

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

JULIA TOTT
d/b/a Pzazz Ballroom
d/b/a Julia's Valley Manor;
d/b/a Tott Homes
Debtor.

Bankruptcy No. X92-01019S

Chapter 11

ORDER RE: DEBTOR'S MOTION TO CONVERT

Debtor Julia Tott moves to convert her chapter 11 case to chapter 7. Notice of the motion was given to all creditors and parties-in-interest. None has objected. Hearing was held August 23, 1994, in Sioux City. Wil L. Forker appeared for the debtor. Donald H. Molstad also appeared. Molstad was appointed trustee when Tott's chapter 11 case was converted in error by the clerk of court. The conversion order was vacated (Order, docket no. 118, June 21, 1994).

Molstad is holding \$17,469.86 received while he served as trustee prior to vacation of the conversion order. He argues that the conversion motion ought to be granted so creditors may share in a distribution of estate assets. He contends that an estate would be created in all of debtor's property at the time of conversion. The debtor agrees that all her property would be property of a bankruptcy estate at the time of conversion even if that proposition is legally incorrect.

Debtor's plan was confirmed October 8, 1993. As a result, as the plan did not provide otherwise, all property of the estate vested in the debtor. 11 U.S.C. § 1141(b). Converting the case to chapter 7 would not recreate an estate in the assets which vested in the debtor at confirmation. In re Pauling Auto Supply, Inc., 158 B.R. 789, 795 (Bankr. N.D. Iowa 1993); In re T.S.P. Industries, Inc., 117 B.R. 375, 378 (Bankr. N.D. Ill. 1990). It is, therefore, unlikely that there would be any assets in this case for a chapter 7 trustee to administer.

Although creditors would not share in a bankruptcy distribution, claims arising prior to conversion would be discharged. 11 U.S.C. § 348(d). Section 727(a)(8) of the Code would not bar such discharge as the court construes that section to preclude discharges arising from two cases, not the same case.

If the court were to permit conversion, creditors whose claims arose prior to conversion would have their claims discharged, but they would be unable to share in a distribution from an estate. Molstad and the debtor offer a tempting, but inadequate, solution to the problem. That is to consider the debtor's property at conversion to be property of an estate created upon conversion. Such treatment would appear to offer some symmetry--the debtor would have her discharge of preconversion debts, but the creditors would share in her assets as they existed at the time of the conversion. The difficulty with this solution is that it ignores the rights of post-conversion creditors to pursue the assets of the

newly "created" estate. The court can find no legal basis for its authority to create an estate which would be shielded from the claims of post-conversion creditors.

If the court denies the motion to convert, pre- and post-confirmation creditors would be left to pursue all of the debtor's assets in satisfaction of their claims. To the extent a bankruptcy case would provide more orderly and equitable distribution to such creditors, either creditors or the debtor could file a case under chapter 7. If that is done, a trustee would administer the debtor's then-assets among all creditors existing as of that date. It is the case that no discharge would be available to the debtor as to post-confirmation debt because of 11 U.S.C. § 727(a)(8), but that circumstance is not the major concern of the court. Debtor is no longer a debtor-in-possession, so she has lost her right to convert this case. 11 U.S.C. § 1112(a)(1). Conversion may now be had only under 11 U.S.C. § 1112(b) which requires consideration of the best interests of creditors. The court concludes, for the reasons stated herein, that conversion of this case to chapter 7 is not in the best interests of creditors. Judgment shall enter accordingly.

IT IS ORDERED that the debtor's motion to convert is denied.

SO ORDERED ON THIS 29th DAY OF AUGUST, 1994.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U. S. mail to: Wil Forker, Donald Molstad, U. S. Attorney, 2002 List, U. S. Trustee.