

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 07-55259

THOMAS J. SPELLS and  
KIMBERLY A. SPELLS,

Chapter 7

Judge Thomas J. Tucker

Debtors.

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**ORDER DENYING DEBTORS' MOTION  
TO RECONVERT CASE TO CHAPTER 13**

This case is before the Court on Debtors' "Motion To Convert From A Chapter 7 To A Chapter 13," filed on January 10, 2008 (Docket # 50). On February 4, 2008, Debtors filed a Certificate of No Response, indicating that no objections to the motion had been filed. The Court cannot grant the motion.

Debtors filed a voluntary petition for relief under Chapter 13 on August 6, 2007. On December 6, 2007, Debtors filed a notice of conversion, to voluntarily convert the case from Chapter 13 to Chapter 7 (Docket # 35), and the Chapter 13 case was converted to Chapter 7. Debtors now seek an order re-converting the Chapter 7 case to Chapter 13. The Court cannot allow conversion by Debtors to Chapter 13 from Chapter 7, because there was previously a conversion under 11 U.S.C. § 1307(a)<sup>1</sup> of Debtors' Chapter 13 case to Chapter 7.

Section 706(a) of the Bankruptcy Code provides, in relevant part: "The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, *if the case has not been converted under section 1112, 1208, or 1307 of this title.*" 11 U.S.C.

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<sup>1</sup> Section 1307(a) of the Bankruptcy Code provides: "The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable." 11 U.S.C. § 1307(a).

§ 1307(a) (*italics added*). Debtors do not have a right to voluntarily convert the case to Chapter 13 because the exception in § 706(a) applies. As the Court has held previously in other cases, the Court does not have authority under any provision of the Bankruptcy Code to convert a case back to Chapter 13 on Debtors' request, under these circumstances. *See* Tr. of 2/24/05 bench opinion, *In re Gaines*, Case No. 04-63830 (Docket # 81 in that case, copy attached to Order filed at Docket # 56 in *In re Honor*, Case No. 07-40125) at 3-7 (explaining why conversion from Chapter 7 to Chapter 13 is not permitted under these circumstances);<sup>2</sup> *see also In re Banks*, 252 B.R. 399 (Bankr. E.D. Mich. 2000).

Accordingly,

IT IS ORDERED that Debtors' "Motion To Convert From A Chapter 7 To A Chapter 13" (Docket # 50) is DENIED.

**Signed on February 04, 2008**

/s/ Thomas J. Tucker

**Thomas J. Tucker**  
**United States Bankruptcy Judge**

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<sup>2</sup> The Court's August 30, 2007 Order in the *Honor* case, which has a transcript of the Court's bench opinion in the *Gaines* case attached to it, is available electronically through PACER and also from the Court's website (<http://www.mieb.uscourts.gov/>), in the "Court Opinions" section.