

SO ORDERED.

SIGNED this 15th day of August, 2024.



Lena Mansori James
LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:)	
)	
Russell James Autry,)	Case No. 24-50215
Mildred Richards Autry,)	
)	
Debtors.)	Chapter 7

ORDER DENYING DEBTORS’ MOTION TO CONVERT CASE

This matter came before the Court on the Debtors’ Motion to Convert Case to Chapter 13. (Docket No. 26). The United States Bankruptcy Administrator objected to the request to convert, (Docket No. 31, the “Objection”), asserting that the Debtors concealed assets and pre-petition transfers and made numerous false statements and omissions on their bankruptcy schedules and at the 11 U.S.C. § 341 meeting of creditors; the Bankruptcy Administrator argues that the Debtors’ conduct constitutes cause to deny the Motion under the reasoning expounded in *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

The Court held a hearing on the Motion on August 7, 2024, at which Wendy James appeared on behalf of the Debtors, and Robert E. Price, Jr. appeared

in his capacity as Assistant Bankruptcy Administrator. The Debtors were also present at the hearing and Ms. Autry testified under oath regarding the Debtors' property interests, income, and expenses as described in both the original and amended schedules and statements. (Docket Nos. 1, 19, 20, 36, 37). The Bankruptcy Administrator introduced evidence of the Debtors' pre-petition sale of real property in Tennessee and their subsequent purchase of real property in North Carolina, (BA Ex. 1-3); the Court admitted the exhibits without objection.

Findings of Fact

After considering the evidence presented at the hearing, including the testimony of Ms. Autry, and a review of the entire record, the Court makes the following findings:

1. The Debtors previously owned property located at 2550 Dark Hollow Rd., Cosby, Tennessee (the "Tennessee Property"). On March 15, 2023, the Debtors sold this property for \$211,800.54 in a cash sale. (BA Ex. 1).
2. In March 2023, the Debtors purchased real property at 7284 Odell St. SW, Ocean Isle Beach, North Carolina (the "Ocean Isle Property") for \$194,755.60 (BA. Ex. 2). The property was purchased with cash, and there were no liens or mortgages.
3. Prior to March 2024, the Debtors resided part-time in the Ocean Isle Property and partly in a 2006 Mallard travel trailer located on their son's property. But on March 1, 2024, the Debtors moved into the Ocean Isle Property and began living there full time. In February and March 2024, the Debtors used remaining cash generated from the sale of the Tennessee Property—approximately \$15,000—to fully furnish the new Ocean Isle Property.
4. The Debtors filed their petition for relief under chapter 7 of the Bankruptcy Code on March 25, 2024. (Docket No. 1; BA Ex. 4).
5. James Lanik is the duly appointed chapter 7 trustee in this case (the "Trustee").

6. Based on this uncontroverted and admitted evidence, the Court finds the Debtors made the following misrepresentations and omissions in their petition, schedules, and statements:
 - a. Despite moving into the Ocean Isle Property on March 1, 2024, the Debtors state on their petition that they reside at 4839 Old Hollow Rd., Kernersville, NC. (Docket No. 1; BA Ex. 4).
 - b. Despite purchasing the Ocean Isle Property in March 2023 for \$194,755, (BA Ex. 2), on their Summary of Assets and Liabilities, the Debtors listed the value of total real estate assets as \$0. (Docket No. 1; BA Ex. 3; BA Ex. 4).
 - c. Despite owning and residing in the Ocean Isle Property, (BA Ex. 3), the Debtors state in Schedule A/B that they do not “own or have any legal or equitable interest in any residence, building, land or similar property.” (Docket No. 1, BA Ex 4).
 - d. In Schedule A/B, the Debtors identify an ownership interest in a 2006 Mallard Travel Trailer, with the statement under “Other information” that “Debtors reside in travel trailer. Total loss title--needs repairs/roof is leaking.” *Id.* Ms. Autry admitted in her testimony that this statement was not true.
 - e. Ms. Autry repeated the false statement “Debtors reside in travel trailer” on her claim for property exemptions. *Id.*
 - f. Although the Debtors had been paying homeowners’ insurance on the Ocean Isle Property, the Debtors failed to account for this expense on their Schedule J. The Debtors also failed to account for any real estate taxes on Schedule J. *Id.*
 - g. The Debtors failed to list the pre-petition sale of the Tennessee Property on their Statement of Financial Affairs. Instead, the Debtors response to question 18 was that there were no transfers of any property to anyone within two years before filing for bankruptcy. *Id.*
7. The § 341 meeting of creditors was held on April 26, 2024, at which the Debtors made the following statements in response to questions from the Trustee:

MR. LANIK: Did you both review your petition schedules and statement of financial affairs before you signed them?

MS. AUTRY: Yes, sir.

MR. AUTRY: Yes.

MR. LANIK: Are all of your assets listed in your schedules?

MS. AUTRY: Yes, sir.

MR. AUTRY: Yes.

...

MR. LANIK: And do either one – do you wish to change or add anything to any of your schedules or statement of financial affairs?

MR. AUTRY: No.

MS. AUTRY: No, sir.

...

MR. LANIK: How long have you lived at your current residence?

MS. AUTRY: Ten years.

MR. LANIK: Okay. And you – you rent it?

MS. AUTRY: We stay in the camper.

MR. LANIK: Okay.

[ASST. BANKRUPTCY ADMINISTRATOR]: It's – it's on their son's property.

MR. LANIK: Got it. Do y'all own a piece of property in Brunswick County with an address 7284 Odell Street Southwest in Ocean Isle Beach?

MS. AUTRY: Yes.

(BA Ex. 5, 5:15-23; 6:4-8, 6:18-7:6).

8. Ms. Autry affirmed that the first time the Debtors told anyone in connection with the bankruptcy filing about the Ocean Isle Property was at the § 341 meeting of creditors.
9. Following the § 341 meeting of creditors, the Debtors filed Amended Schedules A/B, (Docket No. 18), Amended Exempt Property Claim, (Docket No. 19), and Amended Statement of Financial Affairs, (Docket No. 20). The Debtors amended their schedules and statements to show their interest in the Ocean Isle Property, that the Ocean Isle Property was owned as husband and wife, and to disclose the sale of the Tennessee Property. The Debtors also amended their Schedule I to include income from Door Dash and their Schedule J to add real estate taxes and homeowner's insurance.

Conclusions of Law

Section 706 of the Bankruptcy Code, which governs conversion of a chapter 7 case to one under a different chapter, provides in relevant part

(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

....

(d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

Though § 706(a) gives a debtor broad authority to convert, the Supreme Court has clarified that a chapter 7 debtor forfeits the right to convert to chapter 13 if he or she has engaged in bad faith conduct. *See Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372 (2007); *Law v. Siegel*, 571 U.S. 415, 426 (2014); *see also In re Hunter*, 597 B.R. 287, 292 (Bankr. M.D.N.C. 2019) (citing *Marrama*, 549 U.S. at 374) (“[A] debtor's bad faith conduct constitute[s] cause under § 1307(c) such that the debtor [does] not qualify to be a debtor under Chapter 13.”). Numerous decisions, including those from this Court, have found that a debtor’s concealment of assets and transfers can constitute bad faith sufficient to deny conversion. *See, e.g., Marrama*, 549 U.S. at 374; *In re Goins* 397 B.R. 26, 34-35 (Bankr. M.D.N.C. 2007); *In re Southern*, No. 10-50713, 2011 WL 1226058, at *2 (Bankr. M.D.N.C. Mar. 29, 2011); *In re Williams*, No. 23-10189, 2023 WL 5437543, at *5 (Bankr. S.D. Ga. Aug. 23, 2023); *In re Jennings*, No. 12-32615, 2013 WL 1137052, at *5 (Bankr. W.D.N.C. 2013). As the objecting party, the burden of demonstrating cause to deny conversion is on the Bankruptcy Administrator, by a preponderance of the evidence. *In re Southern*, 2011 WL 1226058, at *2 (citing *In re Goines*, 397 B.R. at 33).

The uncontroverted evidence in the record clearly demonstrates that the Debtors made material misstatements and omissions in their petition, schedules, and statements. The Bankruptcy Administrator argues this “concealment” of assets and transfers is “blatant” evidence of bad faith warranting denial of conversion. (Docket No. 31, ¶ 8). In response, Ms. Autry testified that she didn’t believe she needed to list the property “because it’s [located] in a different county” from where the Debtors filed their bankruptcy petition. Similarly, Ms. Autry stated that she did not believe she was supposed to disclose the sale of the Tennessee Property “because it was in a different state.”

A debtor’s schedules are filed under penalty of perjury, and the official forms repeatedly instruct debtors to “[b]e as complete and accurate as possible.” (BA Ex. 4, Official Form 101, Official Form 106, Official Form 107). Schedule A/B clearly instructs the Debtors to describe “*any* legal or equitable interest in *any* residence, building, land, or similar property,” (BA Ex. 4) (emphases added), and contains no language which could reasonably be interpreted as limiting the question to a specific county. Ms. Autry confirmed in testimony that her bankruptcy attorney told her that she “had to list all [her] property” and that the Debtors reviewed the petition, schedules, and statements with their attorney, in person, before signing it. The Debtors offer only partial and incredulous explanations for failing to disclose the Ocean Isle Property or the previous sale of the Tennessee Property.

Even if Ms. Autry earnestly believed her petition and schedules did not

require her to list real property located in a different state or county, that explanation only carries the Debtors so far. It does not, for instance, explain the Debtors' omission of homeowners insurance and real estate taxes from Schedule J, clearly contravening the requirement that debtors accurately estimate their current expenses. Nor does Ms. Autry's excuse explain the statement in the Debtors' schedules and claim for exemption that the "Debtors reside in [the] travel trailer," or the Debtors' statements at the § 341 meeting of creditors on April 26, 2024 that they have lived at their current residence for ten years. (BA Ex. 4, 5).

The Debtors' misstatements, omissions, and misrepresentations were not one-off or minor occurrences, but were rather numerous and significant. As the Bankruptcy Administrator adroitly summarized, "denying home ownership runs like a river through the entire petition." As documented above, the Debtors' attempt to conceal the Ocean Isle Property included misrepresentations and omissions in the Form 106 Summary of Assets, the Schedule A/B list of real and personal property interests, the claim for exemptions, the Schedule J list of current expenses, and the Statement of Financial Affairs. (BA Ex. 4). The Debtors also continued the façade that they resided in travel trailer at the § 341 meeting of creditors, only admitting that they owned and resided in the Ocean Isle Property after a direct question from the Trustee.

After considering (1) the overwhelming evidence of the prepetition misstatements and omissions contained in the petition, schedules, and

statements which, working together, completely concealed any trace of the Debtors' ownership interest in their residence with a value of approximately \$207,0000, (2) the Debtors' ongoing misrepresentations, under oath, at the meeting of creditors, and (3) the absence of any credible explanation, the Court finds the Bankruptcy Administrator has carried his burden of proof and has shown the Debtors acted in bad faith in connection with their chapter 7 case and are not entitled to convert the case to one under chapter 13 of the Bankruptcy Code.¹

As such, the Bankruptcy Administrator's Objection is SUSTAINED and the Debtors' Motion is DENIED.

END OF DOCUMENT

¹ Because the Court sustains the Objection and denies the Motion based on the Debtors' bad faith, it declines to address the Bankruptcy Administrator's alternate argument concerning the Debtors' inability to propose a feasible chapter 13 plan.

PARTIES TO BE SERVED

Russell James Autry and Mildred Richards Autry

Case #24-50215

John Paul Hughes Cournoyer, Bankruptcy Administrator

via cm/ecf

James C. Lanik, Trustee

via cm/ecf

Wendy H. James on behalf of Debtors

via cm/ecf