UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

JACK A. GWILT and TRUDY A. GWILT,

Debtors.
_____/

Case No. DK 16-05354
Hon. Scott W. Dales
Chapter 7

ORDER

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

On January 19, 2018, debtors Jack and Trudy Gwilt (the "Debtors") filed an Application to Re-Convert Chapter 7 Case to Chapter 13 (ECF No. 38, the "Motion"). The court reviewed the Motion and held a hearing, by telephone, on January 31, 2018 at which the chapter 7 trustee, the Debtors and the United States Trustee appeared.

The court scheduled the hearing because it harbors doubts about its authority to permit a chapter 7 debtor (or debtors, as in this case) to re-convert a chapter 7 case back to chapter 13 under 11 U.S.C. § 706(a). *Compare In re Banks*, 252 B.R. 399, 402 (Bankr. E.D. Mich. 2000) (noting split of authority but concluding that "Congress did not intend for the court to have the discretion to permit conversion of a case to chapter 13 if there had been a previous conversion.") *with In re Beckerman*, 381 B.R. 841, 851 (Bankr. E.D. Mich. 2008) (disagreeing with *Banks* and finding discretion in appropriate case to allow reconversion). The cases are divided, but even assuming the court has the discretion to allow the re-conversion, it would decline to do so.

The procedural confusion and attendant delay and expense that would likely follow reconversion in this case, prompts the court to deny the Motion, even assuming the Debtors' apparent good faith. At least one creditor has sought and obtained relief from the automatic stay during the chapter 7 phase of this proceeding, and presumably the Debtors have incurred post-conversion debts (and spent post-conversion wages) in reliance on the earlier conversion. Going forward, the possibility of confusion resulting from multiplying the number of "orders for relief" in the case, and the unanswered questions about the effectiveness of the Debtors' confirmed plan following *Harris v. Viegelahn*, 135 S. Ct. 1829, 1838 (2015), also advise against reconversion in this case. *But see In re Yao*, 548 B.R. 818, 823 (Bankr. D.N.M. 2016) ("Upon reconversion, the Chapter 13 Trustee is reappointed and 11 U.S.C. § 1327(a) once again becomes applicable to bind the debtor and creditors to the terms of the existing plan that was confirmed before conversion to Chapter 7").

Recognizing these uncertainties, and the United States Trustee's recent filing indicating that granting relief to the Debtors under chapter 7 is presumptively abusive, the Debtors, through counsel, expressed their willingness to simply dismiss their case and re-file a voluntary petition under chapter 13. For his part, the United States Trustee's trial attorney pledged to work on a stipulation to that effect. This is the most prudent course under the circumstances, particularly given the willingness of the Debtors and the United States Trustee to pursue it.

For these reasons, and those given on the record during today's telephone hearing, the court will deny the Motion.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion (ECF No. 38) is DENIED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Jack A. Gwilt and Trudy A. Gwilt, Kerry D. Hettinger, Esq., Barbara P. Foley, Esq. (former chapter 13 trustee), Steven L. Langeland, Esq. (current chapter 7 trustee), and the United States Trustee.

END OF ORDER

IT IS SO ORDERED.

Dated January 31, 2018

Scott W. Dales
United States Bankruptcy Judge