SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: May 24, 2017

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

STEPHEN F. ADCOCK, **CASE NO. 16-03626-NPO**

DEBTOR **CHAPTER 7**

ORDER DENYING MOTION TO RECONSIDER CONVERSION TO CHAPTER 7

This matter came before the Court for hearing on April 21, 2017 (the "April Hearing"), on the Motion to Reconsider Conversion to Chapter 7 (the "Motion") (Dkt. 56) filed by the debtor, Stephen F. Adcock (the "Debtor"), and the First Financial Bank's Response to Debtor's Motion to Reconsider [Dkt. #56] (the "Response") (Dkt. 78) filed by First Financial Bank ("First Financial") in the above-styled chapter 7 bankruptcy case (the "Bankruptcy Case"). At the April Hearing, Victoria R. Bradshaw ("Bradshaw")[1] represented the Debtor, Chad J. Hammons ("Hammons") represented First Financial, and David Usry ("Usry") appeared on behalf of the Internal Revenue Service ("IRS").

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of the Bankruptcy

[1] After the April Hearing, Bradshaw filed the Motion to Withdraw as Counsel for Stephen F. Adcock (Dkt. 102), which the Court granted on April 26, 2017 (Dkt. 106).

Case pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Notice was proper under the circumstances.

Facts

I. Pre-Conversion

The Debtor filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code on November 4, 2016 (the "Petition") (Dkt. 1).[2] The Debtor filed his Chapter 13 Plan (the "Plan") (Dkt. 2) and his schedules (the "Schedules") (Dkt. 4) contemporaneously with the Petition. In the Plan, the Debtor proposed to make sixty (60) monthly payments of $4,000.00 to Harold J. Barkley, Jr., the standing chapter 13 panel trustee (the "Chapter 13 Trustee"). (Plan at 1). In the Plan, the Debtor listed First Financial as the holder of a home mortgage. (*Id.* at 1-2). The Court entered the Order Upon Debtor Directing Payments to Trustee (Dkt. 14) on November 14, 2016, requiring the Debtor to make payments to the Chapter 13 Trustee in the amount of $4,146.00 per month.

On December 28, 2016, First Financial filed the First Financial Bank's Objection to Confirmation of Chapter 13 Plan of Reorganization, *[Dkt. #2]* and Motion to Convert Case to Chapter 7 (Dkt. 23). According to First Financial, the Debtor filed the Petition in bad faith "shortly before First Financial was scheduled to foreclose on certain commercial property owned

[2] The Debtor filed a previous individual chapter 13 bankruptcy case that was dismissed: Case No. 15-00072-NPO (the "Prior Individual Case"), filed on January 9, 2015, and dismissed on May 11, 2015 (the "Individual Bankruptcy Dismissal Order") (Dkt. 118). The Debtor's corporation, Adcock Properties, LLC ("Adcock Properties"), filed a petition for relief pursuant to chapter 11 of the Bankruptcy Code on September 25, 2015, in Case No. 15-02980-NPO (the "Adcock Properties Case"), which was dismissed on August, 5, 2016 (the "Adcock Properties Dismissal Order") (Dkt. 126). The Adcock Properties Dismissal Order included a one-year filing bar. Adcock Properties appealed the Adcock Properties Dismissal Order (Dkt. 130), but has taken no action to pursue the appeal since August 12, 2016, and has yet to file an appellant designation, which was due on August 26, 2016.

by [Adcock Properties] in Leake County, Mississippi." (Mot. to Convert at 2). Additionally, First Financial argued that the Debtor did not appear at the scheduled 11 U.S.C. § 341 first meeting of creditors,[3] and "has not produced tax returns or bank statements to the Chapter 13 Trustee, contrary to the requirements of 11 U.S.C. § 1308." (*Id.*). First Financial also argued that the Debtor inaccurately identified the debt he owed to First Financial because a "substantial portion, if not the entirety of the debt owed by the Debtor to [First Financial] is in the nature of guaranteed debt, or debt that the Debtor has undertaken as a co-maker with [Adcock Properties] and/or his wife, Angela Adcock." (*Id.*). First Financial argued that the Plan proposed to pay it "as both a home mortgage claimant, and as an additional mortgage claimant," but the Plan failed "to identify the property that secures the non-homestead mortgage, and states that the debt owed comes to $46,925.00," which it argued is incorrect. (*Id.* at 2-3).

The Court entered the Order to Show Cause (the "Show Cause Order") (Dkt. 30) on January 4, 2017, requiring the Debtor to appear and show cause why the Bankruptcy Case should not be dismissed for failure to attend the Rescheduled First Meeting. Also on January 4, 2017, the Chapter 13 Trustee filed the Trustee's Motion to Dismiss (Dkt. 31) for failure to provide all required documents. First Financial subsequently filed the First Financial Bank's Limited Response to Trustee's Motion to Dismiss [Dkt. #31] (the "First Financial Response") (Dkt. 38) on January 10, 2017. In the First Financial Response, First Financial argued that the Debtor's failure

[3] The 11 U.S.C. § 341 meeting of creditors was initially scheduled for December 6, 2016 (the "Original First Meeting") (Dkt. 11). Justin B. Jones ("Jones"), the attorney for the Chapter 13 Trustee, explained at the hearing held on the Show Cause Order on January 23, 2017 (the "January Hearing"), that the Chapter 13 Trustee had to reschedule the 11 U.S.C. § 341 meeting for January 3, 2017 (the "Rescheduled First Meeting") (Dkt. 20), because the Debtor failed to provide tax returns, pay stubs, bank statements, and other required documents to the Chapter 13 Trustee. The Debtor failed to attend the Rescheduled First Meeting (Dkt. 28).

to attend the Rescheduled First Meeting, and his failure to make any payments or provide tax returns and other documents to the Chapter 13 Trustee, evidenced his bad faith filing. (First Financial Resp. at 1). Instead of dismissing the Bankruptcy Case, however, First Financial argued that the Bankruptcy Case should be converted to chapter 7. (*Id.* at 1-2).

II. January Hearing

At the January Hearing on the Show Cause Order, Richard R. Grindstaff ("Grindstaff") represented the Debtor, Hammons represented First Financial, and Jones appeared on behalf of the Chapter 13 Trustee. Jones stated that the Original First Meeting was reset from December 6, 2016, to January 3, 2017, because the Debtor had not provided the necessary documents to the Chapter 13 Trustee. The Debtor subsequently failed to attend the Rescheduled First Meeting on January 3, 2017, because he allegedly attended a hearing in Leake County Circuit Court ("Leake County"). According to Jones, the Debtor had made no payments and was delinquent for December and January, and the February payment would be due soon. Jones stated that the Debtor also had failed to provide tax returns, pay stubs, bank statements, and other required documents.

Hammons argued at the January Hearing that the Bankruptcy Case, which was a chapter 13 case at that time, should be converted to a chapter 7 case because the Petition was filed in bad faith. After noting the Debtor's "wholesale failure to produce documentation," the Debtor's failure to attend the Rescheduled First Meeting, and the Debtor's actions in his previous bankruptcy cases, Hammons contended that the Debtor filed the Petition to avoid foreclosure. (January Hr'g at 10:15:40).[4] According to Hammons, the Debtor, for the second time, filed a

[4] The January Hearing was not transcribed. Citations to the January Hearing are to the timestamp of the audio recording, and will be cited as "(January Hr'g at ___)."

bankruptcy petition on the morning of a scheduled foreclosure. Hammons stated that a foreclosure was scheduled for 11:00 a.m. on November 4, 2016, and seven (7) minutes before 11:00 he received notice that the Debtor had filed the Petition. (January Hr'g at 10:18:00). The Debtor, who testified at the January Hearing, acknowledged that he filed the Petition the morning of the scheduled foreclosure. (January Hr'g at 10:29:40). The Debtor claimed that he missed the Rescheduled First Meeting on January 3, 2017, because he was attending a hearing in Leake County regarding a lawsuit filed against him (the "Leake County Action") by American Express Bank, FSB ("American Express"), but Hammons argued that the Leake County Action was dismissed before January 3, 2017, so there was no hearing the Debtor was required to attend that day.[5] The Debtor testified that he did not know the Leake County Action had been dismissed, and he attended the hearing because he thought he was required to be there. According to the Debtor, when the Leake County Action was called, he discovered that it had been dismissed. The Debtor testified that prior to the hearing in Leake County, he informed his then attorney, Grindstaff, that he would be unable to attend the Rescheduled First Meeting on January 3, 2017.

At the January Hearing, the Debtor stated that after Grindstaff informed him that he "did not do chapter 11s," the Debtor told him that he would "most likely be converting [to chapter 11]."

[5] To demonstrate that the Leake County Action was dismissed and that the Debtor was not required to attend a hearing in Leake County on January 3, 2017, First Financial entered five (5) exhibits into evidence at the January Hearing: (1) the Order Setting Judge Collins' Cases for Trial (First Financial Ex. 1); the Complaint filed by American Express against the Debtor on March 30, 2016 (First Financial Ex. 2); (3) the Order of Dismissal entered on September 21, 2016, dismissing the Leake County Action (the "Dismissal Order") (First Financial Ex. 3); (4) the Answers filed by the Debtor in the Leake County Action (First Financial Ex. 4); and (5) the Notice of Voluntary Dismissal Without Prejudice, showing that Grindstaff was mailed a copy of the Dismissal Order on November 15, 2016 (the "Dismissal Notice") (First Financial Ex. 5).

(January Hr'g at 10:30:10). The Debtor claimed that he subsequently spoke to another attorney about converting the Bankruptcy Case from chapter 13 to chapter 11. (January Hr'g at 10:23:00). Although the Debtor admitted that he had made no payments to the Chapter 13 Trustee to the date of the January Hearing and had not submitted the required documents, he claimed that if he chose not to convert the Bankruptcy Case to chapter 11, he would bring his payments current before February 1, 2017. (January Hr'g at 10:24:20).

III. Conversion Order, Motion, and Response

The Court entered the Order Converting Bankruptcy Case to Chapter 7 and Denying as Moot Objection to Confirmation of Chapter 13 Plan, Motion to Convert Case to Chapter 7, and Motion to Dismiss (the "Conversion Order") (Dkt. 45) on February 7, 2017. The Court noted that the issue of whether the Debtor was present in Leake County during the Rescheduled First Meeting was immaterial to its decision that the Bankruptcy Case should be converted. Regardless of whether the Debtor was actually present in Leake County, he did not file a motion to reschedule the Rescheduled First Meeting, but simply failed to attend. Moreover, he did not provide required documents to the Chapter 13 Trustee prior to the Rescheduled First Meeting. Noting that the Debtor is a "serial bankruptcy filer who utilizes the bankruptcy process to delay creditors, which is evidenced by his failure to comply with this Court's orders in the Prior Individual Case, the Adcock Properties Case, and the current Bankruptcy Case," the Court utilized its authority to prevent an abuse of process and concluded that it would be in the best interest of the Debtor's creditors and his bankruptcy estate to convert the Bankruptcy Case to chapter 7. (Conversion Order at 6, 13). Notwithstanding a pending motion to dismiss, the Fifth Circuit Court of Appeals "concluded that a bankruptcy case may be converted instead of dismissed when a bankruptcy court finds that a debtor has acted in bad faith." (*Id.* at 7) (citing *Jacobsen v. Moser (In re Jacobsen)*,

609 F.3d 647, 663 (5th Cir. 2010)). The Court held that it "may convert, rather than dismiss a case, if, under the totality of the circumstances, doing so would be in the best interest of the creditors and the estate." (*Id.*). Under this standard, the Court found that the Bankruptcy Case should be converted to chapter 7 because the Debtor filed the Petition in bad faith by filing the Petition with no intent of filing a confirmable chapter 13 plan in order to halt a scheduled foreclosure. (*Id.* at 7-8).

The Court also found in the Conversion Order that under § 1307(c)(1),[6] the Bankruptcy Case should be converted because the Debtor caused unreasonable delay that was prejudicial to his creditors. (*Id.* at 10). Specifically, the Court looked to the "Debtor's conduct thus far in the Bankruptcy Case" and "his conduct in the previous bankruptcy cases," and found that his conduct "evidences the fact that he filed the Petition for the purpose of delaying his creditors." (*Id.*). His repeated failure to comply with the "basic requirements of the Bankruptcy Code" caused unreasonable delay that prejudiced his creditors. (*Id.* at 11-12). Finally, the Court found that the Debtor failed to timely commence plan payments, which provides grounds for conversion under § 1326(a)(1). (*Id.* at 12). The Debtor was required to commence plan payments by December 4, 2016, which he failed to do, evidencing his bad faith. (*Id.* at 13).

After the Bankruptcy Case was converted, Eileen N. Shaffer, the chapter 7 panel trustee (the "Chapter 7 Trustee"), filed the Application of Trustee to Employ Attorney (Dkt. 51), which was granted on February 17, 2017 (Dkt. 52). On February 21, 2017, Bradshaw filed the Notice of Appearance and Request for Notification (Dkt. 54). The same day, her colleague at the law firm of Wise Carter Child & Caraway, P.A., Grafton E. Bragg ("Bragg"), filed the Notice of

[6] Hereinafter, all code sections refer to the Bankruptcy Code found at title 11 of the United States Code unless indicated otherwise.

Appearance and Request for Notification (Dkt. 55). Subsequently, on February 22, 2017, Grindstaff filed the Motion to Withdraw (Dkt. 57), which the Court granted on March 21, 2017 (Dkt. 82).

The Debtor filed the Motion on February 21, 2017, requesting relief from the conversion under Federal Rule of Civil Procedure 59(e) ("Rule 59(e)"), made applicable to the Bankruptcy Case by Federal Rule of Bankruptcy Procedure 9023. According to the Debtor, he did not file the Petition in bad faith, and fully intended to "make regular payments pursuant to the Plan." (Mot. at 4). The Debtor shifted the blame to Grindstaff, arguing that although he did intend to later convert the Bankruptcy Case to chapter 11, he filed the Petition "only after conversing with his bankruptcy counsel." (*Id.*). Additionally, he was "completely unaware" that the Leake County Action had been dismissed and he communicated his scheduling conflict to Grindstaff. (*Id.*). The Debtor desired to stay in chapter 13, claiming that he "can sell two existing properties and generate enough from the proceeds to fully satisfy the notes for which that property serves as security." (*Id.*). The Debtor attached two (2) exhibits to the Motion: (1) the Affidavit of Stephen F. Adcock (Mot. Ex. A) and (2) a December 31, 2016, e-mail from the Debtor to Grindstaff (the "Grindstaff E-Mail") (Mot. Ex. B), in which the Debtor informed Grindstaff that he had to appear in Leake County on the same day of the Rescheduled First Meeting.

In the Response, First Financial noted that the Debtor hired "yet another set of lawyers who have entered the case, with promises that the Debtor will 'do right' from this point forward" without making a substantive basis for such an assertion. (Resp. at 2). The Debtor's newly hired attorneys "in fact have already had to seek additional time to file the Debtor's payment advices [Dkt. #71], because of his failure to deliver the proper documentation by the deadline, despite the fact that he filed Chapter 13 last September and has had plenty of time to compile the necessary

information." (*Id.*). According to First Financial, the Debtor offered no substantive basis for the relief requested and also "failed to take issue with the factual findings and legal conclusions reached by the Court in its bench and written rulings." (*Id.*). "The Court and the affected creditors—primarily [First Financial]—are now supposed to believe that despite the multi-year history of the Debtor's abuse of the bankruptcy system, the Debtor will now honor the rules and the process and actively conduct a Chapter 13 case in good faith." (*Id.*). First Financial contended that despite the Debtor's argument that he did not know conversion was being considered at the January Hearing, First Financial had argued in the First Financial Response that the Bankruptcy Case should be converted and, therefore, "the Debtor was on notice of the request, and is charged with that knowledge. He cannot claim he was somehow surprised that conversion was taken up at the hearing." (*Id.* at 3).

First Financial also argued in the Response that the Debtor had several years to sell properties and did not do so. (*Id.* at 4). "The inability or unwillingness to sell is simply more evidence that he personally does not own any such property, or that he on behalf of [Adcock Properties] cannot do what is necessary to effectuate a sale or otherwise put together a deal on the properties owned by it." (*Id.*). Accordingly, First Financial argued that the Bankruptcy Case should remain in chapter 7 "so that First Financial can proceed with a Motion to Lift Automatic Stay, and renew its foreclosure efforts on its collateral." (*Id.*). First Financial also emphasized its sentiment at the January Hearing, which the Court reiterated in the Conversion Order, that, in regard to Adcock's behavior, "enough is enough." (*Id*. at 5). "Simply put, there is no reason in fact or law for the Court to reconsider its decision to convert the Debtor to Chapter 7." (*Id.*).

IV. April Hearing

At the beginning of the April Hearing on the Motion and Response, Bradshaw informed

the Court that the Debtor has abandoned his argument that he should be permitted to remain in a chapter 13 case and, instead, requested dismissal of the Bankruptcy Case with a filing bar. Bradshaw also explained during the April Hearing that the Debtor was not present at the April Hearing due to an "illness." The Debtor's failure to attend the April Hearing was not surprising to the Court given the Debtor's conduct in the Prior Individual Case, the Adcock Properties Case, and the Bankruptcy Case thus far. Although Bradshaw stated that the Debtor e-mailed her the morning of the April Hearing to inform her that he was sick, she also attempted to introduce as evidence an affidavit executed by the Debtor the day before the April Hearing (the "Proposed Affidavit"). (April Hr'g at 10:07:20).[7] The fact that the Debtor executed the Proposed Affidavit the day before the April Hearing indicates that he did not plan to attend the April Hearing, despite allegedly falling ill just the morning of the April Hearing. The Court excluded the Proposed Affidavit as inadmissible hearsay evidence.

Bradshaw entered two (2) exhibits into evidence at the April Hearing: (1) the Dismissal Notice (Debtor Hr'g Ex. 1)[8] showing that a copy of the Dismissal Order was mailed to Grindstaff on November 15, 2016; and (2) the Show Cause Order (Debtor Hr'g Ex. 2). At the April Hearing, First Financial called as a witness Brad Ogletree ("Ogletree"), the president of First Financial. The IRS called as a witness Mary Jo Turner ("Turner"), an insolvency specialist at the IRS who handles bankruptcy cases, and entered the following exhibits into evidence at the April Hearing: (1) proof of claim 4-1 ("IRS POC") (IRS Hr'g Ex. 1) showing that the IRS had a claim in the Prior

[7] The April Hearing was not transcribed. Citations to the April Hearing are to the timestamp of the audio recording, and will be cited as "(April Hr'g at ___)."

[8] The Court will cite the exhibits entered into evidence at the April Hearing by the Debtor as "(Debtor Hr'g Ex. ___)" and by the IRS as "(IRS Hr'g Ex. ___)."

Individual Case in the amount of $400,140.49; (2) the Plan (IRS Hr'g Ex. 2); (3) the Creditor's Matrix (the "Matrix") (IRS Hr'g Ex. 3) filed by the Debtor in the Bankruptcy Case; and (4) the Schedules (IRS Hr'g Ex. 4).

A. Debtor

Bradshaw argued at the April Hearing that the Bankruptcy Case should be dismissed rather than converted because the Debtor can show cause why dismissal is appropriate. According to her, the Debtor has not acted in bad faith in the Bankruptcy Case, including when he missed the Rescheduled First Meeting, because he believed that he had to appear in Leake County. She stated that although he informed Grindstaff he would be unable to attend, as evidenced by the Grindstaff E-Mail, Grindstaff did not request that the meeting be rescheduled. Additionally, the Dismissal Notice was served upon Grindstaff, not the Debtor, and Grindstaff never informed the Debtor of the dismissal.[9]

Bradshaw also explained that the IRS held a lien that was not listed on the Schedules (the "IRS Lien"). Accordingly, the IRS did not receive proper notice of the Bankruptcy Case and did not file a proof of claim. Bradshaw contended that the Debtor informed Grindstaff of the IRS Lien, but Grindstaff did not list it on the Schedules.[10] According to Bradshaw, the Debtor's actions in the Bankruptcy Case have been the result of miscommunications between him and Grindstaff. Additionally, Adcock was unaware that conversion to chapter 7 was being considered

[9] Because the Debtor failed to attend the April Hearing and the Court excluded the Proposed Affidavit that Bradshaw offered into evidence, there was no testimony or other evidence to support the contention that Grindstaff never told the Debtor of the Dismissal Order.

[10] Again, because the Debtor did not attend the April Hearing and the Court excluded the Proposed Affidavit from evidence, there is no testimony to support the contention that the Debtor informed Grindstaff of the IRS Lien.

because the Show Cause Order only indicated that the Bankruptcy Case could be dismissed, not converted.

Dismissal is the superior remedy, according to Bradshaw, because it would allow First Financial to foreclose and then seek to recover a deficiency from the Debtor. She contended that First Financial sought to convert the Bankruptcy Case, and desires for the Debtor to remain in chapter 7, as a method of punishing him, and the Court should not force the Debtor to remain in bankruptcy involuntarily. (April Hr'g at 10:15:15). She also contended that if First Financial is concerned about the Debtor selling assets or collateral, it could sue the Debtor outside of Bankruptcy. Bradshaw, therefore, argued that the Court should grant the Motion and dismiss the Bankruptcy Case with a filing bar.

B. First Financial

Hammons argued at the April Hearing that the Conversion Order is correct on all points and the Motion constitutes the Debtor's latest attempt to continue his pattern of bad faith conduct. Hammons noted that the Debtor is a serial filer, has prejudiced creditors by repeatedly filing on the eve of a scheduled foreclosure, and has failed to comply with the basic requirements of the Bankruptcy Code on multiple occasions. In regard to the IRS Lien, Hammons stated that "a couple of years ago" at a hearing on a motion to lift the stay filed in one of the Debtor's prior bankruptcy cases, he asked the Debtor why he could not sell certain property. (April Hr'g at 10:20:00). In response, the Debtor stated that he had a "large federal tax lien" that prevented him from selling the property. (*Id.*). This admission, according to Hammons, evidences the Debtor's bad faith because the Schedules excluded the IRS Lien, of which the Debtor had actual knowledge.

Additionally, Hammons argued that even if the Debtor's contention that he did not receive

notice that the Leake County Action was dismissed is true, Grindstaff did receive notice.[11] Despite Bradshaw's argument that First Financial would not be prejudiced by dismissal because it could foreclose, Hammons contended that First Financial would be prejudiced, as evidenced by its history with the Debtor, who has repeatedly demonstrated that he will not comply with his agreements with First Financial. In fact, if the Bankruptcy Case is dismissed, First Financial would be "very prejudiced." (April Hr'g at 10:23:30). "The history of its dealings with [the Debtor] amply demonstrates that it is almost entirely predictable that First Financial will be prejudiced based on what [the Debtor] has done previously." (April Hr'g at 10:23:40). In First Financial's "considered business opinion," its interest would be best served if the Debtor remains in chapter 7. (April Hr'g at 10:25:00). Hammons provided that First Financial desires the orderly liquidation and distribution of assets in the Bankruptcy Case through the Chapter 7 Trustee, which is in the best interest of all creditors.

Ogletree, who testified that he is very familiar with the Debtor and his history in bankruptcy, outlined the Debtor's history of prior behavior. The first example of the Debtor's prior behavior, as described by Ogletree, was that the Debtor incurred business debts in the name of his foster daughter, Georgia, and his biological daughter, Ashton, and subsequently defaulted. (April Hr'g at 10:29:40). Second, Ogletree testified that First Financial legally repossessed its collateral (cattle) and then entered into a workout agreement with the Debtor. (April Hr'g at

[11] Because the Debtor failed to attend the April Hearing, and in the absence of Grindstaff's testimony, the Court is unable to determine whether the Debtor's contention that Grindstaff failed to tell him about the Dismissal Order is true. Nonetheless, "[u]nder Mississippi law, knowledge and information received by an agent . . . of a principal is imputed to the principal, regardless of whether the agent communicated that knowledge or information to the principal." *In re Adams,* Case No. 14-00580-NPO, slip op. at *9 (Bankr. S.D. Miss. Aug. 21, 2014) (citing *Lane v. Oustalet,* 873 S.2d 92, 95-96 (Miss. 2004)). Thus, because it is undisputed that Grindstaff received notice that the Leake County Action was dismissed, that notice is imputed to the Debtor.

10:31:00). After the collateral was returned to the Debtor, he sold the collateral without First Financial's permission and retained the proceeds. (*Id.*). Additionally, Ogletree testified that during a meeting with Hammons and the Debtor at First Financial's office, Adcock invited him to "step outside for a physical confrontation." (April Hr'g at 10:30:30).

C. IRS

At the April Hearing, Usry explained that he only recently learned of the existence of the Motion because the Debtor did not list the IRS on the Schedules, meaning the IRS did not receive proper notice of the Bankruptcy Case. After reviewing the Conversion Order and the docket in the Bankruptcy Case, however, Usry stated that the Motion should be denied because the Conversion Order is correct. According to Usry, the information presented demonstrates a lack of good faith and dismissal would not adequately protect the Debtor's creditors. Usry argued that the Chapter 7 Trustee, who has the duty to locate and liquidate the Debtor's assets and distribute them accordingly, is necessary to ensure that the Debtor does not further engage in bad faith conduct.

Usry presented additional evidence of bad faith, which was not previously brought to the Court's attention due to the IRS' lack of notice of the Bankruptcy Case, showing that the Debtor has acted in bad faith. First, Usry argued that the IRS POC demonstrates that the IRS held a claim in the amount of $400,140.49 resulting from the Debtor's tax liability, which is secured by federal tax liens in several counties. Second, despite the existence of the IRS Lien, the Debtor did not list the IRS anywhere on the Plan. Third, neither the IRS nor Usry were listed on the Matrix as required. Finally, the Schedules do not list the IRS. Although the Mississippi Department of Revenue is listed on Schedule E/F: Creditors Who Have Unsecured Claims (Schedules at 14-16) (IRS Hr'g Ex. 4) as a creditor, the IRS does not appear. Additionally, Usry argued that Schedule

J: Your Expenses ("Schedule J") (Schedules at 21-22) (IRS Hr'g Ex. 4) provided that the Debtor has $0.00 in tax liability. Usry also contended that the Debtor indicated in the Schedules that he does not own a business, which is not true. Bradshaw argued that the Debtor informed Grindstaff about the IRS Lien and that Grindstaff did not include it on the Schedules, but Usry argued that the Debtor electronically signed the Schedules, certifying that he read the Schedules and that they were true and correct.

Turner testified at the April Hearing that the total balance of the IRS Lien after bringing the amount from the IRS POC current to the day of the April Hearing, was $483,407.55. Turner also testified that in chapter 7 no-asset cases, the IRS does not typically file proofs of claim. If the Chapter 7 Trustee were to discover assets in the Bankruptcy Case, the IRS would file a proof of claim. According to Turner, the Debtor failed to file tax returns for the years 2008, 2012, 2013, 2014, and 2015. Additionally, the Debtor has yet to file a tax return for the year 2016—he did not file before the April 15 deadline and did not request an extension.

Discussion

"Motions to 'reconsider,' to 'vacate' or to 'set aside' are motions under Rule 9023 [of the Federal Rules of Bankruptcy Procedure]." *In re Jackson*, Case No. 16-03263-NPO, slip op. at *5 (Bankr. S.D. Miss. Dec. 21, 2016) (citing *In re Salmeron*, No. 10-38945-H3-13, 2012 WL 1354858, slip op. at *2 (Bankr. S.D. Tex. Apr. 16, 2012)). Because the Debtor requested that the Court "reconsider" the Conversion Order, and cited Rule 59(e), the Court considers the Motion under Rule 59(e).

Under Rule 59(e), made applicable to the Bankruptcy Case by Federal Rule of Bankruptcy Procedure 9023, an aggrieved party may file a motion to alter or amend a judgment within fourteen

(14) days of entry of the judgment.[12] FED. R. BANKR. P. 9023. It "serves the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Waltman v. Int'l Paper Co.,* 875 F.2d 468, 473 (5th Cir. 1989). Essentially, Rule 59(e) "calls into question the correctness of a judgment." *Templet v. HydroChem Inc.,* 367 F.3d 473, 478 (5th Cir. 2004). The Court may amend a final judgment if: (1) there is a manifest error of law or fact; (2) there is newly discovered evidence; or (3) there was an intervening change in controlling law. *Schiller v. Physicians Res. Grp. Inc.,* 342 F.3d 563, 567 (5th Cir. 2003) (citing *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-64 (5th Cir. 2003)). This Court has noted that "[r]elief under Rule 59(e) is 'an extraordinary remedy that should be used sparingly.'" *Fina Oil & Chem. Co. v. Howard (In re Howard),* Adv. No. 14-05009-NPO, 2015 WL 534559, at *6 (Bankr. S.D. Miss. Feb. 6, 2015) (citing *Templet,* 367 F.3d at 479).

In the Motion, the Debtor did not present any law or evidence to support relief under Rule 59(e), and did not argue that any of the three (3) aforementioned categories is applicable. The Motion merely constitutes an attempt to refute the Court's findings of fact and conclusions of law, which were substantially supported by evidence of past conduct and the Court's prior experience with the Debtor. The Debtor has not demonstrated a "manifest error of law or fact," and certainly has not alleged newly discovered evidence or an intervening change in controlling law. The lynchpin of the Debtor's argument appears to be that his due process rights were violated when the Court converted the Bankruptcy Case without giving the Debtor an adequate opportunity to respond. On the contrary, the Debtor was on notice that the Bankruptcy Case could be converted. In the First Financial Response, First Financial argued that the Bankruptcy Case should be

[12] The Court entered the Conversion Order on February 7, 2017, and the Debtor filed the Motion on February 21, 2017, within fourteen (14) days.

converted instead of dismissed. The Court agrees with First Financial that, based on the fact that First Financial argued that the Bankruptcy Case should be converted, "the Debtor was on notice of the request, and is charged with that knowledge. He cannot claim he was somehow surprised that conversion was taken up at the hearing." (Resp. at 3). Thus, the Debtor was on notice that First Financial would argue that the Bankruptcy Case should be converted.

Importantly, a Rule 59(e) motion must not be utilized to relitigate old issues that could have been raised before entry of the judgment. *Simon v. United States,* 891 F.2d 1154, 1159 (5th Cir. 1990); *Forsythe v. Saudi Arabian Airlines Corp.,* 885 F.2d 285, 289 (5th Cir. 1989). Rule 59(e) "is not the proper vehicle for rehashing evidence [or] legal theories . . . ." *Templet*, 367 F.3d at 478-79 (citations omitted). Relitigating old issues is precisely what the Debtor is attempting to do in the Bankruptcy Case. His argument that the Court should reconsider the Conversion Order and dismiss the Bankruptcy Case relies on his contention that, despite the Court's findings in the Conversion Order, he did not act in bad faith in the Bankruptcy Case. The Court considered a plethora of evidence in the Bankruptcy Case, as well as the Court's past experience with the Debtor in the Prior Individual Case and the Adcock Properties Case, and concluded that the Debtor filed the Petition in bad faith. The Debtor asserted in the Motion, and his counsel argued at the Hearing, that this conclusion was mistaken and that the Debtor is an honest debtor who has fallen on hard times. Such is not the case.

In the fourteen (14)-page Conversion Order, the Court outlined the Debtor's conduct and the law supporting its finding that the Bankruptcy Case should be converted rather than dismissed. As the Court noted in the Conversion Order, it has the authority under § 1307 to convert or dismiss a chapter 13 case, whichever is in the best interest of the creditors and the estate, upon the request

of a party in interest.[13] (Conversion Order at 6) (citing 11 U.S.C. § 1307(c)). Additionally, the Supreme Court held that bankruptcy courts "are vested with the authority to take appropriate action in response to an abuse of process." (*Id.*) (citing *In re Jacobsen*, 609 F.3d at 661) (citing *Marrama v. Citizens Bank*, 549 U.S. 365, 375 (2007)). Extensively citing Fifth Circuit and Supreme Court law, the Court concluded that the Debtor filed the Petition in bad faith. Specifically, the Debtor's purpose was "to file a petition to halt a scheduled foreclosure, then convert to chapter 11, unreasonably delaying and causing prejudice to his creditors." (*Id.* at 8). The Court found that evidence of the Debtor's bad faith included, but was not limited to, the following: (1) the Debtor testified at the January Hearing that he desired to file a chapter 11 case, but because Grindstaff did not handle chapter 11 cases, he filed a chapter 13 petition with the intent to later convert rather than hiring a chapter 11 attorney, demonstrating that he never intended to propose a confirmable chapter 13 plan; (2) the Debtor failed to remit the basic, required documents to the Chapter 13 Trustee; and (3) as the Court found in the Prior Individual Case, the Debtor has consistently wasted an "enormous amount of judicial resources" in part by improperly filing a notice of appeal, filing a meritless motion for contempt, and lodging allegations under Rule 11 of the Federal Rules of Civil Procedure (Individual Bankruptcy Dismissal Order at 4).

Additionally, the Court had the authority to convert the Bankruptcy Case under § 1307(c)(1) because doing so was in the best interest of the creditors and the estate since the Debtor's conduct resulted in unreasonable delay prejudicial to creditors. (Conversion Order at 10). "The Debtor's conduct thus far in the Bankruptcy Case, as well as his conduct in the previous bankruptcy cases, evidences the fact that he filed the Petition for the purpose of delaying his

[13] First Financial requested in the First Financial Response and at the January Hearing that the Bankruptcy Case be converted to chapter 7.

creditors." (*Id.*). To support its conclusion, the Court cited the Debtor's following behavior in the Conversion Order: (1) the debtor filed two (2) individual petitions within two (2) years, plus the Adcock Properties Case, which were dismissed because he failed to meet the basic requirements of the Bankruptcy Code; (2) the Prior Individual Case was dismissed because the Debtor failed to file a confirmable chapter 13 plan, even though the Court extended the deadline five (5) times; (3) the Debtor has retained at least six (6) separate law firms, and a total of ten (10) lawyers have represented him either individually or on behalf of Adcock Properties;[14] (4) an enormous amount of judicial resources were wasted in the Prior Individual Case, including more than 100 docket entries, emergency hearings, a motion for contempt, an improperly filed notice of appeal, and allegations under Rule 11 of the Federal Rules of Civil Procedure; and (5) in the Bankruptcy Case, the Debtor failed to attend the Rescheduled First Meeting, failed to provide necessary documents, and failed to provide the Chapter 13 Trustee with the required documents due within forty-five (45) days under § 521(a)(1)(B)(i) and § 521(i). (*Id.* at 10-11).

In sum, the Debtor is a serial filer who utilizes the bankruptcy process to delay creditors, which is supported by extensive evidence outlined in the Conversion Order. The Court has the duty to prevent fraud and abuse, which led it to conclude that conversion, rather than dismissal, was the only appropriate remedy. The Debtor has provided no evidence to demonstrate that the Court made a manifest error, that he possesses newly discovered evidence, or that there has been a change in the law. In fact, the only evidence not previously considered in the Bankruptcy Case

[14] The following attorneys represented the Debtor during the pendency of the Prior Individual Case (attorneys in the same law firm will be listed together): William R. Hood and R. Michael Bolen; John D. Moore and Melanie T. Vardaman; and Craig M. Geno and Jarrett P. Nichols. Robert Rex McRaney, Jr. represented the Debtor in the Adcock Properties Case. Grindstaff previously represented the Debtor in the Bankruptcy Case, and then Bradshaw and Bragg were retained as counsel for the Debtor.

only bolsters the Court's justification for converting: (1) the Debtor excluded the IRS Lien from his Schedules and Plan, even though he electronically signed the Schedules and acknowledged that he knew about his tax liability at a previous hearing; (2) Ogletree explained at the April Hearing that First Financial and the Debtor entered into a workout agreement after First Financial repossessed its collateral (cattle) and after it returned the collateral to the Debtor, he sold it without permission and failed to remit the proceeds; and (3) Ogletree testified that the Debtor incurred business debts in the name of his foster daughter and his biological daughter. Given that none of the three (3) categories supporting a successful Rule 59(e) motion were satisfied, the Court finds that the Motion lacks merit and should be denied.

Conclusion

The Debtor failed to present any evidence to demonstrate that Rule 59(e) warrants reconsideration of the Conversion Order, which was well supported by legal and factual findings outlining the Debtor's repeated bad faith conduct. The Debtor has had multiple opportunities to comply with the Bankruptcy Code, and has repeatedly shirked his legal responsibilities. The Court finds that the *only* way to ensure that the Debtor will comply with the Bankruptcy Code and to prevent him from further abusing the bankruptcy process is to uphold the Conversion Order. The Chapter 7 Trustee has been appointed, and she is required by bankruptcy law to expeditiously locate and collect the Debtor's non-exempt property, convert it to money, and pay the allowed claims of creditors, including First Financial, as expeditiously as possible under § 704(a)(1). 6 COLLIER ON BANKRUPTCY ¶ 704.01 (16th ed. 2016).

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

##END OF ORDER##