



**SO ORDERED,**

**Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: February 7, 2017**

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

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**STEPHEN F. ADCOCK,**

**CASE NO. 16-03626-NPO**

**DEBTOR.**

**CHAPTER 13**

**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**

This matter came before the Court for hearing on January 23, 2017 (the “Hearing”), on the Order to Show Cause (the “Show Cause Order”) (Dkt. 30) requiring the debtor, Stephen F. Adcock (the “Debtor”), to appear and show cause why the above-styled chapter 13 bankruptcy case (the “Bankruptcy Case”) should not be dismissed “for failure to attend the Section 341 Meeting scheduled for January 3, 2017, at 9:30 a.m., as required by 11 U.S.C. § 343.” (Show Cause Order at 1). At the Hearing, Richard R. Grindstaff (“Grindstaff”) represented the Debtor, Chad J. Hammons (“Hammons”) represented First Financial Bank (“First Financial”), and Justin B. Jones (“Jones”) appeared on behalf of Harold J. Barkley, Jr., the standing chapter 13 panel trustee (the “Trustee”). After considering the matter and being fully advised in the premises, the Court ruled from the bench that the Bankruptcy Case should be converted from chapter 13 to chapter 7. This Order memorializes and supplements the Court’s bench ruling.

## **Jurisdiction**

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

1. The Debtor filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code on November 4, 2016 (the “Petition”) (Dkt. 1).<sup>1</sup>

2. The Debtor filed his Chapter 13 Plan (the “Plan”) (Dkt. 2) contemporaneously with the Petition. In the Plan, the Debtor proposed to make sixty (60) monthly payments of \$4,000.00 to the Trustee. In the Plan, the Debtor listed First Financial as the holder of a home mortgage. (Plan at 1).

3. The Court entered the Order Upon Debtor Directing Payments to Trustee (the “Wage Order”) (Dkt. 14) on November 14, 2016, requiring the Debtor make plan payments to the Trustee in the amount of \$4,146.00 per month.

4. Wells Fargo Bank, N.A., a secured creditor, filed the Objection to Confirmation of Chapter 13 Plan (the “Confirmation Objection”) (Dkt. 21) on December 21, 2016, arguing that the Plan should not be confirmed.

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<sup>1</sup> 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. The Debtor appealed the Adcock Properties Dismissal Order (Dkt. 130), but has taken no action to pursue the appeal since August 12, 2016. The Debtor has yet to file an appellant designation, which was due on August 26, 2016.

5. 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 (the "Motion to Convert") (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 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 (the "First Meeting"), 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 owes 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).

6. The Court entered the Show Cause Order on January 4, 2017, the same day the Trustee filed the Trustee's Motion to Dismiss (the "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 to attend the First Meeting and his failure to make any payments or provide tax returns and other documents to the 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).

7. At the Hearing, Jones stated that the First Meeting was reset from December 6, 2016, to January 3, 2017, because the Debtor had not provided the necessary documents to the Trustee. The Debtor subsequently failed to attend the First Meeting on January 3, 2017, because he allegedly attended a hearing in Leake County Circuit Court. According to Jones, the Debtor has made no payments and is delinquent for December and January, and the February payment will be due soon. Jones stated that the Debtor also has failed to provide tax returns, pay stubs, bank statements, and other required documents.

8. Hammons argued at the Hearing that the Bankruptcy Case 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 First Meeting, and the previous bankruptcy cases filed by the Debtor, Hammons contended that the Debtor filed the Petition to avoid foreclosure. (Hr'g at 10:15:40).<sup>2</sup> According to Hammons, the Debtor, for the second time, filed a 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 filed the Petition. (Hr'g at 10:18:00). The Debtor, who testified at the Hearing, acknowledged that he filed the Petition the morning of the scheduled foreclosure. (Hr'g at 10:29:40). The Debtor claimed that he missed the First Meeting on January 3, 2017, because he was attending a hearing in Leake County Circuit Court regarding a lawsuit filed against him (the "Leake County Action") by American Express Bank, FSB

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<sup>2</sup> The Hearing was not transcribed. Citations are to the timestamp of the audio recording.

(“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.<sup>3</sup> 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, only after the Leake County Action was called, he discovered that it had been dismissed. The Debtor testified that he informed his attorney, Grindstaff, that he would be unable to attend the First Meeting on January 3, 2017, but he did not know that he should also have informed the Trustee. The Court notes that the issue of whether the Debtor was present in the Leake County Circuit Court during the First Meeting is immaterial to its decision that the Bankruptcy Case should be converted. Regardless of whether the Debtor was actually present in the Leake County Circuit Court, he did not file a motion to reschedule the First Meeting, but simply failed to attend.

9. At the Hearing, the Debtor requested more time in which to submit the required documents to the Trustee. 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].” (Hr’g at 10:30:10). The Debtor claims that he subsequently spoke to another attorney<sup>4</sup> about converting the

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<sup>3</sup> To demonstrate that the Leake County Action was dismissed and that the Debtor was not required to attend a hearing in Leake County Circuit Court on January 3, 2017, First Financial entered five (5) exhibits into evidence at the 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 (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 issued on November 15, 2016, notifying the Debtor that the Leake County Action was dismissed (First Financial Ex. 5).

<sup>4</sup> At least four (4) sets of attorneys have represented the Debtor or Adcock Properties in both the Prior Individual Case and the Adcock Properties Case. The following attorneys represented the Debtor during the pendency of the Prior Individual Case (attorneys practicing in the same law firm will be listed as one): (1) William R. Hood and R. Michael Bolen; (2) John D.

Bankruptcy Case from chapter 13 to chapter 11. (Hr'g at 10:23:00). Although the Debtor admitted that he has made no payments to the Trustee to date and has 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. (Hr'g at 10:24:20).

### **Discussion**

At the Hearing, Hammons requested that the Court convert the Bankruptcy Case from chapter 13 to chapter 7, rather than dismiss the Bankruptcy Case, because the Debtor filed the Petition in bad faith, as evidenced by his actions in the Prior Individual Case, the Adcock Properties Case, and the Bankruptcy Case. The Court may dismiss or convert a chapter 13 case to a chapter 7 case, whichever is in the best interest of the creditors and the estate, upon the request of a party in interest. 11 U.S.C. § 1307(c). The Supreme Court has held that bankruptcy courts “are vested with the authority to take appropriate action in response to an abuse of process.” *Jacobsen v. Moser (In re Jacobsen)*, 609 F.3d 647, 661 (5th Cir. 2010) (citing *Marrama v. Citizens Bank*, 549 U.S. 365, 375 (2007)). In order to convert a chapter 13 bankruptcy case to a chapter 7 liquidation case pursuant to § 1307(c),<sup>5</sup> the Court must find cause, which includes the “unreasonable delay by the debtor that is prejudicial to creditors” or the “failure to commence making timely payments under section 1326 of this title.” 11 U.S.C. § 1307(c)(1) & (4).

The Fifth Circuit has addressed the issue of whether to convert or dismiss a bankruptcy case under § 1307(c). *In re Jacobsen*, 609 F.3d at 662-63. In *In re Jacobsen*, the Court cited the

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Moore and Melanie T. Vardaman; and (3) Craig M. Geno and Jarrett P. Nichols. Robert Rex McRaney, Jr. represented the Debtor in the Adcock Properties Case. Thus, Grindstaff is the fifth attorney hired by the Debtor, either individually or for Adcock Properties, to represent him in bankruptcy, and the Debtor desires to hire a sixth attorney to represent him in a chapter 11.

<sup>5</sup> Hereinafter, all code sections refer to the Bankruptcy Code found in title 11 of the United States Code unless indicated otherwise.

Supreme Court’s decision in *Marrama*, finding that when a debtor acts in bad faith, it is “within the bankruptcy court’s discretion to deny [the debtor’s] motion to dismiss his Chapter 13 case under § 1307(b) and to order conversion under § 1307(c) instead.” *Id.* at 663 (citing *Marrama*, 549 U.S. at 368, 371, 375 n. 11). In interpreting *Marrama*, the Fifth Circuit 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.* The Supreme Court held that nothing in § 1307(c) “limits a court’s authority to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor.” *Marrama*, 549 U.S. at 366. Under this standard, the Court must look to the facts of the Bankruptcy Case to determine whether it is an extraordinary case with an “atypical debtor” evidencing bad faith conduct that warrants conversion. *In re Smith*, 530 B.R. 327, 334 (Bankr. S.D. Miss. 2015). Stated differently, the Court 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. For the reasons set forth below, the Court finds that the Bankruptcy Case should be converted to a chapter 7 liquidation case, rendering moot the Confirmation Objection, the Motion to Dismiss, and the Motion to Convert.

## **I. Bad Faith**

Although none of the specified causes for conversion under § 1307(c) explicitly mentions bad faith conduct as a reason for conversion, bankruptcy courts “nevertheless routinely treat dismissal for prepetition bad-faith conduct as implicitly authorized by the words ‘for cause.’” *Marrama*, 549 U.S. at 373. “Cause exists to convert or dismiss a Chapter 13 case when the Court finds the petition was filed for an improper purpose or in bad faith.” *In re Troppy*, Case No. 14-70546, 2015 WL 1161534, at \*1 (Bankr. S.D. Tex. Mar. 10, 2015) (citation omitted).

Individuals who engage in bad faith conduct do not belong to the “class of ‘honest but unfortunate debtors’ that the bankruptcy laws were enacted to protect.” *In re Jacobsen*, 609 F.3d at 656 (citing *Marrama*, 549 U.S. at 364). The Supreme Court in *Marrama* “considered a finding of bad-faith conduct sufficient to invoke § 1307(c) ‘tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13.’” *Id.* (quoting *Marrama*, 549 U.S. at 373-74). A bankruptcy court’s finding of bad faith is reviewed under the “clearly erroneous” standard and will only be overturned when the bankruptcy court’s finding is not plausible in light of the record viewed in its entirety. *Id.* at 662.

Whether a petition was filed in bad faith is to be determined on a case-by-case basis. *Id.* In determining whether a petition was filed in good faith, several factors may guide a bankruptcy court’s inquiry: “(a) Whether there are any deficiencies or inaccuracies in the debtor’s schedules or plan that might amount to an attempt to mislead the court; (b) Whether payments proposed by the plan are fundamentally fair in dealing with creditors . . . ; and (c) Whether the debtor had any improper motivation in seeking relief . . . .” *In re Troppy*, 2015 WL 1161534, at \*1 (citing *In re Ramji*, 166 B.R. 288, 290-91 (Bankr. S.D. Tex. 1993)). “These factors and others constitute a totality of the circumstances on which the court is to determine whether there has been an abuse of a provision, or of the purpose, of the Bankruptcy Code.” *Id.* (citations omitted).

In considering the aforementioned factors and the totality of the circumstances, the Court finds that the Debtor filed the Petition for an improper purpose: to file a petition to halt a scheduled foreclosure, then convert to chapter 11, unreasonably delaying and causing prejudice to his creditors. During the Debtor’s testimony at the Hearing, he stated that he desired to file a chapter 11 case, but Grindstaff did not represent debtors in chapter 11 cases. Instead of hiring an attorney to file a chapter 11 case on his behalf, he filed the Petition with the intent to later convert the



Bankruptcy Case to a chapter 11 case. This evidences the Debtor's bad faith filing because he never intended to file a confirmable chapter 13 plan or remit the required documents to the Trustee. By filing the Petition under chapter 13 with no intention of complying with the provisions of chapter 13 over several months and later to convert the Bankruptcy Case to chapter 11, the Debtor intentionally misled the Court, the Trustee, and the creditors. The fact that the Debtor intended to mislead the Court and filed the Petition for an improper purpose satisfies two (2) of the three (3) factors for determining bad faith articulated by the bankruptcy court in *In re Troppy*, 2015 WL 1161534, at \*1. Additionally, as the Court found in the Individual Bankruptcy Dismissal Order, the Debtor wasted an "enormous amount of judicial resources" in part by "improperly fil[ing] [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). This provides further evidence of the judicial resources that have been wasted again by the Debtor's efforts to delay his creditors through the bankruptcy process in the Bankruptcy Case.

The Supreme Court has held that under § 1307(c), courts have the authority to "take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to a typical debtor." *Marrama*, 549 U.S. at 366; *see In re Jacobsen*, 609 F.3d at 661. For the foregoing reasons, the Court finds that the Petition was filed in bad faith. Accordingly, the Court may convert the Bankruptcy Case to a chapter 7 case instead of dismissing the Bankruptcy Case. While a finding of bad faith alone is sufficient to warrant conversion under § 1307(c), the Court also finds that conversion is appropriate because it would be in the best interest of creditors and the estate and because the Debtor filed the Petition to unreasonably delay his creditors and he failed to timely commence plan payments. Upon conversion, a chapter 7 trustee will expeditiously collect the non-exempt property of the Debtor's

estate, convert it to money, and pay the claims of creditors. 6 COLLIER ON BANKRUPTCY ¶ 704.01 (16th ed. 2016).

## **II. Unreasonable Delay**

Pursuant to § 1307(c)(1), if it is in the best interest of the creditors and the estate, the Court may convert a chapter 13 case to a chapter 7 case if it finds “unreasonable delay by the debtor that is prejudicial to the creditors.” 11 U.S.C. § 1307(c)(1). 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 creditors. It would be in the best interest of creditors to convert the Bankruptcy Case to chapter 7 so that they may take appropriate action.

This is the Debtor’s second individual bankruptcy petition in two (2) years, excluding the Adcock Properties Case. The Debtor’s Prior Individual Case was dismissed on May 11, 2015, because the Debtor failed to file a confirmable chapter 13 plan even though the Court extended the deadline five (5) times and the Debtor was cautioned that the Prior Individual Case would be dismissed if he did not meet the final deadline. (Individual Bankruptcy Dismissal Order at 4).

The Court noted that:

[t]hroughout the Bankruptcy Case, the Debtor has retained three (3) separate law firms, and a total of six (6) lawyers have represented him. An enormous amount of judicial resources have been spent in the Bankruptcy Case, including, more than 100 docket entries, emergency hearings, a motion for contempt, an improperly filed notice of appeal by the Debtor, and allegations under Rule 11 of the Federal Rules of Civil Procedure . . .

(*Id.* at 4). The Court dismissed the Prior Individual Case, concluding that the Debtor “has proceeded in the Bankruptcy Case in bad faith . . . .” (*Id.* at 5). Subsequently, the Debtor filed the Adcock Properties Case, which was dismissed because the Debtor failed to comply with the Court’s requirements. (Adcock Properties Dismissal Order at 1-2). In the Adcock Properties

Case, the Court denied confirmation of a proposed plan and ordered the Debtor “to comply with certain conditions” or the Court would dismiss the case and impose a one-year bar. (*Id.* at 1). The Debtor failed to comply with the conditions imposed by the Court, and the Court dismissed the Adcock Properties Case and imposed a one-year filing bar. (*Id.* at 2). In both the Prior Individual Case and the Adcock Properties Case, the Debtor filed appeals, wasting judicial resources of the District Court in addition to the judicial resources wasted in this Court.<sup>6</sup> (Adcock Properties Case Dkt. 130; Prior Individual Case Dkt. 38).

The Debtor has again filed a bankruptcy petition, and has again failed to comply with basic requirements of the Bankruptcy Code. The Trustee rescheduled the original First Meeting set for December 6, 2016, after the Debtor failed to provide the necessary documents. The Debtor subsequently failed to attend the rescheduled First Meeting on January 3, 2017, without notifying the Trustee or filing a motion to reschedule. Additionally, the Debtor, by his own admission, has yet to provide the Trustee with the required documents due within forty-five (45) days after the Petition date. *See* 11 U.S.C. § 521(a)(1)(B)(i).

In *Howard v. Lexington Investments*, the First Circuit Court of Appeals affirmed the bankruptcy court’s decision to dismiss a chapter 13 case under § 1307(c)(1) when the debtor failed to file documents before the deadline established by a local bankruptcy rule. 284 F.3d 320, 323 (1st Cir. 2001). The First Circuit noted that the documents were required to administer the bankruptcy case and the debtor was delaying the process by refusing to submit the documents. *Id.* Accordingly, the First Circuit affirmed the bankruptcy court’s dismissal of the bankruptcy case, finding that the debtor’s action caused unreasonable delay and prejudice to creditors. *Id.* “The

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<sup>6</sup> The appeal in the Prior Individual Case was dismissed on March 10, 2015, in the Stipulation of Dismissal of Appeal (the “Appeal Dismissal”) (Prior Individual Case Dkt. 96), because after the appeal was filed, no further action was taken.

passage of further time awaiting [the filing of documents] would prejudice creditors;” therefore, “it was not an abuse of discretion for the bankruptcy court to dismiss the Chapter 13 petition.” *Id.*

By failing to attend the First Meeting or provide the required documents to the Trustee, the Debtor has delayed the Bankruptcy Case. Coupled with the Debtor’s actions in the Prior Individual Case and the Adcock Properties Case, the Court finds that the Debtor filed the Petition for the purpose of causing unreasonable delay. As the Court previously discussed, the Debtor filed the Petition with the intent of later converting to a chapter 11. This further evidences the unreasonable delay caused by the Debtor’s actions. The Debtor did not attend the First Meeting or submit the required documents because he intended to convert to a chapter 11 case, which delayed the administration of the Bankruptcy Case, causing delay to the creditors. Specifically, this unreasonable delay has caused prejudice to First Financial, which has been delayed by the Debtor’s bad faith bankruptcy filing three (3) times. Similarly to the First Circuit’s finding in *Howard*, allowing the Debtor to further delay in filing the required documents would cause increased prejudice to his creditors. The Court, therefore, finds that the Bankruptcy Case should be converted to chapter 7 for cause under § 1307(c)(1).

### **III. Failure to Timely Commence Plan Payments**

Under § 1326(a)(1), a debtor typically must begin making plan payments “not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier . . . .” 11 U.S.C. § 1326(a)(1). “Because it is hard to imagine a circumstance in which a plan would be filed before the order for relief, which is normally the petition, . . . this amendment effectively requires payments to commence within 30 days after the petition or conversion to chapter 13.” 8 COLLIER ON BANKRUPTCY ¶ 1326.02[1][a]. Under § 1307(c)(4), the Court may convert if the Debtor fails to comply with § 1326(a)(1), if doing so would be in the best interest of the creditors. 11 U.S.C.

§ 1307(c)(4).

The Debtor filed the Petition on November 4, 2016, meaning he should have commenced plan payments thirty (30) days from that date, which was December 4, 2016. The Court entered the Wage Order on November 14, 2016, requiring the Debtor to make payments to the Trustee in the amount of \$4,146.00 per month. According to the Trustee, and by the Debtor's own admission, the Debtor has yet to remit a single plan payment to the Trustee. Accordingly, the Trustee filed the Motion to Dismiss on January 4, 2017. The Court finds that the Debtor's failure to submit a plan payment to the Trustee since he filed the Petition on November 4, 2016, further evidences his bad faith filing. Under § 1307(c)(4), the Court may convert a chapter 13 case to a chapter 7 case for a debtor's failure to timely commence plan payments. Because the Debtor has yet to make a plan payment, the Court finds that § 1307(c)(4) provides a third ground for conversion for cause.<sup>7</sup>

### **Conclusion**

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. For these reasons, and all of the reasons discussed herein, conversion, rather than dismissal, is in the best interest of the creditors and is appropriate under the totality of the circumstances. In sum, the Bankruptcy Case should be converted to a chapter 7 case under § 1307(c) because the Debtor filed the Petition in bad faith, caused unreasonable delay that is prejudicial to creditors, and failed to timely commence plan payments. The Supreme Court held that nothing in § 1307(c) "limits a

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<sup>7</sup> The Court concluded in Section II above that conversion is in the best interest of creditors and the estate.

court's authority to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama*, 549 U.S. at 366. Because the Debtor is an "atypical litigant" who filed the Petition in bad faith with the intent to unreasonably delay his creditors and later convert to a chapter 11 case, the Court finds that the conversion of the Bankruptcy Case to chapter 7 is appropriate.

IT IS, THEREFORE, ORDERED that the Bankruptcy Case is hereby converted to chapter 7.

IT IS FURTHER ORDERED that the Confirmation Objection, the Motion to Dismiss, and the Motion to Convert are hereby denied as moot.

##END OF ORDER##