

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

MABEL W. TATE

Case No. 92-13611 K

Debtor

ORDER OF CONVERSION

Before the Court is the Motion of the United States Trustee seeking either conversion or dismissal of this Chapter 11 case. The Debtor, Mabel W. Tate, has filed a Consent to Dismissal of the case. It is clear that cause exists for this case to be converted or dismissed. The sole question for consideration, pursuant to the decision of the United States District Court for this district on October 22, 1991 and amended on October 30, 1991, in the matter of *James J. Michalek*, 89-12184 K, is whether the "best interest of creditors and the estate" rests in conversion, as opposed to dismissal, pursuant to 11 U.S.C. § 1112(b). It appears that the debtor has abused the processes of this Court, and this case will be converted to Chapter 7.

Mrs. Tate filed her Chapter 11 Petition pro se on October 22, 1992 for the sole purpose of preventing her various parcels of real estate from being sold at City Tax Foreclosure. She acknowledges that motivation in the Statements and Schedules she has filed and in her verbal representations to the Court. In those

Schedules and Statements she represents that her only debts are City and County property taxes. On or about October 23, 1992, the Court conducted a telephonic conference with the Debtor upon the emergency Ex Parte Application of the City of Buffalo, which was seeking an Order lifting the automatic stay in order to permit the then-imminent tax foreclosure sale to proceed. The telephonic conference was not on the record, but it is the Court's clear recollection that the Debtor represented to the Court that if the Court would grant her a thirty-day continuation of the stay she would bring the taxes current within that time or would list the properties for sale so that she could realize her equity as well as pay the taxes. The Court granted the continuation of the stay on those terms and over the objection of counsel for the city, Rosemary Gavigan Bis, who was present in the chambers of the Court when the conference was conducted by speakerphone therefrom. As a result, the foreclosure sale was canceled as to Mrs. Tate's properties. The Court's Order continuing the stay in accordance with that ruling was signed November 9, 1992, entered November 10, 1992, and served by mail upon the Debtor by the Clerk of the Court. It ordered the Debtor to appear before the Court on November 23, 1992 at 9:00 a.m., ordered that the Debtor obtain legal counsel in sufficient time for that counsel to appear before the Court on that date fully prepared to participate in the case; and it ordered that unless the taxes were paid to the City of Buffalo before November 23, 1992 then the Debtor was by that date to engage a real estate

agent or broker to sell her properties. The debtor was to advise the Court on November 23, 1992 of the status of those listings, including any pending sales, the asking prices, and the values of the several parcels of real estate. (The Debtor had not yet filed Schedules and Statements as of the time of that Order. Hence the values were not of record. She later scheduled six parcels of real estate with an aggregate market value of approximately \$84,000, with no liens thereon other than taxes in the amount of approximately \$15,000.)

The Debtor did not appear on November 23 as ordered, nor did she retain counsel. If she had engaged a real estate agent or broker by that time as ordered by the Court, she had offered no evidence of it. On that date, however, she filed a Motion to Convert her case to Chapter 13, and the Clerk's office set that Motion for hearing to be held on December 16.

On November 25, however, the City made a Motion to Lift Stay, to be returnable on November 30, 1992. On that date the Debtor appeared together with her son (who is apparently an accountant). In opposition to the City's Motion, she filed documents in which she represented that she had met with three different attorneys and would select one soon; that she had obtained estimates from a realty company with regard to her parcels of real estate, and had been told that their total value in fact was \$178,000 (rather than the \$84,000 she scheduled); and that she would submit a plan in "about sixty days."

The Debtor discloses no income from any of these properties. Her Schedules and Statements reflect \$1,000 per month income, that coming from Social Security and pension. She discloses no other income, and apart from these parcels of real estate, no other assets except for household goods, a motor vehicle, and \$200 cash on hand.

The Court ordered at that hearing on November 30, 1992 that although the City would be given leave to commence a new foreclosure proceeding, the City would be directed to accept full payment of taxes and to remove the parcels from the foreclosure list if the Debtor were to make full payment of all monies due on each parcel including taxes, water bills and other liens, at any time up until foreclosure sale. (The Court is advised that under State law the Debtor has no "right" to redeem these properties, thus this Order grants her a form of relief to which she is not otherwise entitled and which would otherwise be within the discretion of the City to grant or not to grant.)

On December 1, 1992, the Debtor failed to appear for examination by creditors at the section 341 meeting. Consequently, on December 4, 1992, the United States Trustee filed the present Motion to Convert the case to Chapter 7 or to dismiss the case. The Clerk set this motion for hearing to be conducted on January 6, 1993. At the December 16, 1992 hearing on the Debtor's Motion to Convert the case to Chapter 13, the Debtor failed to appear, and the Court denied the Motion. At the adjourned section 341 meeting

conducted on December 22, 1992, the Debtor failed to appear. At the January 6, 1993 hearing on the United States Trustee's Motion for Conversion or Dismissal, the Debtor failed to appear and the United States Trustee consented to adjourn that Motion for one week, to January 13, 1993.

On January 13, 1993, the Debtor failed to appear, but filed a request or consent for dismissal of the case.

It might also be noted that the Debtor has paid only \$200 toward the \$600 Chapter 11 filing fee with the filing of her Petition and made an application to pay the balance of the filing fee in installments. As of January 13, 1993, she has paid nothing further. She currently owes the Clerk of the Court \$400 of the Chapter 11 filing fee. As of January 12, 1993 she had not paid quarterly fees to the Office of the United States Trustee.

It appears from the circumstances of this Petition and the conduct of the Debtor since the filing of the Petition that the Debtor has abused the processes of this Court to the detriment of her only creditors, the taxing entities. The Court kept her properties from being foreclosed upon in November of 1992 based upon the Debtor's promises, none of which has she fulfilled.¹

¹As indicated above, she assured the Court that she would either pay the taxes or she would obtain an attorney and list the properties for sale. She explained that her children were accountants, that they did not know that she had not been paying the taxes, and that if she spoke to them they would give her the money to pay the taxes, but she wished to solve this problem without their assistance if possible.

Other than filing Schedules and Statements, the Debtor has not complied with any of the requirements imposed upon a Chapter 11 debtor: she did not appear before the Court on November 23 as ordered; she has failed twice to appear for examination by creditors at a section 341 meeting; she has not made any further installment payments of the fee for the filing of her Chapter 11 Petition; she has not paid the quarterly fee of the United States Trustee; she has not filed monthly operating statements. Although she requested conversion to Chapter 13, she did not appear before the Court in support of her own request. Now she files a request to dismiss the case, but did not appear in response to the U.S. Trustee's motion to convert or dismiss.

Mrs. Tate may believe that her sole purpose in filing this Petition - to thwart the City in its efforts to collect taxes by foreclosure - has been served. She now seeks dismissal of the case so that she is free to do what she wishes with the real estate and, perhaps, file another Petition to thwart the next foreclosure sale of these properties, currently scheduled for April of 1993. It is not in the best interest of creditors or the estate that that be permitted to happen.

This case should be and hereby is converted to a case under Chapter 7. These properties will be administered by a Trustee in Bankruptcy.

THE DEBTOR HAS TEN DAYS FROM THE ENTRY OF THIS
ORDER IN WHICH TO SEEK RECONSIDERATION THEREOF
OR IN WHICH TO SEEK REVIEW THEREOF BY APPEAL
TO A HIGHER COURT.

SO ORDERED.

Dated: Buffalo, New York
January 14, 1993



U.S.B.J.