

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION

	)	
	)	
In re:	)	
	)	Case No. 21-11833-SDM
JOHN COLEMAN,	)	
	)	Chapter 11
Debtor.	)	
	)	

**EXAMINER ALBERT ALTRO’S OBJECTION TO THE DEBTOR’S MOTION TO  
CONVERT CHAPTER 11 CASE TO A CASE UNDER CHAPTER 7 [102]**

COMES NOW Albert Altro, CPA, CIRA, Managing Director of Traverse LLC, and court-appointed examiner in the above-captioned matter (the “Examiner”), and files this Objection to the Motion to Convert Chapter 11 Case to a Case Under Chapter 7 (the “Motion to Convert”)<sup>1</sup> filed by John Coleman (the “Debtor”). In support of his Objection, the Examiner respectfully states as follows:

1. This case was commenced on September 29, 2021 by John Coleman (the “Debtor”).<sup>2</sup>
2. On November 24, 2021, the Debtor filed a Motion to Dismiss Case (the “Motion to Dismiss”).<sup>3</sup>

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<sup>1</sup> Dkt. # 102.

<sup>2</sup> Dkt. # 1.

<sup>3</sup> Dkt. # 66.

3. On January 12, 2022, the Court entered an order denying the Motion to Dismiss and appointing an examiner pursuant to 11 U.S.C. § 1104(c) (the “Appointment Order”).<sup>4</sup>

4. In the Appointment Order, the Court discussed arguments in favor of, and against, dismissal or conversion of the case pursuant to 11 U.S.C. § 1112.<sup>5</sup>

5. On January 31, 2022, the United States Trustee selected Albert Altro, CPA, CIRA and founding member of Traverse, LLC, to serve as the examiner in this case.<sup>6</sup>

6. On February 2, 2022, the Court entered an order approving the appointment of the Examiner.<sup>7</sup>

7. This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This Objection is submitted pursuant to 11 U.S.C. § 1112 and Bankruptcy Rule 9013.

8. The Examiner respectfully requests that the Court sustain his Objection and deny the Debtor’s Motion to Convert.

9. Section 1112 of the Bankruptcy Code provides, in relevant part, that

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless –

(1) the debtor is not a debtor in possession;

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<sup>4</sup> Dkt. # 94.

<sup>5</sup> Dkt. # 94 at 2-4.

<sup>6</sup> Dkt. # 101.

<sup>7</sup> Dkt. # 106.

- (2) the case originally was commenced as an involuntary case under this chapter; or
- (3) the case was converted to a cases under this chapter other than on the debtor's request.<sup>8</sup>

10. Section 1112(b)(1), however, provides that

Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause *unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.*<sup>9</sup>

11. First, by asserting only a request for and arguments in favor of dismissal of this case in the Motion to Dismiss, the Debtor waived any arguments for conversion of this case to a case under chapter 7.<sup>10</sup> Indeed, the Motion to Dismiss recites similar grounds in favor of dismissal as those relied upon in the Debtor's Motion to Convert.<sup>11</sup> Therefore, the Debtor's request for conversion, to the extent the request encompasses the

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<sup>8</sup> 11 U.S.C. § 1112(a).

<sup>9</sup> 11 U.S.C. § 1112(b)(1) (emphases added).

<sup>10</sup> *C.f.*, *Black & Decker Inc. v. Robert Bosch Tool Corp.*, 371 F. Supp. 2d 965, 970 n.3 ("Failure to develop an argument constitutes a waiver." (citing *Kramer v. Banc of Am. Sec., LLC*, 355 F.3d 961, 964 n.1 (7th Cir. 2004)).

<sup>11</sup> Compare Dkt. # 66 at 1 ("Debtor's schedules reflect that he has only a few creditors, and since pre-petition litigation against him has been dismissed, there is no pressing reason for him to remain in Chapter 11[;]" "The cost and expense of Chapter 11 is not currently or readily affordable to the Debtor since his pre-petition salary has been eliminated") with Dkt. # 102 at 1 ("[T]he Debtor has not source of income and Express Grain Terminals, LLC, the company that has employed Debtor and paid his salary for many years, is about to be liquidated and its assets sold[;]" "[N]o reason exists for the Debtor to continue this Chapter 11 case and, since the Debtor does not believe that a second motion to dismiss would be granted, he elects to exercise his right to convert to a case under Chapter 7.>").

same or similar arguments in favor of the Motion to Dismiss, should have been raised in the Motion to Dismiss and, as a result, should be deemed waived.

12. Second, though the Debtor provides that “he elects to exercise his right to convert to a case under Chapter 7[,]”<sup>12</sup> the Debtor’s right to convert his case to a case under chapter 7 is not absolute,<sup>13</sup> and “[t]he inquiry under § 1112 is case-specific, focusing on the circumstances of each debtor.”<sup>14</sup> Additionally, the Debtor “bears the burden of proving cause by a preponderance of the evidence.”<sup>15</sup>

13. The Debtor, stating that “it does not appear that the Debtor will be able to file or submit a confirmable plan of reorganization, the Debtor has no source of income and Express Grain Terminals, LLC, the company that has employed the Debtor and paid his salary for many years, is about to be liquidated and its assets sold[,]” argues that “no reason exists for the Debtor to continue this Chapter 11 case . . . .”<sup>16</sup>

14. The only debatably new argument in the Motion to Convert is the Debtor’s argument that it does not appear that the Debtor will be able to file or submit a

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<sup>12</sup> Dkt. # 102 at 1.

<sup>13</sup> See *Mahanna v. Bynum*, 465 B.R. 436, 439-40 (W.D. Tex. 2011) (recognizing that the right to convert is not absolute); *Monroe Bank & Tr. v. Pinnock*, 349 B.R. 493, 497 (E.D. Mich. 2006) (holding that “the plain language of § 1112 does not grant the debtor an absolute right to convert.”); Dkt. # 94 at 5 (“Even where cause is established to dismiss a chapter 11 case by way of the debtor’s bad faith conduct, the Court has the discretion to deny dismissal and appoint an examiner under § 1104(c) if the appointment of an examiner is in the best interests of creditors and the estate.” (citing *In re Charles St. African Methodist Episcopal Church*, 499 B.R. 66, 116 (Bankr. D. Mass. 2013)).

<sup>14</sup> *In re TMT Procurement Corp.*, 534 B.R. 912, 917 (Bankr. S.D. Tex. 2015) (internal quotation marks omitted) (quoting *United Savs. Ass’n of Tex. v. Timbers of Inwood Forest Assocs. Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 808 F.2d 363, 371-72 (5th Cir. 1987) (en banc)).

<sup>15</sup> *Id.* at 918 (citing *In re Woodbrook Assocs.*, 19 F.3d 312, 317 (7th Cir. 1994)).

<sup>16</sup> Dkt. # 102 at 1.

confirmable plan. But this does not necessarily support conversion in light of the imminent sale of the Debtor's real estate pursuant to 11 U.S.C. § 363.<sup>17</sup> Indeed, "a sale can be the basis of a reorganization."<sup>18</sup> Thus, should the Debtor's request for conversion not be deemed waived, the Debtor has still failed to demonstrate cause to support conversion on the basis of his inability to file a confirmable plan and, therefore, the Motion to Convert should be denied.

15. Third, and in the alternative, if the Court finds that the Debtor has not waived his arguments in favor of conversion of this case and has established the requisite cause to support conversion, the Court should still deny the Motion to Convert for substantially the same reasons it denied the Debtor's Motion to Dismiss.

16. In the Appointment Order, "the Court recognize[d] a unique circumstance before it: the Debtor, Coleman, rather than a creditor or other interested party, has sought to dismiss his own case for cause under § 1112(b)(1)."<sup>19</sup> A near-identical circumstance presents itself here: the Debtor, rather than a creditor or other interested party, has sought to convert his own case under 11 U.S.C. § 1112.

17. Conversion "is not appropriate if 'the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.'"<sup>20</sup> The Debtor has not shown how the estate or its creditors will

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<sup>17</sup> See Dkt. ## 75; 94 at 2.

<sup>18</sup> *C.f.*, *In re Del Rio Dev., Inc.*, 35 B.R. 127, 128 (B.A.P. 9th Cir. 1983) (citing 11 U.S.C. § 1123(a)(5)(D)).

<sup>19</sup> Dkt. # 94 at 7.

<sup>20</sup> *In re TMT Procurement Corp.*, 534 B.R. 912, 921 (Bankr. S.D. Tex. 2015) (quoting 11 U.S.C. § 1112(b)(1)); see Dkt. # 94 at 5.

benefit from conversion of this case to a case under chapter 7, nor has he explained why the Court's previous finding that "it is in the best interests of creditors and the estate to allow an examiner to conduct an investigation pursuant to § 1104(c) of the Debtor . . ." should now be ignored.<sup>21</sup> The Motion to Convert should therefore be denied.

**WHEREFORE**, premises considered, the Examiner respectfully requests that the Court (1) sustain his Objection to the Motion to Convert; (2) deny the Motion to Convert; and (3) grant such other relief deemed necessary and just.

THIS the 28th day of February, 2022.

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<sup>21</sup> Dkt. # 94 at 7.

Respectfully submitted,

**ALBERT ALTRO**

BY: /s/ Garrett A. Anderson

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a complete and correct copy of the foregoing filing was provided to all parties receiving notices and filings herein pursuant to the Court's ECF noticing system.

This the 28th day of February, 2022.

/s/ Garrett A. Anderson  
Garrett A. Anderson