



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
January 23, 2017

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No. 09-33798-MKN
)	Chapter 11
CHARLES LEE ROSE and NICOLE)	
MARIE ROSE,)	Date: January 19, 2017
)	Time: 1:30 p.m.
Debtors.)	
)	

ORDER ON MOTION TO CONVERT CASE TO CHAPTER 7¹

On January 19, 2017, a hearing was held on the Motion to Convert Case to Chapter 7 (“Conversion Motion”) (ECF No. 667) brought by Wells Fargo Bank, N.A. and Wells Fargo Home Mortgage (together “Wells Fargo”). The appearances of counsel were noted on the record. A joinder in the motion was filed by Rushmore Loan Management Services, LLC (“Rushmore”) and MTGLQ Investors, LP (“MTGLQ”). (ECF No. 796). Opposition to the Conversion Motion was filed by the above-captioned Debtors (ECF No. 765) and a reply was filed by Wells Fargo (ECF No. 805). After arguments were presented, the matter was taken under submission.

The court having considered the Conversion Motion, together with the arguments and representations of counsel, concludes that the motion must be denied. In this instance, the Debtors confirmed their Chapter 11 plan of reorganization (“Plan”) (ECF No. 300) at a hearing

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRCP” are to the Federal Rules of Civil Procedure.

1 on February 19, 2014. (ECF No. 357). Section 6.4 of the confirmed Plan provides that all
2 property of the Debtors' and the bankruptcy estates shall vest in the Debtors on the effective
3 date. There is no dispute that the Debtors' discharge was entered on April 13, 2015. (ECF No.
4 484).

5 At this juncture, conversion of the reopened Chapter 11 case will not result in any of the
6 assets of the prior Chapter 11 bankruptcy estate becoming property of a Chapter 7 estate because
7 the language of the Plan does not contain a specific provision for distribution of liquidation
8 proceeds from the individual, reorganized Debtors' assets. Compare In re Consolidated Pioneer
9 Mortg. Entities, 264 F.3d 803, 808 (9th Cir. 2001)(liquidating entity created to distribute
10 proceeds to investors of the Chapter 11 entities); Hillis Motors, Inc. v. Hawaii Auto. Dealers'
11 Ass'n, 997 F.2d 581 (9th Cir. 1983)(plan confirmation order delayed discharge of corporate
12 entity and Chapter 11 trustee continued to manage reorganized debtor's affairs.). Because
13 confirmation of the Plan vested all property of the Chapter 11 estate in the reorganized Debtors
14 under Section 1141(b), and no exception was included in the Plan or the confirmation order,
15 conversion to Chapter 7 will produce no distribution for creditors.

16 Moreover, conversion of the Debtors' proceeding will not vacate the Chapter 11
17 discharge previously entered. A separate proceeding to revoke the Debtors' discharge under
18 FRCP 60(d)(3) is not presently before the court. Compare Levander v. Proper (In re Levander),
19 180 F. 3d 1114 (9th Cir. 1999)(bankruptcy court may amend prior order based on fraud on the
20 court); Pryor v. ITEC Financial, Inc. (In re Pryor), No. CC-141365-KiKuD (B.A.P. 9th Cir. Feb.
21 19, 2015), Memorandum Decision at 11 ("The bankruptcy court only ruled that Pryor untimely
22 filed his Motion to Set Aside Judgment. As a result, the court incorrectly applied a standard of
23 law as to his claim for relief under Civil Rule 60(d)(3). Motions to set aside judgments for
24 'fraud on the court' have no time limit.") and Pryor v. ITEC Financial, Inc., 2016 WL 400119 at
25 *4-5 (B.A.P. 9th Cir. Jan. 29, 2016)(affirming bankruptcy court's denial of 60(d)(3) motion on
26 remand).² At the hearing on the instant Conversion Motion, Wells Fargo argued that revocation

27
28 ² The instant motion, as well as the written arguments in other matters before the court,
allege that the Debtors misrepresented under penalty of perjury their completion of payments

1 of the Debtors' Chapter 11 discharge is not required to convert to Chapter 7 based on the Ninth's
2 Circuit decision in Consolidated Pioneer Mortgage. Reliance on that decision is misplaced,
3 however, inasmuch as the non-individual Chapter 11 debtors therein were liquidating instead of
4 engaging in business after consummation of their plan. As a result, the Chapter 11 debtors in
5 Consolidated Pioneer Mortgage were ineligible to obtain a discharge under Section 1141(d)(3).
6 So while Wells Fargo may be correct, the authority it relies upon does not suggest that an actual
7 purpose would be served in the instant proceeding by conversion to Chapter 7.

8 Because conversion to Chapter 7 will not produce assets for distribution by a Chapter 7
9 trustee, nor will conversion vacate the Chapter 11 discharge previously received by the Debtors,
10 the Conversion Motion is without merit.

11 **IT IS THEREFORE ORDERED** that the Motion to Convert Case to Chapter 7, Docket
12 No. 667, brought by Wells Fargo Bank, N.A. and Wells Fargo Home Mortgage, be, and the same
13 hereby is, **DENIED**.

14
15 Copies sent to all parties via CM/ECF ELECTRONIC FILING

16 Copies sent via BNC to:

17 CHARLES LEE ROSE
18 NICOLE MARIE ROSE
19 10300 W. CHARLESTON BLVD. #13-54
20 LAS VEGAS, NV 89135

21
22
23
24
25
26
27
28
###

25 required by their confirmed Plan. See Conversion Motion at ¶¶ 37-40 & ns. 10 & 12;
26 Conversion Motion at 20:10 to 21:6. See also Opposition to Reorganized Debtors' Motion for:
27 (I) Partial Summary Judgment as to Liability Against Wells Fargo Bank, N.A. [etc.], at ¶¶ 8-14
28 and at 20:9 to 22:18. The parties presumably are aware that if reasonable grounds are
established for believing that bankruptcy fraud has been committed, e.g., 18 U.S.C. § 157(3), the
court is required to report the matter to the United States Attorney for investigation. See 18
U.S.C. § 3057(a).