NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. MB 18-012

Bankruptcy Case No. 17-12708-FJB

PAUL FRANCIS,
Debtor.

PAUL FRANCIS,
Appellant,

v.

WILLIAM K. HARRINGTON, United States Trustee,
Appellee.

Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. Frank J. Bailey, U.S. Bankruptcy Judge)

Before
Godoy, Harwood, and Fagone,
United States Bankruptcy Appellate Panel Judges.

Carmenelisa Perez-Kudzma, Esq., on brief for Appellant.
Eric K. Bradford, Esq., on brief for Appellee.

March 14, 2019

Per Curiam.

Paul Francis (the "Debtor") appeals from the bankruptcy court's order converting his chapter 11 case to one under chapter 7. The Debtor maintains that the bankruptcy court should have dismissed his case instead of converting it. For the reasons discussed below, we **AFFIRM**.

BACKGROUND

The Debtor filed the bankruptcy petition which is the subject of this appeal on July 21, 2017. Commenced as a chapter 13 case, it was his fourth in a series of bankruptcy filings. He filed the case following the dismissal of a prior chapter 13 case due to his failure to file required documents.[1]

The Debtor disclosed on his Schedule A/B over $2.9 million in assets, consisting primarily of real estate holdings. He indicated that he owned six pieces of real estate: four rental properties, a residence, and an undeveloped lot. Five out of six of the properties had equity. Among these was a single-family home identified as 410 Highland Street, Milton, Massachusetts (the "Milton property"), which the Debtor valued at $1.1 million and indicated was subject to liens totaling $546,046. On his Schedule D, the Debtor listed approximately $1.8 million in secured debt.

About one month after filing his case, the Debtor moved to convert it to one under chapter 11, as his secured debt exceeded the limit prescribed in § 109(e).[2] In the absence of any objections, the bankruptcy court granted the motion. Thereafter, the Debtor agreed to the entry

[1] In this most recent bankruptcy case, the Debtor successfully moved the court for an extension of the automatic stay. See 11 U.S.C. § 362(c)(3)(A)-(B).

[2] All references to "Bankruptcy Code" or to specific statutory sections are to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. §§ 101, et seq.

of an order requiring him to file a disclosure statement and chapter 11 plan by January 26, 2018. After the Debtor failed to comply with that deadline, the court entered another order, this time directing him to file the plan and disclosure statement by February 12, 2018. The U.S. trustee, William K Harrington (the "U.S. Trustee"), responded to the Debtor's failure to meet the agreed-upon deadline with a motion to convert the case to one under chapter 7, asserting that conversion was in the best interests of creditors and the estate. In support, he alleged that the Debtor had failed to file or confirm a plan in any of his three chapter 13 cases. In addition, according to the U.S. Trustee, the Debtor had failed to file monthly operating reports or to pay quarterly fees. Therefore, the U.S. Trustee claimed that cause to convert existed under: § 1112(b)(4)(E) ("failure to comply with an order of the court"); § 1112(b)(4)(H) ("failure timely to provide information . . . reasonably requested by the U.S. trustee"); § 1112(b)(4)(J) ("failure to file a disclosure statement, or to file or confirm a plan" by a court-ordered deadline); § 1112(b)(4)(K) ("failure to pay any fees or charges required under chapter 123 of title 28"); and, for delay.

Even with the motion to convert looming, the Debtor still failed to comply with the February 12, 2018 deadline for filing a disclosure statement and proposed plan. Therefore, the bankruptcy court entered an order to show cause, directing him to demonstrate why his case should not be dismissed under § 1112(b)(1) and (b)(4)(J), and scheduling the matter for a hearing in March 2018.

Prior to the hearing, the bankruptcy court permitted the U.S. Trustee to supplement the motion to convert with "two new issues," namely, the Debtor's failure to provide the U.S. Trustee with insurance information regarding the Milton property, and his refusal to cooperate with an audit request from the U.S. Trustee's office. According to the U.S. Trustee, these

failures constituted additional "cause" under § 1112(b)(4), including subsection (C) ("failure to maintain appropriate insurance that poses a risk to the estate or to the public").

While the Debtor opposed the requested conversion of his case, he did not dispute any of the failures the U.S. Trustee alleged in the motion to convert. He attempted to justify the failure to file a plan, however, by stating he needed to finalize a loan modification. He also blamed the failure to provide financial information on his wife, who he claimed was "in charge of the family finances." Conceding there was cause to convert under § 1112(b)(4)(E), the Debtor nonetheless argued that conversion was not in the best interest of creditors and disputed the U.S. Trustee's assertion that there was "unreasonable delay" in the case. Although he did not explain how creditors would benefit from dismissal, he maintained that conversion would "ruin[ ] his life."

At the hearing on the supplemented motion to convert and the order to show cause, the U.S. Trustee urged the court to convert, rather than dismiss, the case. In addition to listing the Debtor's failures to satisfy his duties as a chapter 11 debtor, the U.S. Trustee asserted: (1) the Debtor was a "serial filer" who had never confirmed a plan or received a discharge; (2) because the Debtor was "balance sheet solvent," conversion would result in the payment of creditors' claims; and (3) conversion would result in relief to the Debtor in the form of a discharge.

Without disputing the existence of cause to dismiss or convert under § 1112(b), counsel for the Debtor pressed for dismissal with a bar to refiling for a "reasonable" time, rather than conversion, noting that no creditors had joined in the motion to convert. Although she assured the court that the Milton property was insured, counsel admitted she could not prove it.

She explained it was a difficult case because the Debtor lacked transparency. Lastly, she claimed the Debtor would not receive a benefit from a chapter 7 discharge.[3]

The court then identified three possible dispositions: conversion, dismissal, or the appointment of a chapter 11 trustee. The court selected conversion. It did so only after observing: there was equity in the Debtor's properties; the Debtor was a serial filer who could not satisfy "the minimum" requirements of the chapter 11 "process"; and the Debtor could not establish that his primary asset, the Milton property, was insured.

On the same date, the bankruptcy court entered the following order:

> For the reasons set forth on the record and it being in the best interest of creditors and the estate, the motion to convert case to a case under chapter 7 [#73], as supplemented by the additional motion [#83], is allowed. To avoid any doubt, the United States Trustee made an offer of proof that cause for conversion under [§] 1112(b) exists and counsel for the debtor could not contest those assertions. Among other things, the Debtor could not establish that he has maintained sufficient insurance on the Milton property ([§] 1112(b)(4)(C)), has failed to timely provide information reasonably requested by the [U.S.] Trustee ([§] 1112(b)(4)(H))[,] has failed to pay reasonable fees required under the Code ([§] 1112(b)(4)(K)), and has failed to abide by orders of the court, namely has failed to file a plan and disclosure statement by the date set by the court ([§] 1112(b)(4)(E)).

This appeal followed.

POSITIONS OF THE PARTIES

I. The Debtor

On appeal, the Debtor continues to acknowledge that "cause" existed to dismiss or convert his case. He insists, however, that the court should have opted for dismissal, as no

[3] Notwithstanding this representation, the Debtor has appealed the bankruptcy court's subsequent denial of his discharge pursuant to § 727(a)(6)(A). See In re Francis, BAP No. MB 18-053 (B.A.P. 1st Cir. filed Oct. 10, 2018).

creditors had requested conversion. He argues that because he was ineligible to file a case under chapter 7, he likely would have faced a motion to dismiss if he had filed a chapter 7 petition. Contending that conversion was harsh and punitive, the Debtor asserts that the court failed to properly assess the option of dismissal, to use the word "dismissal," or to inquire whether unusual circumstances existed which might preclude conversion.

II. The U.S. Trustee

The U.S. Trustee counters that the likelihood of a motion to dismiss a hypothetical chapter 7 case amounted to "pure speculation." In addition, the U.S. Trustee argues that the Debtor waived his § 1112(b) "unusual circumstances" argument by failing to raise it in the proceedings below. Lastly, the U.S. Trustee rejects the Debtor's argument that the record was devoid of reasoning as to why the court converted, rather than dismissed, the case. The U.S. Trustee asserts that, in ordering conversion, the bankruptcy court factored into the analysis both the available equity in the Debtor's properties and his status as a serial filer.

JURISDICTION

The Panel may consider appeals from final orders. See 28 U.S.C. § 158(a)(1) and (b)(1); see also Bullard v. Blue Hills Bank, 135 S. Ct. 1686, 1692, 1695 (2015) (discussing the Panel's jurisdiction to hear bankruptcy appeals under 28 U.S.C. § 158(a)). A bankruptcy court order converting a chapter 11 case to a case under chapter 7 is a final order. See Hoover v. Harrington (In re Hoover), 828 F.3d 5, 8-9 (1st Cir. 2016) (considering—without discussing finality—appeal of order affirming bankruptcy court's conversion of chapter 11 case to case under chapter 7); see also Lapham v. U.S. Trustee (In re Lapham), No. 1:17-cv-00382-BLW, 2018 WL 2745900, at *1

(D. Idaho June 7, 2018) ("A bankruptcy court order converting a Chapter 11 case to a Chapter 7 case is a final and appealable order."). Accordingly, we have jurisdiction to hear this appeal.

STANDARD OF REVIEW

"Appellate courts apply the clearly erroneous standard to findings of fact and de novo review to conclusions of law." Belser v. Nationstar Mortg., LLC (In re Belser), 534 B.R. 228, 233 (B.A.P. 1st Cir. 2015) (citing Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 592 F.3d 267, 269 (1st Cir. 2010)); see also Efron v. Candelario (In re Efron), 529 B.R. 396, 405 (B.A.P. 1st Cir. 2015) ("When considering a bankruptcy court's decision . . . under § 1112(b), the Panel reviews the bankruptcy court's findings of fact for clear error and conclusions of law *de novo*.") (citations omitted). "The bankruptcy court . . . has broad discretion to determine whether either conversion or dismissal is in the best interests of creditors and the estate after finding cause." In re Efron, 529 B.R. at 405 (citation omitted) (internal quotations omitted). Accordingly, the bankruptcy court's decision regarding "which relief to elect is reviewed for an abuse of discretion." Id.; see also In re Gonic Realty Tr., 909 F.2d 624, 626 (1st Cir. 1990) ("Discretionary rulings made pursuant to the Bankruptcy Code are reviewable only for abuse of discretion."). "A court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact." In re Efron, 529 B.R. at 405 (citation omitted) (internal quotations omitted).

DISCUSSION

I. The Standard

"Section 1112(b) governs conversion or dismissal of a chapter 11 case." Andover Covered Bridge, LLC v. Harrington (In re Andover Covered Bridge, LLC), 553 B.R. 162, 171 (B.A.P. 1st Cir. 2016). That section provides, in pertinent part:

> (1) 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.
>
> (2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that—
>
> > (A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and
> >
> > (B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—
> >
> > > (i) for which there exists a reasonable justification for the act or omission; and
> > >
> > > (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(1) and (b)(2).

Section 1112(b)(1) "invokes a two-step analysis, first, to determine whether 'cause' exists either to dismiss or to convert the chapter 11 proceeding to a chapter 7 proceeding, and second to determine which option is in the best interest of creditors and the estate." In re Costa

Bonita Beach Resort, Inc., 513 B.R. 184, 200 (Bankr. D.P.R. 2014) (quoting Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.), 14 F.3d 240, 242 (4th Cir. 1994), and citing In re Mech. Maint., Inc., 128 B.R. 382, 386 (E.D. Pa. 1991)); see also In re Hoover, 828 F.3d at 8 (similarly describing a two-step inquiry). "[T]he inquiry for [the second] element cannot be completed without comparing the creditors' interests in bankruptcy with those they would have under state law." In re Cont'l Holdings, Inc., 170 B.R. 919, 927 (Bankr. N.D. Ohio 1994) (quoting In re Superior Siding & Window, Inc., 14 F.3d at 243).

A. Cause

"The initial burden is on the movant to prove there is cause for either conversion or dismissal of the chapter 11 case." Andover Covered Bridge, LLC, 553 B.R. at 171 (citation omitted). Although the Bankruptcy Code does not define "cause" as that term is used in § 1112(b), § 1112(b)(4) provides a "nonexclusive list of what constitutes cause." In re Colón Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012) (citation omitted) (internal quotations omitted). That list includes, *inter alia*: the "failure to comply with an order of the court" (§ 1112(b)(4)(E)); the "unexcused failure to satisfy timely any filing or reporting requirement" (§ 1112(b)(4)(F)); and the "failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by [the Bankruptcy Code] or by order of the court" (§ 1112(b)(4)(J)). One ground is sufficient to establish cause under the statute. Id. (citation omitted). Courts also dismiss or convert chapter 11 cases for "unreasonable delay by the debtor that is prejudicial to creditors." See, e.g., In re Abijoe Realty Corp., 943 F.2d 121, 128 (1st Cir. 1991) (citation omitted); In re Camann, No. 00-11090-JMD, 2001 WL 1757075, at *4 (Bankr. D.N.H. Mar. 19, 2001) (citation omitted). In addition, the court may convert or dismiss a case "for reasons that

are not specifically enumerated in the section, provided that these reasons are sufficient to demonstrate the existence of cause." In re Colón Martinez, 472 B.R. at 144 (citation omitted) (internal quotations omitted).

B. Best Interests of Creditors

"Once cause is found, the burden shifts to the opposing party to show why dismissal or conversion would not be in the best interests of the estate and the creditors." In re Costa Bonita Beach Resort, Inc., 513 B.R. at 195 (citation omitted). In addition, after a finding of cause, "the court's discretion is limited; it must grant some form of relief unless § 1112(b)(2) applies." In re Korn, 523 B.R. 453, 465 (Bankr. E.D. Pa. 2014) (footnote omitted) (citations omitted); see also In re Costa Bonita Beach Resort, Inc., 513 B.R. at 195. "[U]nless the debtor presents unusual circumstances, the debtor meets certain criteria justifying the act or omission and likelihood of confirming a plan, or the bankruptcy court finds that the appointment of a trustee is in the best interest[s] of creditors," the bankruptcy court must dismiss or convert. In re Colón Martinez, 472 B.R. at 144 (quoting Gilroy v. Ameriquest Mortg. Co. (In re Gilroy), BAP No. NH 07-054, 2008 WL 4531982, at *4 (B.A.P. 1st Cir. Aug. 4, 2008)).

The bankruptcy court retains broad discretion, however, "to determine whether either conversion or dismissal is in the best interests of creditors and the estate after finding cause." Id. at 145 (citation omitted) (internal quotations omitted). "The standard for choosing between conversion or dismissal based on 'the best interest[s] of creditors and the estate' implies application of a balancing test by the bankruptcy court." In re Costa Bonita Beach Resort, Inc., 513 B.R. at 196 (citing De Jounghe v. Lugo Mender (In re De Jounghe), 334 B.R. 760, 770 (B.A.P. 1st Cir. 2005); In re Staff Inv. Co., 146 B.R. 256, 260 (Bankr. E.D. Cal. 1992)).

While the Bankruptcy Code does not define "best interests" for purposes of the § 1112(b)(1) inquiry, courts typically consider:

> (1) whether some creditors received preferential payments, and whether equality of distribution would be better served by conversion rather than dismissal, (2) whether there would be a loss of rights granted in the case if it were dismissed rather than converted, (3) whether the debtor would simply file a further case upon dismissal, (4) the ability of the trustee in a chapter 7 case to reach assets for the benefit of creditors, (5) in assessing the interest of the estate, whether conversion or dismissal of the estate would maximize the estate's value as an economic enterprise, (6) whether any remaining issues would be better resolved outside the bankruptcy forum, (7) whether the estate consists of a "single asset," (8) whether the debtor had engaged in misconduct and whether creditors are in need of a chapter 7 case to protect their interests, (9) whether a plan has been confirmed and whether any property remains in the estate to be administered, and (10)[ ] whether the appointment of a trustee is desirable to supervise the estate and address possible environment and safety concerns.

In re Andover Covered Bridge, LLC, 553 B.R. at 178 (quoting In re Costa Bonita Beach Resort, Inc., 513 B.R. at 200-01); see also In re Spenlinhauer, 592 B.R. 1, 7 (D. Mass. 2018) (considering a number of the Andover Covered Bridge factors).

One court advanced the following principle to guide the "best interests" analysis: "[C]reditors are generally 'best served by the course of action that results in the largest number of [them] being paid the largest amount of money in the shortest amount of time.'" In re Aurora Memory Care, LLC, 589 B.R. 631, 643 (Bankr. N.D. Ill. 2018) (quoting In re Rey, No. 04 B 35040, 2006 WL 2457435, at *9 (Bankr. N.D. Ill. Aug. 21, 2006), and citing In re Del Monico, No. 04 B 28235, 2005 WL 1129774, at *3 (Bankr. N.D. Ill. May 13, 2005)). It reasoned: "The best interest of the estate turns on whether its economic value 'is greater in or out of bankruptcy.'" Id. (citations omitted); see also In re Staff Inv. Co., 146 B.R. at 261 (stating "the prime criterion for assessing the interest of the estate is the maximization of its value as an economic enterprise"). "A 'key question,' then—perhaps *the* key question—is 'what assets

would be available for a chapter 7 trustee to liquidate and administer for the benefit of unsecured creditors if this case were converted?'" In re Aurora Memory Care, LLC, 589 B.R. at 643 (quoting In re Green Box NA Green Bay, LLC, 579 B.R. 504, 511 (Bankr. E.D. Wis. 2017)). "With this question in mind, the decision becomes simpler." Id.

C. The Debtor's Right to Dismiss a Voluntary Chapter 11 under § 1112(b)

"The plain meaning of § 1112(b) allows the bankruptcy court to convert a debtor's voluntary Chapter 11 case when it is in the best interest[s] of creditors and the estate, even if the debtor opposes conversion and favors dismissal." Camden Ordnance Mfg. Co. of Ark., Inc. v. U.S. Trustee (In re Camden Ordnance Mfg. Co. of Ark., Inc.), 245 B.R. 794, 803 (E.D. Pa. 2000). "Unlike Chapter 7 and 13, voluntary dismissal in Chapter 11 is not a debtor's right but rather turns on whether the relief is in the best interest of creditors." In re G & G Transp., Inc., No. 98-30860DWS, 1998 WL 898835, at *4 (Bankr. E.D. Pa. Dec. 22, 1998). "The express language of § 1112(b) indicates that a debtor's motion to dismiss should not 'reflexively . . . be granted whenever cause exists.'" In re Cont'l Holdings, Inc., 170 B.R. at 927 (citations omitted). As one bankruptcy court stated:

> Once a debtor submits to the jurisdiction of the bankruptcy court and avails itself of bankruptcy protections, the debtor must comply with the Bankruptcy Code. One of those rules is § 1112(b), allowing a bankruptcy court to convert a voluntary Chapter 11 case, even if a debtor wants the case dismissed. [The Debtor] was not compelled to seek protection in bankruptcy and thus, following the statutory framework of the Bankruptcy Code is a fair and necessary requirement for a debtor seeking the benefits of bankruptcy.

In re Camden Ordnance Mfg. Co. of Ark., Inc., 245 B.R. at 805.

D. Section 1112(b)(2) and Unusual Circumstances

The Bankruptcy Code does not define the term "unusual circumstances." In re Korn, 523 B.R. at 468. A determination of unusual circumstances is "fact intensive and contemplates facts that are not common to Chapter 11 cases." In re Costa Bonita Beach Resort, Inc., 513 B.R. at 195. "Under § 1112(b)(2), the court retains discretion in evaluating whether there are 'unusual circumstances' that establish that conversion or dismissal 'is not in the best interests of creditors and the estate." In re Korn, 523 B.R. at 465. In making this determination, "courts focus on the likely consequences of remaining in chapter 11 or converting the case to chapter 7 and consider what the likely differences would be in the end result under each chapter." Id. at 468. "Section 1112(b)(2) requires that there be a 'reasonable justification' for the act or omission that gives rise to a finding of 'cause' under § 1112(b)(1)." Id. at 469. The § 1112(b)(2) defense to conversion or dismissal of a chapter 11 case requires a showing that:

> (1) "unusual circumstances" exist;
>
> (2) conversion or dismissal "is not in the best interests of creditors and the estate;"
>
> (3) there is a reasonable likelihood of confirmation of a plan within any time period mandated by the Code or, otherwise within a reasonable time;
>
> (4) the grounds for dismissal for "cause" do not include those set forth in § 1112(b)(4)(A);
>
> (5) there is a reasonable justification for the act or omission of the debtor; and
>
> (6) the act or omission may be cured within a reasonable period of time.

Id. at 465 (footnote omitted).

II. The § 1112(b) Standard Applied

Here, the Debtor conceded both in the proceedings below and in his appellate brief that cause existed to dismiss or convert his chapter 11 case under § 1112(b). The record reflects ample grounds for that concession. Indeed, given his failure to file a plan or disclosure statement, the Debtor would be hard-pressed to dispute the presence of cause within the meaning of the statute. See In re Babayoff, 445 B.R. 64, 78-79 (Bankr. E.D.N.Y. 2011) (stating if a debtor does not make progress toward plan confirmation within time periods fixed by the Bankruptcy Code and any court orders, relief under § 1112(b)(4)(J) should follow). As there is no question that there was cause under § 1112(b), the sole issue before the Panel is whether the bankruptcy court abused its discretion when it determined that conversion, and not dismissal, was in the best interests of creditors and the estate.

A number of the Andover Covered Bridge factors point with particular force toward conversion, including: "whether the debtor would simply file a further case upon dismissal"; and "the ability of the trustee in a chapter 7 case to reach assets for the benefits of creditors." 3 B.R. at 178. The Debtor is a serial filer who owns six properties, five of which appear to have equity. Where there are assets with equity, "conversion is the better course." In re Aurora Memory Care, LLC, 589 B.R. at 643 (citing In re Burgess, No. 11-1257, 2013 WL 5874616, at *3 (Bankr. N.D. W. Va. Oct. 30, 2013) (finding conversion in the best interest of creditors because of "equity in several parcels of real property"); In re Tri-Chek Seeds, Inc., No. 12-11409, 2013 WL 636031, at *5 (Bankr. S.D. Ga. Feb. 7, 2013) (same)).

As the U.S. Trustee observes, conversion would permit "a chapter 7 trustee to liquidate these properties in an orderly fashion and use the proceeds to pay creditors in full." In this

manner, a chapter 7 proceeding would ensure "the largest number of [creditors] being paid the largest amount of money in the shortest amount of time." In re Aurora Memory Care, LLC, 589 B.R. at 643 (citations omitted) (internal quotations omitted). Further, the Debtor's inability to propose a plan in this case or its predecessors, and his inability to prove that his most significant asset was insured, establishes that creditors' interests are better served by conversion than by dismissal. Moreover, there is no indication that creditors would be paid anything outside of bankruptcy, even if the Debtor succeeded in establishing that he was maintaining insurance on his property. Lastly, the admission of Debtor's counsel that her client was not "transparent" speaks to the need for a trustee in this case.

The Debtor's argument that conversion would ruin his life is unsupported and unavailing. As one bankruptcy court noted, "the debtor's interest . . . is not mentioned in § 1112(b) . . . ." In re Del Monico, 2005 WL 1129774, at *4. Rather, the Debtor's interests "enter[ ] into the equation, if at all, only to the extent that [they] coincide with those of the estate." Id. (citing In re Staff Inv. Co., 146 B.R. at 261); see also In re Helmers, 361 B.R. 190, 197 (Bankr. D. Kan. 2007) ("What is of the moment [ ] is comparing how the creditors would fare inside as opposed to outside bankruptcy."). The Debtor's "unusual circumstances" argument is likewise unpersuasive. Not only did the Debtor waive this argument by failing to raise it in the proceedings below, the record does not establish the presence of "unusual circumstances" that would permit the bankruptcy court to avoid § 1112(b)'s directive to dismiss or convert.

Moreover, the Debtor's desire to extricate himself from bankruptcy does not impact the analysis. The Debtor "filed the bankruptcy voluntarily, after all, [repeatedly] taking advantage of

the court and its processes and enjoying the shelter of the automatic stay." In re Del Monico, 2005 WL 1129774, at *4. He "does not simply get to bid the court and [his] creditors farewell when it suits [him], over [the U.S. T]rustee's objection." Id.

Lastly, contrary to the Debtor's assertion that the bankruptcy court neglected to consider dismissal, the record suggests otherwise. The court explicitly acknowledged three possible outcomes in this case—including dismissal. Additionally, the bankruptcy court's recognition that the Debtor was a serial filer who would likely refile reflects the court's consideration of the effect of a possible dismissal. Thus, the argument that the bankruptcy court failed to consider whether dismissal was in the best interests of creditors is easily dispatched.

CONCLUSION

For the foregoing reasons, we discern no abuse of discretion in converting the Debtor's case to one under chapter 7 and, therefore, **AFFIRM**.