

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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CLAYTON L. BRAL and KATHLENE BRAL  
Debtors.

Bankruptcy No. 95-50086XS  
Chapter 7

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### PROCEEDING MEMORANDUM AND ORDER

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The matter before the court is the debtors' motion for turnover of assets in the hands of the Chapter 7 trustee in a case converted from Chapter 13. Hearing was held November 21, 1995 in Sioux City, Iowa. Donald H. Molstad appeared for debtors Clayton L. Bral and Kathlene Bral. Wil L. Forker appeared for himself as Chapter 7 trustee. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2) (E).

The parties did not present evidence. The trustee does not dispute the facts as represented by attorney Molstad. The Brals filed a Chapter 13 petition on January 20, 1995. Their plan of reorganization was confirmed on April 21, 1995. The plan provided that the Brals would make monthly payments to the Chapter 13 trustee. On September 14, 1995, the Brals converted their case to Chapter 7. At that time, the Chapter 13 trustee was holding funds in the amount of \$8,063.98 which represented plan payments made by the Brals. The funds were turned over to the Chapter 7 trustee pursuant to Fed.R.Bankr.P. 1019(4).

The Brals were self-employed in a furniture construction business. On the date of their petition, they had about \$30,000 worth of inventory and accounts receivable valued at \$1,700. The Brals constructed and sold furniture post-petition, using some of the inventory. They also had income from a post-petition contract to treat or finish doors. The materials needed for that project were supplied to them. The Brals ceased operating their business between 30 and 60 days prior to the hearing on this motion.

The Brals argue that the money in the hands of the trustee should be returned to them because it represents post-petition earnings. The trustee argues that the funds are property of the Chapter 7 estate because they are no longer under the control of the debtors. Alternatively, the trustee argues that the funds should be included in the Chapter 7 estate because the Brals converted their case in bad faith.

Resolution of this matter is controlled by 11 U.S.C. 348(f), which provides:

(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title--

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion. . . .

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property in the converted case shall consist of the property of the estate as of the date of conversion.

Section 348(f) was added to the Code by the Bankruptcy Reform Act of 1994, 311, P.L. No. 103-394 (Oct. 22, 1994), to resolve a split in authority on the issue of what constitutes property of the estate when a Chapter 13 case converts to Chapter 7. Property of the estate in a Chapter 7 case is determined as of the commencement of the case, 11 U.S.C. 541(a), whereas Chapter 13 estate property additionally includes the debtors' post-petition earnings. 11 U.S.C. 1306. Conversion does not effect a change in the date of the commencement of the case for purposes of 541. 11 U.S.C. 348(a). In Matter of Lybrook, 951 F.2d 136, 138 (7th Cir. 1991), the court held that property in the Chapter 13 estate on the date of conversion passes unaltered into the Chapter 7 estate. See also Resendez v. Lindquist, 691 F.2d 397, 399 (8th Cir. 1982) (debtor may not claim as exempt funds turned over to Chapter 7 trustee after conversion from Chapter 13). The 1994 amendment overruled Lybrook and adopted the reasoning of those courts which determined the converted Chapter 7 estate as of the date of the petition. See, e.g., In re Bobroff, 766 F.2d 797 (3d Cir. 1985); In re Peters, 44 B.R. 68 (Bankr. M.D. Tenn. 1984); see also 2 Collier on Bankruptcy 348.02 (noting that the amendment adopted the majority view, citing cases). Congress was concerned that the risk of loss of post-petition assets would be a disincentive to attempt repayment of debts through a Chapter 13 plan. H.R. Rep. No. 834, 103rd Cong., 2d Sess. 42-43 (1994).

The trustee has presented no evidence of bad faith by the debtors. The result in this case should be that the funds are estate property in the converted case only if they would have been property of the estate if the case had been filed initially as a Chapter 7. The court must determine to what extent the funds are proceeds, product, or profits of property existing on the date of the petition, and to what extent they are earnings from services performed after the commencement of the case. 11 U.S.C.

541(a)(6).

The parties have not presented the evidence necessary to make this factual determination. Therefore, the court will direct the clerk to set this matter for hearing to allow the parties to present further evidence on the nature of the funds in the hands of the trustee. The parties shall also file briefs addressing the basis upon which the court is to decide the nature of the funds and the burden of proving whether the funds are property of the Chapter 7 estate.

SO ORDERED THIS 1st DAY OF DECEMBER 1995.

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on \_\_\_\_\_ I mailed a copy of this order by U.S. mail to: Don Molstad, Wil Forker, USAttorney and USTrustee.