

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

IN RE:)	CASE No.	17-51543 (JAM)
)		
Lloyd G. Elliott,)	CHAPTER	11
)		
DEBTOR.)	RE: ECF No.	42
)		

**RULING AND ORDER REGARDING DEBTOR’S MOTION TO DISMISS
AND UST’S MOTION TO CONVERT**

I. Background

On December 29, 2017, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On March 14, 2018, pursuant to 11 U.S.C. §§ 1106(a), 704(a)(8) and 1112(b)¹, the United States Trustee (“UST”) filed a motion seeking to: (i) convert the Debtor’s case to a case under Chapter 7; (ii) compel the Debtor to file monthly operating reports (the “MORs”); or (iii) dismiss the Debtor’s case for failure of the Debtor to file the MORs (the “UST’s Motion to Convert”, ECF No. 42). A hearing on the UST’s Motion to Convert was held on April 24, 2018.

During the April 24th hearing, pursuant to § 1112(b), the Debtor made an oral motion to voluntarily dismiss the Chapter 11 bankruptcy proceeding (the “Debtor’s Motion to Dismiss”). According to the Debtor, the primary purpose of this Chapter 11 case was to preserve a certain condominium from a foreclosure action. However, on March 21, 2018, pursuant to § 362(d)(1), the Court entered an Order granting relief from the automatic stay to allow the Movant to exercise all applicable remedies it may have under state law related to the condominium (ECF No. 48). The Debtor has sufficient financial means to pay unsecured debts and remains current

¹ Unless otherwise specified, all future statutory references are to Title 11 of the United States Code.

with mortgage payments due on all the mortgages on properties other than the condominium. The Debtor is also pursuing a financing arrangement with a mortgage broker. According to the Debtor, dismissal of the case would allow the Debtor to secure financing on more favorable terms.

The UST opposed the Debtor's Motion to Dismiss, arguing that, *inter alia*, conversion is in the best interest of creditors and the estate because it provides an opportunity for unsecured creditors to get paid. In response to the UST's objection to the Motion to Dismiss, the Debtor proposed to pay all unsecured claims in full as a condition to dismissal. The UST, however, expressed concerns about the proposed dismissal, arguing that any condition attached to dismissal should not be allowed. At the conclusion of the hearing, the Court took the Debtor's Motion to Dismiss and the UST's Motion to Convert under advisement.

II. Analysis

The issue of whether cause exists to dismiss the case under § 1112(b) is essentially moot as both parties are moving to dismiss the Debtor's case. The pivotal issue is whether the Debtor may condition a request for voluntary dismissal of the Chapter 11 case upon his agreement to pay all allowed unsecured claims in full. The underlying basis of the UST's objection to the Debtor's Motion to Dismiss is that any condition attached to dismissal should not be allowed and is in violation of the priority rules of Bankruptcy Code § 507.

According to the Debtor's Schedule E/F, there are no priority unsecured claims filed against the estate, but there are nonpriority unsecured claims in the total amount of \$11,779.00. *See* Schedule E/F, ECF No. 1. According to the Debtor, he has approximately \$60,000.00 in cash or equity available to pay all of the nonpriority unsecured claims in full.

Accordingly, it is hereby

ORDERED: On or before June 22, 2018, the Debtor shall file on the docket a sworn affidavit or declaration under 28 U.S.C. § 1746 indicating that the Debtor has paid all unsecured claims in full, including administrative claims if any, asserted against the estate; and it is further

ORDERED: After review of an affidavit or declaration filed by the Debtor, the Court may enter an Order Granting the Debtor's Motion to Dismiss and Denying the UST's Motion to Convert, or enter any other Order it deems appropriate.

IT IS SO ORDERED at Bridgeport, Connecticut this 18th day of May, 2018.

Julie A. Manning
Chief United States Bankruptcy Judge
District of Connecticut

