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Should § 707(b) Apply in Chapter 7 Cases Converted from Chapter 13?

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Enacted as a part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), § 707(b)(1) provides that “the court ... may dismiss a case [that is] filed by an individual debtor under this chapter” if it finds “that the granting of relief [under chapter 7] would be an abuse” of chapter 7’s “provisions.” The pertinent phrase, which has been debated throughout the nation regarding this subsection’s applicability to cases that were originally filed under other chapters of the Bankruptcy Code and subsequently converted to chapter 7, is “a case filed by an individual debtor under this chapter.” Case law addressing this issue falls into diammetrically opposed camps: (1) a majority view holding that § 707(b)(1) “applies with equal force to [cases] that commenced under Chapter 7 as with those converted from Chapter 13,” and (2) a minority view, limiting its review to the plain language of § 707(b), contends that § 707(b)(1) does not.

The so-called “hybrid” view reaches the same conclusion as the majority view, but bases its reasoning on the statute’s plain language.

Majority View

The majority view espouses the notion that § 707(b) should apply to all chapter 7 cases, whether or not filed as such or converted thereafter. Noting that the phrase “filed by an individual debtor under this chapter” does not have a singular meaning, courts following the majority view rely on the fundamental canon of construction that a statute’s words ought to be read in context and with regard to the overall statutory scheme. The majority finds that debtors who convert their cases should be deemed to have “filed under” the converted-to chapter as of the date of the original petition. “[A]t [a] minimum,” § 707(b) “applies ... to natural persons who are currently proceeding under chapter 7.”

In particular, the majority posits that Congress intended for § 707(b) to curb the perceived abuse of chapter 7 by a certain class of debtors, “limit[ing] the chapter 7 bankruptcy remedy ... to those debtors who are honest and who need the remedy to preserve a decent standard of living for themselves and their dependents.” As to this precise issue, BAPCPA’s primary goal seems clear: to prevent chapter 7 discharges in cases where debtors have disposable income that could be used to pay their creditors’ claims. To allow debtors to avoid the means test by filing chapter 13 petitions and then subsequently converting to chapter 7 would run afoul of this objective, making a mockery of the bankruptcy system and producing an absurd result.

In relation, if § 707(b) excludes converted cases, a debtor could potentially receive an otherwise impermissible discharge by intentionally manipulating the Bankruptcy Code’s sundry provisions. As justification, these courts’ decisions refer to other BAPCPA amendments, including Congress’s lowering of the standard for dismissal of a chapter 7 case from “substantial abuse” to “abuse” and replacing the Code’s formerly pro-discharge presumption with one that categorizes a case as an “abuse” if the debtor does not satisfy the means test.

The majority also point out that Federal Rule of Bankruptcy Procedure 1019(2) provides for an extension of time for interested parties to file a motion to dismiss under § 707(b) in cases that are converted from other chapters, including chapter 13, to a case under chapter 7. This extension would have no purpose if § 707(b) did not apply to converted cases. Any other interpretation of the statute would exempt converted cases from review under § 707(b)(3) regarding whether the case should be dismissed as constituting an abuse under the “totality of the circumstances.”

2 The presumption of abuse arises if the debtor’s total disposable income as calculated in § 707(b)(2)(A) is above the minimum threshold set forth in § 707(b)(2)(A)(i) (the “means test”).
7 Advanced Control, 639 F.3d at 840-41; In re Willis, 408 B.R. at 809; In re Davis, 489 B.R. at 480; In re Lassiter, 2011 WL 2039363, at *2-3.
9 In re Reece, 498 B.R. at 77.
12 In re Kellett, 379 B.R. at 338.
13 In re Perfetto, 361 B.R. at 30.
14 In re Kellett, 379 B.R. at 338; In re Perfetto, 361 B.R. at 30; In re Davis, 489 B.R. at 484.
Finally, the majority finds that “applying § 707(b) in converted cases is consistent with pre-BAPCPA practice, and Congress has not clearly indicated an intent to depart from established precedent.” Critically, § 707(b) was originally enacted as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984. “In the years since its original enactment, bankruptcy courts have consistently applied § 707(b) to cases that were converted to chapter 7 from other chapters.” Not explicitly overturned by any later congressional act, such prior practice compels a definition of “filed” under chapter 7 that encompasses a case “converted” to it. In sum, by adopting a contextual and purposive reading of § 707(b), the majority view is that § 707(b) is not limited to cases originally filed under chapter 7.

Hybrid View

While the hybrid view extends the prohibition in § 707(b)(1) to voluntarily converted chapter 7 cases, unlike the majority it grounds this interpretation in the subsection’s plain meaning as evidenced by two distinct analytical tools. The first method relies on “‘the grammatical rule of the last antecedent,’ according to which a limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.” and so concludes that the phrase “case filed” in § 707(b)(1) is modified by the phrase “by the individual debtor” rather than the later phrase “under this chapter.” The second method relies on nonbankruptcy sources to define the term “filed” as incorporating a voluntary conversion to chapter 7. To justify this use of extrinsic sources, the hybrid view invokes a more familiar canon: Words statutorily undefined are to be given their ordinary meaning, one that is found in a dictionary (or two).

Minority View

The minority view, known as the literalist movement or plain-language view, has determined that the judicial inquiry begins with what § 707(b) says and ends with what it does not say. It reads § 707(b) as plainly and unambiguously allowing the dismissal of cases that were “filed” under chapter 7, as disallowing the dismissal of cases that were not originally filed under that chapter, and asserts that the term “filing” refers to the date of a chapter 7 petition’s filing, not a case later converted to one under chapter 7. Had Congress intended for the means test to apply to all chapter 7 cases, it would have used the phrase “filed or converted to” to codify that intention. Since it did not, a court should not effectively amend the statute by subsuming a distinct verb like “converted” into the word “filed.”

This view consistently rejects a reason advanced in favor of a broad interpretation of § 707(b): it would be consistent with certain Federal Rules of Bankruptcy Procedure. Whatever such rules might imply, they cannot override the plain meaning of “filed,” for they may not “abridge, enlarge, or modify substantive right[s].” An expansive definition of “filed,” in short, would seem to violate the Rules Enabling Act.

Like the majority, the minority argues that an expansive reading of § 707(b) yields an absurd result. The means test finds “abuse” by utilizing calculations based on the debtor’s current monthly income incurred during the six-month period ending on the last day of the calendar month preceding the case’s commencement. If, as the majority believes, the means test applies to a converted debtor, a court might “have to look to financials that are months or even years old.” If a chapter 13 debtor’s financial condition has deteriorated, necessitating a conversion to chapter 7 long after he or she first filed, a calculation of current monthly income in the six months prior to his/her chapter 13 filing will not reveal an accurate picture of a person’s financial status. As one court observed, the majority’s approach thereby makes it probable that a good-faith chapter 13 debtor will receive no discharge under either chapter.

Regardless of whether its drafters contemplated the effect of conversion in § 707(b), Congress failed to explicitly state so in the enacted text. Even if one chose to “divine” Congress’s intent by examining the legislative history, it contains no decisive evidence that § 707(b) was meant to apply to good-faith chapter 13 debtors who, due to a change in circumstances, must convert to chapter 7. In the absence of such evidence, the minority reject a reading of § 707(b) that appears to both contravene bankruptcy law’s long-standing policy of providing a fresh start for the honest-but-unfortunate debtor and ignore the authority encoded in § 105 to dismiss converted cases for “bad faith.”

Conclusion

Each of the three approaches discussed herein appears flawed to a certain degree. A majority of courts adopt the so-called “common sense” approach. They lay aside “the plain verbiage” of § 707(b) based on intimations of legislative intent and the absurdity doctrine, but concede that “many anomalies” and “incongruous results” follow.

Meanwhile, the hybrid approach privileges a grammatical rule and a dictionary definition, ignoring the likely existence of a unique Code definition of the verb “to file,” one that should supersede the word’s ordinary meaning, and rendering the phrase “under this chapter” in § 707(b)(1) superficial. In so doing, this approach fails to account for the possibility that “filed” is modified not just by “an individual debtor” but by the compound antecedent “an individual debtor under this chapter.”
The minority view might be regarded as the most natural, but it too perpetrates anomalies. Perhaps more importantly, it makes it easier and likelier that a debtor will file for chapter 13 and then convert his/her case to a chapter 7, avoiding application of the means test and thwarting Congress’s efforts to increase the disposable income to be distributed to the creditors; this goal was famously the very motive behind the test’s creation.

While § 105(a) might provide a means of sanctioning debtors who first file a chapter 13 petition and then convert the case to chapter 7 to avoid the means test, use of this subsection must generally be linked to an explicit Code provision. Taking advantage of a loophole is not necessarily the same as abusing the bankruptcy process, arguably throwing into some doubt reliance on § 105(a) to police a misdeed that might be more naturally governed by § 707(b), as the majority view maintains.

Any chapter 13 debtor should be aware that a bankruptcy court might apply the means test if his/her case is converted to a chapter 7. In some courts, the debtor might be able to avoid § 707(b)(2); in others, conversion will not short-circuit its reach. If a debtor converts, he or she should thus be prepared to parry the presumption of abuse that was created by the means test.