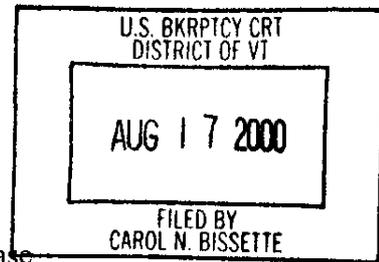


UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT



In re:

John E. Gregory and  
Christine A. Gregory  
Debtors.

Chapter 13 case  
# 99-11737

#59-1

**ORDER DENYING MOTION TO RECONSIDER**

On July 28, 2000, on motion of the Debtors, an Order was entered converting this case from Chapter 7 to Chapter 13. On August 4, 2000, the Chapter 7 Trustee filed a Motion to Reconsider this Order. On August 9, 2000, Debtor's counsel filed an Objection to Trustee's Motion to Reconsider.

The Trustee's Motion for Reconsideration has two bases. First, the Chapter 7 Trustee points out that he submitted a letter to the Court on July 26, 2000 indicating his intent to file opposition to the Debtors' motion to convert, and the Order converting the case was entered prior to receipt of his affidavit in opposition.<sup>1</sup> Secondly, the Chapter 7 Trustee sets forth facts in his motion which he believes warrant a denial of the motion to convert, pursuant to 11 U.S.C. §105, on the ground that conversion is not in the best interest of creditors. The Chapter 7 Trustee asserts, and the Debtors affirm, that the Debtors' motivation for converting their case from chapter 7 to chapter 13 was to allow them to assume control over litigation which the Chapter 7 Trustee had handled and wished to settle for a sum that would pay the creditors in full but would leave no surplus monies for the Debtors. The Chapter 7 Trustee argues that failure to consummate this settlement will harm creditors.

The Debtors assert, in response, that under In re Jan Rossen, No. 99-10383 Doc. #100-1 (Bankr. D. Vt. July 11, 2000), the Debtors' right to convert is absolute and that they have the right to take steps to preserve their assets, i.e., to attempt to seek a resolution of the lawsuit that would be sufficient to pay their creditors in full and compensate them as well.

The Court has considered the Trustee's Motion to Reconsider, the bases for the Trustee's opposition to conversion, and the Debtors' objection to reconsideration (supporting conversion), and specifically, the Court has considered these pleadings in light of this Court's recent ruling in In re Jan Rossen, *supra*. Since the statutory language of §706(a) clearly grants the Debtors an unfettered right to

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<sup>1</sup> The Court was not aware of the Trustee's request for an opportunity to submit opposition nor of the facts set forth in the Trustee's affidavit prior to entry of the Order converting the case.

convert, only the most egregious circumstances could justify denial of what is otherwise a clear right, provided the statutory standards are met. See In re Jan Rossen, *supra*. There is no dispute that the Debtors are statutorily eligible for conversion and there has been no showing of egregious circumstances here. These facts, rather, raise an issue of balancing equities as between the Debtors and their creditors.

The Trustee urges this Court to rely on the equitable powers of 11 U.S.C. section 105 to deny conversion in this case. However, the equitable powers emanating from §105(a) are not a license for a court to disregard the clear language and meaning of the statute. In re Barbieri, 199 F.3d 616 (2d. Cir. 1999). Moreover, the issues raised by the Trustee can be addressed in the Chapter 13 case and therefore do not warrant a denial of so clear a right as the Debtors' right to convert their case from chapter 7 to chapter 13.

ACCORDINGLY, IT IS HEREBY ORDERED that the Motion to Reconsider is DENIED.

However, the Debtors' conversion of the case to Chapter 13 does not mean that the Debtors are now permitted by the Bankruptcy Code to take steps to preserve their assets if to do so would inevitably have detrimental consequences on their creditors. The issues raised by the Chapter 7 Trustee are important and warrant investigation in the Chapter 13 case.

IT IS THEREFORE FURTHER ORDERED that (1) the Chapter 7 Trustee is authorized to file a proof of claim in the Chapter 13 case for the amount he believes to be due to him under 11 U.S.C. § 330(a) and/or 503(b) in connection with his efforts in the lawsuit pursued in the Chapter 7 case, and (2) the Chapter 7 Trustee serve the Chapter 13 Trustee with a copy of the Motion to Settle and the Motion for Reconsideration, so that the Chapter 13 Trustee may address the issues raised by the Chapter 7 Trustee in the context of the Chapter 13 Confirmation process.

SO ORDERED.

August 15, 2000  
Rutland, Vermont

  
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Hon. Colleen A. Brown  
U.S. Bankruptcy Judge

To: Raymond Obuchowski,, Esq., Attorney for the Debtors  
John E. and Christine A. Gregory  
Douglas J. Wolinsky, Esq., Chapter 7 Trustee  
Jan M. Sensenich, Esq., Chapter 13 Trustee

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