

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED
NOV 21 1999
U.S. Bankruptcy Court
Greensboro, NC
AHL

IN RE:)
)
Richard Fearrll Salisbury and) Case No. 99-10431C-7G
Rachelle Outen Salisbury,)
)
Debtors.)
)

ORDER

The Debtors filed this Chapter 13 case on February 22, 1999. On June 1, 1999, an order was entered confirming the Debtors' Chapter 13 plan. The plan calls for payments of \$ 600.00 per month to be made to the Chapter 13 trustee beginning on April 12, 1999. On July 13, 2000, this case was converted from Chapter 13 to Chapter 7 upon motion of the Debtors. When this case was converted, the Chapter 13 trustee was holding the sum of \$695.83 that was paid to the trustee by the Debtors pursuant to the confirmed Chapter 13 plan. The motion now before the court was filed by the Chapter 13 trustee and presents the issue of whether the funds held by the trustee should be returned to the Debtors or should be distributed to creditors pursuant to the provisions of the confirmed plan.

ANALYSIS

The courts that have examined the effect of conversion from Chapter 13 to Chapter 7 on entitlement to money held by the

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Chapter 13 trustee pursuant to a confirmed plan are split.

Because § 348 relates the commencement of the converted Chapter 7 case back to the date of the filing of the original Chapter 13 petition, some courts conclude that the debtor is entitled to receive all money in the possession of the Chapter 13 trustee at conversion. See In re Bullock, 41 B.R. 637, 640 (Bankr. E.D. Pa. 1984) (§ 541, not § 1306, controls the estate upon conversion. "[S]ince the deducted wages were not part of the Chapter 7 estate, the debtor is entitled to recover such wages in full without regard to his exemption claim."); Tucker v. Hendren (In re Tucker), 133 B.R. 819 (Bankr. W.D. Tex. 1991); In re Gorski, 85 B.R. 155 (Bankr. M.D. Fla. 1988); McCullough v. Luna (In re Luna), 73 B.R. 999 (N.D. Ill. 1987).

Other courts, looking to § 1306, have concluded that property of the Chapter 7 estate after conversion from Chapter 13 includes property or income acquired by the Chapter 13 debtor before conversion. See Resendez v. Lindquist, 691 F.2d 397 (8th Cir. 1982) (holding that funds held by the Chapter 13 trustee awaiting distribution to creditors became property of the Chapter 7 estate upon conversion); In re Lybrook, 951 F.2d 136 (7th Cir. 1991) (holding that an inheritance received by a Chapter 13 debtor more than 180 days after filing and before conversion to Chapter 7

became property of the Chapter 7 estate).¹ A third position, and in this court's view the better rule, relies on § 1326 in concluding that "the creditor's right to receive funds pursuant to the confirmed plan vests at the time the trustee receives the funds and debtors can no longer retain any reasonable expectation that such funds will be returned to them under any circumstances, including a conversion or dismissal." Ledford v. Burns (In re Burns), 90 B.R. 301, 304-305 (Bankr. S.D. Ohio 1988). Accord In re Galloway, 134 B.R. 602, 603 (Bankr. W.D. Ky. 1991) ("Section 1326 specifically describes the treatment of the plan payments. . . . If plan payments are made, pursuant to a confirmed plan, then the trustee shall distribute any such payments in accordance with the plan. . . . When a case is converted to a Chapter 7 after entry of an order of confirmation, the Chapter 13 trustee shall distribute any funds in accordance with the terms of the plan and not pay funds to the Chapter 7 trustee."); In re Halpenny, 125 B.R. 814,

¹In 1994 Congress amended § 348(f) of the Bankruptcy Code with the stated intent of overruling the holding in cases such as In re Lybrook. See KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY, § 8.17A (2d ed. Supp. 1997). This amendment makes clear that as between the Chapter 7 trustee and the debtor, the Chapter 7 trustee is not entitled to property held by the Chapter 13 trustee at conversion. However, the amendment does not address the rights of the Chapter 13 creditors to such funds. See In re Hardin, 200 B.R. 313, 313-14 (Bankr. E.D. Ky. 1996).

816 (Bankr. D. Haw. 1991) ("[U]nder 11 U.S.C. § 1326, when a debtor voluntarily pays funds to the Chapter 13 trustee pursuant to the terms of a confirmed plan, the creditors have a vested right to receive the funds at the time the trustee receives the funds. Because of this vesting, the debtor no longer has any interest in these funds. Thus, the funds in the hands of the Chapter 13 trustee should be distributed pursuant to the provisions of the confirmed plan."); In re Radbuagh, 125 B.R. 797, 798 (Bankr. W.D. Mo. 1991) ("[O]nce the plan is confirmed, the trustee is required to distribute the payments to the creditors"); In re Galloway, 134 B.R. 602 (Bankr. W.D. Ky. 1991); In re O'Quinn, 143 B.R. 408 (S.D. Miss. 1992); In re Leonard, 150 B.R. 709 (Bankr. W.D. Ark. 1992); In re Hardin, 200 B.R. 312, 314 (Bankr. E.D. Ky. 1996) ("While the Court reaches this conclusion based upon the provisions of § 1306, § 1326, et seq. of the Bankruptcy Code, the Court believes that equitable factors also compel the same result. Those factors include the delay occasioned in the confirmation process, the reliance of creditors upon the distribution called for in the confirmed plan, the finality afforded a confirmed plan when enforcement is sought by the debtor, and the forbearance by many creditors in asserting other rights which they may have (such as a right to adequate protection pending confirmation) in reliance upon

funds being accumulated by the trustee for distribution after confirmation occurs.").

Having considered the provisions of § 1326 and the persuasive reasoning presented by decisions such as Galloway and Hardin, this court concludes that in a Chapter 13 case in which a plan has been confirmed, funds held by the Chapter 13 trustee upon conversion to Chapter 7 must be distributed to creditors in accordance with the terms of the confirmed plan.

IT IS SO ORDERED in the present case.

This 17th day of November, 2000.

WILLIAM L. STOCKS

WILLIAM L. STOCKS
United States Bankruptcy Judge