to refile a Chapter 12 proceeding. Debtors also appeal the bankruptcy court's denial of a motion to convert their Chapter 11 proceeding to proceedings under Chapter 12.

Jurisdiction is claimed pursuant to 28 U.S.C. §153, which provides:

> The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under Sections 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

The issues presented on appeal are: (1) Whether the bankruptcy

court erred in denying debtors' motion to dismiss their pending Chapter 11 case and grant leave to refile the case under the newly enacted Chapter 12 of the Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986 (The Act). PL 99-554, 100 Stat. 3088.

(2) Whether the bankruptcy court erred in denying debtors' motion for conversion of the Chapter 11 proceeding to Chapter 12 proceeding.

The pertinent facts of this case are that the debtors filed a Chapter 11 proceeding on April 22, 1985. The provisions of Chapter 12 of the Act became effective on November 26, 1986. Thus, the debtors' bankruptcy filing of April, 1985, was prior to the effective date of Chapter 12 of the Act. Section 302(c)(1) of the Act provides: "The amendments made by Subtitle B of Title 11 shall not apply with respect to cases commenced under Title 11 of the U.S. Code before the effective date of this Act." Section 1112(d) (11 U.S.C. 1112(d)), which provides for conversion of a Chapter 11 proceeding to a Chapter 12 proceeding, is included among the amendments made by Subtitle B. On December 17, 1986, debtors filed a motion for conversion, in the alternative, for dismissal with leave to refile. The bankruptcy court denied the motion for conversion of the Chapter 11 proceeding on March 13, 1987. The same court denied the motion for dismissal and refiling on March 26, 1987. This appeal is from the denial of these two motions.

On appeal are the legal conclusions of the bankruptcy court; the facts of this case are not in dispute. Pursuant to 28 U.S.C. §157(c)(1), the standard of review of the bankruptcy judge's proposed conclusions of law is de novo. See In re: Nanodata Computer Corporation v. Kollmorgen Corporation, 52 BR 334 (Bankr. W.D. N.Y.

1985) and In re: Duque, 48 BR 965 (Bankr. D.C. 1984).

The first issue on appeal, whether the bankruptcy court erred in denying a motion to convert Chapter 11 proceedings to Chapter 12 proceedings has been considered extensively in recent case law. Significant to deciding this issue is the fact that the debtors filed for Chapter 11 prior to the effective date of Chapter 12. Further, §302 of the Act, as noted above, provides that such amendments under Chapter 12 shall not apply to such proceedings.

Debtors, however, argue that there is an ambiguity between the plain words of §302(c) (1) and the stated intent of Congress in the conference committee report, which states:

> It is not intended that there be routine conversion of Chapter 11 and 13 cases, pending at the time of enactment, to Chapter 12. Instead, it is expected that courts will exercise their sound discretion in each case, in allowing conversions only where it is equitable to do so. Cong. Rec.H8999 (daily ed. Oct. 2, 1986).

Further, debtors contend that this court should now consider the words and implicit meaning of the committee report in lieu of the stated words of the statute in order to effectuate Congressional intent: that some pending cases would be permitted to be converted to Chapter 12.

Some bankruptcy courts have chosen to give effect to the Congressional statements rather than the explicit language of §302(c)(1). See In re Erickson Partnership, 68 BR 819 (Bankr. D.S.D. 1987) and In re Mason, 70 BR 753 (Bankr. W.D. N.Y. 1987); In re Anderson, 70 BR 883 (Bankr. D. Utah 1987); In re Henderson, 69 B.R. 982 (Bankr. N.D. Ala. 1987).

However, the majority of courts have not chosen to disregard the

plain meaning of the statute. The bankruptcy court for the Southern District of Illinois in In re Halford, No. BK 86-30811, entered February 25, 1987, denied a debtors' motion to convert to Chapter 12 proceedings. The bankruptcy court followed the well established principle of statutory construction that "if a statute is clear, the legislative history is not to be considered." Ex Parte Collett, 337 U.S. 55, 61 (1949). The plain words and meanings of the statute cannot be overcome by legislative history. Id, see also, Consumer Product Safety Commission v. GTE Sylvania, 447 U.S. 102, 108 (1980). Thus, the bankruptcy court in In re Halford, noted that §302(c)(1), providing that amendments made by the new Act, shall not apply to cases commenced prior to the effective date of the Act. Section 1112(d) of 11 U.S.C., as amended by §256, would thus permit conversion only to cases filed after the effective date, i.e., November 26, 1986.

Further, the bankruptcy court noted that the Supreme Court in United States v. Oregon, 366 U.S. 643, 648 (1961) states that committee language suggesting application contrary to the plain words of a statute is not sufficient to justify deviating from the statutory language.

Finally, addressing the alleged unjust result debtors claim would result because of the implication of the plain meaning of §302, the bankruptcy court noted that

> Where the plain meaning 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 and Naturalization Service, 525 F. Supp. 655 (S.D.N.Y. 1981).

Other courts reaching the same conclusions include, most significantly, In re Rossman, 70 BR 985 (Bankr. W.D. Mich. 1987). This case is factually similar to the instant case and involved family farm cases filed under Chapter 7, 11 and 13 of the Bankruptcy Code prior to and pending on November 26, 1986, the effective date of the Act. The issue was the same as addressed here. In a lengthy discussion, the Rossman Court acknowledged the confusion in the explanatory statement of the conference committee report, however, the Rossman Court also chose to follow the principle stated above in Ex Parte Collett. 337 U.S. at 61. Further, after examining cases which have allowed conversion, the Rossman Court noted that in "none of the . . . decisions on the conversion issue facing us, including those granting conversion, has a judge found an ambiguity within the language of the statute." Rossman 70 BR at 991. Thus, on its face the statutory language stands as prohibiting conversion. Finally, the Rossman Court notes the significant parallel between the situations in Rossman, with the implementation of the Bankruptcy Act of 1978. Here the court stated that "in spite of its concern for debtors, Congress did not make the expanded relief under the Bankruptcy Code available to bankrupts in pending cases." Rossman 70 BR at 993. See also, Central Trust Company, Rochester v. Official Creditors Committee of Geiger Enterprises, Inc., 454 U.S. 354 (1982). Thus, the court denied the motion to convert noting the "problems inherent with the use of a

Congressional report as a substitute for the plain meaning of the law." Rossman, 70 BR at 993; see also, In re Barclay, 69 BR 552 (Bankr. C.D. Ill. 1987); In re Petty, 69 BR 412 (Bankr. N.D. Ala. 1987); In re Solomon, 72 BR 506 (Bankr. E.D. Ark. 1987).

Accordingly, the decision of the bankruptcy court with respect to the debtors' conversion is affirmed.

In consideration of the second issue on appeal, debtors maintain that the dismissal of their pending Chapter 11 case is permitted by §1112(b) of Chapter 11 and should be granted with leave to refile their case under Chapter 12. The bankruptcy court's decision to base denial on the holding of Central Trust Company, Rochester, 454 U.S. 354, is argued by debtors to be inapplicable to the present case. The Supreme Court holding in Central Trust, is that the debtor could not voluntarily dismiss its case filed under Chapter XI of the 1891 Act to facilitate refiling under Chapter 11 of the 1978 Act. Specifically, Rule 403(a) of the 1978 Act states

> A case commenced under the Bankruptcy Act, and all matters and proceedings in or relating to any such case, shall be conducted and determined under such act as if [the new code] had not been enacted, and the substantive rights of parties in connection with any such bankruptcy case, matter or proceeding shall continue to be governed by the law applicable to such case, matter or proceeding as
> if the [new code] had not been enacted.
> 92 Stat. 2683, note proceedings 11 U.S.C.§101 (1976 ed., Supp. IV).

Based on the explicit wording on this rule, the court concluded that a debtor should not be allowed to unilaterally accomplish by indirection what was directly prohibited by the statutory provision.

See also In re Gamble, 72 BR 75 (Bankr. D. Idaho 1987).

The language of §302(c)(1) is similar to §403(a) in that it unequivocally states that "Amendments relating to family farmers. - - (1) The amendments made by Subtitle B of Title 11 shall not apply with respect to cases commenced under Title 11 of the United States Code before the effective date of this Act." Thus the provisions of Chapter 12, which included dismissals under §1112(d), does not apply to cases filed before November 26, 1986 and no exception is provided.

However, debtors maintain that there is "clear" Congressional intent that cases in 1979 not be converted to cases under the Bankruptcy Code and that, in the present case, Congressional intent is clearly the other way, that cases should be permitted to convert.

As discussed above, it is not generally held that there is "clear" Congressional intent under this section of the statute, as debtors maintain, that cases should be allowed to convert from Chapter 11 to Chapter 12 proceedings.

In light of the fact that the majority of courts do not allow conversion because of the plain meaning of §302(c)(1) and the holding in Central Trust. This court adopts the broader reading of Central Trust as adopted by others courts and determines that dismissal and refiling under Chapter 12 is not permissible. See also, In re Ryder, 75 BR 890, 893 (Bankr. W.D. La. 1987); In re Gamble, 72 BR 75 (Bankr. D. Idaho 1987).

Accordingly, the bankruptcy court's order denying dismissal and refiling is hereby affirmed.

IT IS SO ORDERED.

DATED: This 26th day of February, 1988.

/s/ WILLIAM L. BEATTY
UNITED STATES DISTRICT JUDGE