

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

**FILED**

JEANNE A. NAUGHTON, CLERK

**APRIL 12, 2017**

U.S. BANKRUPTCY COURT  
NEWARK, N.J.

BY: *s/ Ronnie Plasner*  
JUDICIAL ASSISTANT

In Re:

**MARIA DEL CARMEN MIRANDA,**

Debtor.

Case No.: 16-30461 (JKS)

Chapter: 13

Judge: Hon. John K. Sherwood

**DECISION AND ORDER  
WITH RESPECT TO DEBTOR'S MOTION TO  
CONVERT CASE TO CHAPTER 11  
AND CROSS-MOTION TO DISMISS**

The relief set forth on the following pages, numbered two (2) through twelve (12), is hereby  
**ORDERED.**

*John K. Sherwood*

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JOHN K. SHERWOOD  
UNITED STATES BANKRUPTCY JUDGE

Dated: April 12, 2017

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**INTRODUCTION**

Maria Del Carmen Miranda ("Debtor") filed a Chapter 13 petition approximately one month after being held in contempt for failure to comply with an order of the New Jersey Superior Court which provided for the disposition of marital assets and payment of claims in the context of her divorce proceeding.<sup>1</sup> Her ex-husband and creditor, Rogelio Miranda ("Mr. Miranda"), sought dismissal of the Debtor's case, alleging it had been filed in bad faith and that she was over the debt limits imposed by section 109(e) of the Bankruptcy Code.<sup>2</sup> The Court agreed that the Debtor exceeded the Chapter 13 debt limits but allowed her to file a motion to convert her case to Chapter 11.<sup>3</sup> Mr. Miranda opposes conversion to Chapter 11, arguing that the bankruptcy case is still being pursued in bad faith and that there are obstacles the Debtor will not be able to overcome to confirm a Chapter 11 plan. He seeks dismissal of the case.

For the reasons discussed below, the Debtor's motion to convert to Chapter 11 is denied and Mr. Miranda's cross-motion to dismiss is granted.

**JURISDICTION**

The Court has jurisdiction over the motion pursuant to 28 U.S.C. §§ 1334(b), 157(a) and the Standing Order of Reference from the United States District Court for the District of New Jersey. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E) and (O). Venue is proper under 28 U.S.C. §§ 1408 and 1409(a).

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<sup>1</sup> Debtor's Chapter 13 Petition [ECF No. 1].

<sup>2</sup> Mr. Miranda's Objection to Chapter 13 Plan Confirmation [ECF No. 20].

<sup>3</sup> Chapter 13 Plan Confirmation hearing held on February 23, 2017.

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**RELEVANT FACTS AND PROCEDURAL HISTORY**

On May 13, 2016, an order reducing an arbitration award to judgment was entered by the New Jersey Superior Court in the divorce proceeding between the Debtor and Mr. Miranda.<sup>4</sup> The order and arbitration award were fully incorporated into the Final Judgment of Divorce between Mr. Miranda and the Debtor (the "Divorce Judgment," also dated May 13, 2016).<sup>5</sup> The pertinent terms of the Divorce Judgment are as follows:

1. The parties' marital home located at 232 73rd Street, North Bergen, New Jersey was to be placed on the market for sale immediately. Any existing equity in the property was to be divided equally between the parties. However, if there was a deficiency, payment of the deficiency was to be the sole responsibility of the Debtor.
2. No later than August 10, 2016, the Debtor was to purchase Mr. Miranda's one-half interest in commercial property located at 201-203 69th Street, Guttenberg, New Jersey. If the Debtor did not effectuate the purchase by August 10, 2016, then the property was to be placed on the market for sale with the sale proceeds to be divided equally between the parties.
3. No later than August 10, 2016, the Debtor was to purchase Mr. Miranda's one-half interest, valued at \$217,578.50, in the parties' day care business known as Happy Wake Up. If the Debtor did not effectuate the purchase by August 10, 2016, then the day care business was to be placed on the market for sale with the sale proceeds to be divided equally between the parties.
4. No later than April 20, 2016, the Debtor was to pay Mr. Miranda one half of the sale proceeds for the business known as Happy Wake Up Too.
5. The Debtor was to pay a total of \$20,000 to Mr. Miranda for attorney fees, with \$10,000 paid no later than May 1, 2016 and the remaining \$10,000 paid no later than August 1, 2016.

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<sup>4</sup> Mr. Miranda's Objection to Chapter 13 Plan Confirmation [ECF No. 20, Ex. "A"].

<sup>5</sup> Mr. Miranda's Opposition to Debtor's Request for Adjournment of Chapter 13 Plan Confirmation [ECF No. 42, Ex. "B"].

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6. The Debtor was to pay Mr. Miranda a total of \$3,331, representing her one-half share owed on a Costco American Express credit card no later than April 20, 2016.

Essentially, the Divorce Judgment gave the Debtor approximately six months to refinance and buy out Mr. Miranda's share of the day care business and related commercial real estate located in Guttenberg, New Jersey. If the Debtor could not pay Mr. Miranda within that period, the assets were to be sold.

The Debtor's conduct during the divorce proceedings was criticized. The arbitration award (fully incorporated into the Divorce Judgment) stated that "the [Debtor] has not acted in good faith throughout this litigation" and that she engaged in "deliberate obstructive behavior."<sup>6</sup> The Debtor never appealed the Divorce Judgment. Instead, it appears the Debtor chose to violate its terms. She did not pay Mr. Miranda the amounts set forth above and she did not refinance the properties and the day care business or market them for sale. Thus, on September 30, 2016, the Superior Court entered an Order holding the Debtor in contempt for her failure to comply with the terms of the Divorce Judgment. Among other things, the contempt Order appointed a realtor to market and sell the commercial property; appointed an attorney-in-fact to execute all listing and sale documents on behalf of the Debtor; and directed the appointment of a receiver for the day care business.<sup>7</sup>

Less than 30 days later, on October 26, 2016, the Debtor filed her Chapter 13 bankruptcy petition. On January 5, 2017, Mr. Miranda filed an objection to plan confirmation and sought dismissal arguing, *inter alia*, that: (1) the Debtor was over the Chapter 13 debt limits imposed by section 109(e); (2) her plan was not fully funded to pay Mr. Miranda's judgment as required by

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<sup>6</sup> Mr. Miranda's Objection to Chapter 13 Plan Confirmation [ECF No. 20, Ex. "A"].

<sup>7</sup> *Id* at Ex. "B."

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section 1322(a)(1); and (3) the Debtor's petition was filed in bad faith and in violation of section 1325(a)(7). In addition, the Chapter 13 trustee opposed plan confirmation for multiple reasons and sought dismissal of the Debtor's petition for being over the section 109(e) debt limit.<sup>8</sup> On February 23, 2017, the Court determined that the Debtor was over the Chapter 13 debt limit imposed by section 109(e), denied plan confirmation and allowed the Debtor to file a motion to convert her case to Chapter 11.<sup>9</sup>

Early in the Chapter 13 case, the Debtor took the position that she could contravene the terms of the Divorce Judgment as it related to the sale of the marital home in North Bergen, New Jersey by engaging in loss mitigation with the mortgage lender without the approval or participation of Mr. Miranda who was also liable on the mortgage. The Debtor also commenced a lawsuit in the District Court against the mortgage lender to force the lender to engage in loss mitigation with her.<sup>10</sup> After strong resistance from Mr. Miranda, the Chapter 13 trustee and the mortgage lender, it appears that the Debtor has given up on this plan to save the home in North Bergen and will allow it to be sold.<sup>11</sup>

What remains is the disposition of the day care business and the commercial real estate in Guttenberg, New Jersey as well as the payment of the amounts due from the Debtor to Mr. Miranda pursuant to the Divorce Judgment. The Debtor is of the view that she can postpone the sale of the day care business and the Guttenberg property indefinitely and, using the profits from the day care business, propose a Chapter 11 plan that will satisfy the nondischargeable claims of Mr. Miranda.

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<sup>8</sup> Trustee's Objection to Chapter 13 Plan Confirmation [ECF No. 34].

<sup>9</sup> Order Denying Chapter 13 Plan Confirmation and fixing deadline to file Motion to Convert case to Chapter 11 [ECF No. 52].

<sup>10</sup> *Maria Miranda v. Ocwen Loan Servicer* (2:17-cv-00559-JLL-SCM).

<sup>11</sup> Debtor's counsel indicated to the Court at the hearing on March 23, 2017 that the Debtor was abandoning any attempt to obtain a loan modification.

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To that end, the Debtor filed this motion to convert her case to Chapter 11 and states that the “principal purpose of seeking to reorganize is to prevent the sale of the Guttenberg commercial property and the cessation of the child care business.”<sup>12</sup> Mr. Miranda opposes conversion and seeks dismissal of the Debtor’s case, arguing that the filing is a bad faith attempt “to avoid complying with the Arbitration Award and the Court’s orders.”<sup>13</sup> On March 9, 2017, this Court heard oral argument on the Debtor’s motion to convert and Mr. Miranda’s cross-motion to dismiss and reserved its decision. Both the Debtor and Mr. Miranda have filed supplemental letter briefs.

It seems clear that Mr. Miranda’s claims for the proceeds of the sale of the day care business and the Guttenberg commercial property, the attorney fee claim and the claim for the Debtor’s share of the credit card debt are nondischargeable under section 523(a)(15) as debts that were incurred in the course of a divorce proceeding and as part of a divorce decree. Mr. Miranda argues that conversion should be denied and the case dismissed because any hypothetical plan: (1) is not feasible under section 1129(a)(11) because Mr. Miranda’s claim for half the sale proceeds of the commercial property and day care business is nondischargeable and is enforceable post-confirmation pursuant to section 1141(d)(2); (2) would not be confirmed over the objection of Mr. Miranda because his claims are 88% of all unsecured claims; (3) cannot be confirmed over his objection because section 1129(a)(7) mandates that Mr. Miranda receive at least as much as he would receive under a Chapter 7 liquidation of the Debtor’s property; and (4) violates section 1129(a)(3), because the Debtor has proceeded in bad faith to further frustrate and delay Mr. Miranda’s attempts to recover what was awarded to him in the divorce proceedings.<sup>14</sup>

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<sup>12</sup> Debtor’s Certification in Support of Motion to Convert, ¶ 6 [ECF No. 50].

<sup>13</sup> Mr. Miranda’s Certification in Opposition to Motion to Convert and in Support of Cross-Motion to Dismiss, ¶ 11 [ECF No. 59].

<sup>14</sup> Mr. Miranda’s Supplemental Letter Brief in Opposition to Debtor’s Motion to Convert to Chapter 11 and in Support of Cross-Motion to Dismiss [ECF No. 67].

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In support of conversion, the Debtor argues that a hypothetical plan: (1) could enjoin Mr. Miranda's enforcement of his nondischargeable claims; (2) could overcome any objection to confirmation by Mr. Miranda because his claims are unsecured and subject to separate classification under section 1122(a); and (3) would preserve the commercial property and the day care as a going concern and allow for payment to all creditors exceeding their recovery under a Chapter 7 liquidation. The Debtor has also offered to make adequate protection payments of \$2,000 per month to Mr. Miranda pending plan confirmation.<sup>15</sup>

### LEGAL ANALYSIS

Section 1307(d) of the Bankruptcy Code provides that at any time before confirmation of a plan, on request of a party in interest and after notice and a hearing, the court may convert a Chapter 13 case to a Chapter 11 case. A debtor does not have an absolute right to conversion, instead, it is "within the court's discretion to grant or deny" the debtor's request.<sup>16</sup> In determining whether to grant a request for conversion, the court should "consider, *inter alia*, whether the debtor: (1) filed the initial bankruptcy petition and sought to convert in good faith; (2) is able to effectuate a plan; and (3) has caused prejudicial delay to creditors."<sup>17</sup>

In considering the Debtor's right to convert, the Court has focused on two major issues. The first is how the nondischargeable claims of Mr. Miranda would be classified and treated under a Chapter 11 plan. It is unclear whether his claims could be placed in a separate class simply because they are nondischargeable or whether they would have to be placed in a class together

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<sup>15</sup> Debtor's Supplemental Letter Brief in Support of Motion to Convert to Chapter 11 and in Opposition to Cross-Motion to Dismiss [ECF No. 66] and Sur-Reply Letter Brief in Support of Motion to Convert to Chapter 11 and in Opposition to Cross-Motion to Dismiss [ECF No. 68].

<sup>16</sup> *In re Henning*, 420 B.R. 773, 782 (Bankr. W.D. Tenn. 2009) (citing *In re Hanson*, 282 B.R. 240, 246 (Bankr. D. Colo. 2002)).

<sup>17</sup> *In re Plagakis*, 2004 WL 203090, at \*5 (E.D.N.Y. 2004) (citing H. Rept. No. 95-595, p. 428; *In re Hanson*, 282 B.R. 240 (Bankr. D. Colo. 2002); *In re Funk*, 146 B.R. 118 (Bankr. D.N.J. 1992)).

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with other general unsecured claims.<sup>18</sup> And given the amount of Mr. Miranda's claims, it appears that he would have a blocking position on the unsecured creditor class and be able to vote down any Chapter 11 plan proposed by the Debtor if his claim had to be placed in the same class with other unsecured creditors.<sup>19</sup> On the other hand, if the Debtor could separately classify Mr. Miranda's claims or otherwise create an impaired consenting class of creditors, she might be able to confirm a Chapter 11 plan under section 1129(b). Also, there is some support for the idea that a nondischargeable claim can be paid over time under a Chapter 11 plan while the holder of the claim is enjoined from pursuing the claim.<sup>20</sup> Standing alone, these interesting confirmation issues would not prevent the Court from allowing the case to be converted to Chapter 11. It would ordinarily be better to see these issues resolved during the confirmation process.

But the second issue is different. It relates not only to whether the Debtor can confirm her plan, but also to delay that would be prejudicial to Mr. Miranda. There is no doubt that in order to succeed in Chapter 11, the Debtor must get relief from the provisions of the Divorce Judgment that now call for the immediate sale of the day care business and its place of operation in Guttenberg, New Jersey. The Debtor's rights under the Divorce Judgment to those assets or the proceeds thereof (after payment of Mr. Miranda's share) are property of the estate. The question is whether the Debtor can retain her rights to those assets, which were granted in the Divorce Judgment, while modifying the terms and conditions of her ownership that would frustrate her Chapter 11 strategy.

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<sup>18</sup> See 11 U.S.C. § 1122.

<sup>19</sup> See 11 U.S.C. § 1126(c).

<sup>20</sup> See *In re Mercado*, 124 B.R. 799 (Bankr. C.D. Cal. 1991) (injunction in Chapter 11 plan against collection of nondischargeable debt outside the plan is not *per se* inconsistent with section 1141(d)(2)'s prohibition of confirmed plan discharging a nondischargeable debt); See also *In re Brothby*, 303 B.R. 177 (9th Cir. BAP 2003) (Section 1142(d)(2) does not except nondischargeable debts from any effects of Chapter 11 plan, and does not prevent plan, in appropriate case, from temporarily enjoining collection of nondischargeable debts if the delay is necessary to a plan's success).

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Section 541 provides that a debtor's estate is comprised of all interests, both legal and equitable, existing as of the commencement of the case. Although the terms "property" and "interests" are not defined in section 541, "it is a long-held tenet of bankruptcy law that property rights are decided by state law."<sup>21</sup> State law decides not only what becomes property of the estate, but also "the nature, scope and extent of the property rights that come into the hands of the bankruptcy estate."<sup>22</sup> Thus, once property comes into the estate, it arrives with the same state law limitations that were in effect on the petition date.<sup>23</sup>

Here, the Debtor's interests in the day care business and Guttenberg real estate are governed by the Divorce Judgment. In all actions for divorce within the State of New Jersey, courts may equitably distribute all property which was legally acquired by the parties during the marriage.<sup>24</sup> The theory of equitable distribution is that a marriage is a partnership whose assets should be fairly and equitably distributed when the partnership dissolves.<sup>25</sup> Pursuant to R. 5:1-5 of the New Jersey Court Rules, parties to a divorce proceeding are permitted to engage in arbitration of disputes relating to equitable distribution. The confirmation by a court of an arbitration award "shall have the same effect and be enforceable as a judgment in any other action."<sup>26</sup> Thus, the Divorce Judgment governs the nature and scope of the Debtor's interest in the day care business and the Guttenberg property. The conditions and restrictions set forth in the Divorce Judgment do not go away merely because the Debtor filed for bankruptcy protection.

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<sup>21</sup> *In re Forant*, 331 B.R. 151, 156 (Bankr. D. Vt. 2004) (citing *Butner v. United States*, 440 U.S. 48, 55-56 (1979)).

<sup>22</sup> *Incorporated Solutions, Inc. v. Service Support Specialties, Inc.*, 124 F.3d 487, 492 (3d Cir. 1997) (quoting *In re Transcon Lines*, 58 F.3d 1432, 1438 (9th Cir. 1995)).

<sup>23</sup> See *Incorporated Solutions, Inc.*, 124 F.3d at 492-93.

<sup>24</sup> See N.J.S.A. 2A:34-23.

<sup>25</sup> *Brown v. Brown*, 348 N.J. Super. 466 (App. Div. 2002).

<sup>26</sup> N.J.S.A. 2A:23A-26.

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In addition, the *Rooker-Feldman* doctrine prevents a federal court from exercising jurisdiction over “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.”<sup>27</sup> The Third Circuit has articulated four requirements that must be met for the doctrine to apply: (1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgment; (3) the judgment was rendered before the federal suit was filed; and (4) the plaintiff is inviting the federal court to review and reject the state-court judgment.<sup>28</sup>

*In re Giberson* (260 B.R. 78 (Bankr. D.N.J. 2001)) addressed an issue that is similar to the one before the Court. In that case, a divorce decree was entered prior to the debtor's bankruptcy petition which required her ex-husband to convey his interest in the couple's marital residence by deed to her. In exchange, the debtor was required to remain current on all mortgage obligations and to attempt to have her ex-husband released as a co-obligee on the mortgage. In the two years following entry of the divorce judgment, however, the debtor defaulted on the mortgage and failed to have her ex-husband released as a co-obligee. Thereafter, the New Jersey state court ordered that the debtor obtain a release of the ex-husband from the mortgage within 90 days. The debtor failed to comply with the order and the state court ordered the debtor to execute and deliver a deed to the ex-husband. On the date that she was to deliver the deed, the debtor filed for bankruptcy protection and sought to challenge the validity and enforceability of the state court enforcement order. The bankruptcy court determined that it was precluded from deciding issues relating to the disposition of property because the state court order “enforcing the divorce judgment is a final

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<sup>27</sup> *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

<sup>28</sup> See *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010).

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judgment on the merits for purposes of claim preclusion because it disposed of all the issues between the parties as to ownership of the property.”<sup>29</sup> Although the debtor never challenged the validity or finality of the state court order, she still asked the bankruptcy court to “disregard the state superior court order” and “adjudicate and administer the property as part of the bankruptcy estate.”<sup>30</sup> The request for relief was also denied because “[t]he court [did] not have jurisdiction to do so because of the *Rooker-Feldman* doctrine.”<sup>31</sup>

Similarly, in this case, the Debtor is requesting that the Court ignore material provisions of a state court judgment. There is no question that the Debtor was the losing party under the terms of the Divorce Judgment. The Debtor’s main purpose in filing this case was “to prevent the sale of the Guttenberg commercial property and the cessation of the child care business,” despite the clear language in the Divorce Judgment requiring the Debtor to sell the commercial property and the day care business after August 10, 2016.<sup>32</sup> Importantly, the Divorce Judgment and the contempt order were both entered before the Debtor filed her bankruptcy petition. She now asks this Court to reject the Divorce Judgment by dramatically altering its terms. Federal courts are barred from taking such action under *Rooker-Feldman*.

Since the Debtor has made clear that any plan she files will seek to retain the commercial property and the day care business, the Court must find that she will be unable to effectuate a plan in Chapter 11.

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<sup>29</sup> *In re Giberson*, 260 B.R. at 82.

<sup>30</sup> *Id.* at 83.

<sup>31</sup> *Id.*

<sup>32</sup> Debtor’s Certification in Support of Motion to Convert, ¶ 6 [ECF No. 50].

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**CONCLUSION**

For the foregoing reasons, the Debtor's motion to convert to Chapter 11 is denied and Mr. Miranda's cross-motion to dismiss is granted.