

**APR 05 2006**

**HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT**

**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

In re:	)	BAP No.	WW-05-1084-SDK
	)		
EWALD S. MAUSER,	)	Bk. No.	04-13753
	)		
Debtor.	)		
<hr/>			
EWALD S. MAUSER,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
DENNIS L. BURMAN, Chapter 7	)		
Trustee,	)		
	)		
Appellee.	)		
<hr/>			

Submitted Without Argument on October 21, 2005<sup>2</sup>

Filed - April 5, 2006

Appeal from the United States Bankruptcy Court  
for the Western District of Washington

Honorable Thomas T. Glover, Bankruptcy Judge, Presiding

Before: SMITH, DUNN<sup>3</sup> and KLEIN, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of res judicata, including issue preclusion and claim preclusion. See 9th Cir. BAP Rule 8013-1.

<sup>2</sup> An order was entered that cancelled oral argument leaving the appeal to be submitted and determined on the briefs and the appellate record.

<sup>3</sup> Hon. Randall L. Dunn, United States Bankruptcy Judge for the District of Oregon, sitting by designation.

1 Ewald S. Mauser ("Appellant" and "Debtor") appeals orders of  
2 the bankruptcy court granting the chapter 7 trustee's motion for  
3 denial of all his exemptions and denying his motion to dismiss  
4 the chapter 7 case. We REVERSE and REMAND.

5 **I. FACTS**

6 Debtor filed a chapter 13<sup>4</sup> petition on March 19, 2004. In  
7 August 2004, Debtor's first attorney withdrew as his attorney of  
8 record and Debtor proceeded pro se from that time through  
9 December 13, 2004.

10 In September 2004, a creditor moved to convert the case to a  
11 chapter 7 on the grounds that Debtor 1) fraudulently transferred  
12 property of the estate, 2) was unable to confirm a plan, and 3)  
13 was uncooperative in providing information regarding his  
14 financial condition.

15 The hearing on the conversion motion was held on October 13,  
16 2004. At some point during the hearing, Debtor orally requested  
17 that his bankruptcy case be dismissed:

18 I ask the court to dismiss this whole case.  
19 This goes on now since 2000, and they're  
20 using - they are using me and my friend  
Anna Christian and Doris for their endeavor  
to make money . . . .

21 The court did not rule directly on the oral motion to  
22 dismiss, but instead granted the motion to convert.

23 Following the conversion, Debtor moved to dismiss the  
24 chapter 7 case.<sup>5</sup> Shortly thereafter, the chapter 7 trustee

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25  
26 <sup>4</sup> Unless otherwise indicated, all chapter, section and rule  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and  
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

28 <sup>5</sup> This motion is not included in the record on appeal. A  
copy of the pleading was obtained by the panel from the  
(continued...)

1 objected to all of Debtor's exemptions on the grounds that he  
2 failed to provide requested financial information, turn over  
3 assets of the estate, or otherwise cooperate with the trustee.  
4 Debtor responded, pro se, to the exemption objection with a 291  
5 page pleading described by his current counsel as "prefaced with  
6 . . . fractured English and somewhat incoherent logic."

7 The objection to the exemptions was first heard on January  
8 12, 2005. At that hearing, the trustee advised the court of what  
9 he perceived as Debtor's continuing failure to cooperate in  
10 providing financial records and in the marketing of his residence  
11 for sale, among other things. The court admonished Debtor, who  
12 now was represented by counsel, that he needed to "get [his] act  
13 together here and get this information and start cooperating with  
14 these guys." The hearing was continued to February 9, 2005 to  
15 allow Debtor to resolve the various issues raised by the trustee.

16 At the continued hearing, the trustee reported that no

17 \_\_\_\_\_  
18 <sup>5</sup>(...continued)  
19 bankruptcy docket. With the exception of the caption, clearly  
20 labeled "Motion to Dismiss," the grounds upon which the motion  
21 was based are undeterminable. The pleading, which includes as  
22 apparent exhibits a collection of various letters and state court  
23 pleadings of unknown relevance, states in its entirety:

24 Motion to Dismiss!  
25 Case NO:04-13753-ttg  
26 I feel Injustices happened to me from all  
27 sides of the Law I blame from my Part is  
28 Misunderstanding of the Lawyer language I  
am 68 Years old Sick falsely accused,  
looking for a Peaceful Settlement, even  
with Mr. Herman. I need Protection to make  
2005 a satisfactory Life, therefore I need  
to reach that goal, for all of us.

(grammatical mistakes in original). It does not appear that the  
motion was served on creditors.



1 claim of exemption is a final appealable order. In re Arnold,  
2 252 B.R. 778, 784 (9th Cir. BAP 2000). By order of the panel  
3 entered July 5, 2005, leave to appeal the denial of Debtor's  
4 dismissal motion was granted.

### 5 **III. ISSUES PRESENTED**

- 6 1. Whether the bankruptcy court erred in denying Debtor's  
7 oral motion to dismiss his chapter 13 case at the  
8 October 13, 2004 hearing on the conversion motion; and
- 9 2. Whether the bankruptcy court erred in granting the  
10 chapter 7 trustee's motion objecting to the allowance  
11 of Debtor's exemptions and denying Debtor's motion to  
12 dismiss the bankruptcy case.

### 13 **IV. STANDARD OF REVIEW**

14 The panel reviews the denial of a debtor's motion to  
15 voluntarily dismiss a bankruptcy case for an abuse of discretion.  
16 See In re Leach, 130 B.R. 855, 856 (9th Cir. BAP 1991). A  
17 bankruptcy court abuses its discretion if it bases its ruling  
18 upon an erroneous view of the law or a clearly erroneous  
19 assessment of the evidence. In re Beatty, 162 B.R. 853, 855 (9th  
20 Cir. BAP 1994). The panel also finds abuse of discretion if it  
21 has a definite and firm conviction that the trial court committed  
22 a clear error of judgment in the conclusion it reached upon  
23 weighing the relevant factors. United States v. Finley, 301 F.3d  
24 1000, 1007 (9th Cir. 2002). Questions regarding the right of a  
25 debtor to claim exemptions are questions of law reviewed de novo.  
26 In re Arnold, 252 B.R. at 784; In Goswami, 304 B.R. 386 (9th Cir.  
27 BAP 2003). A bankruptcy court's finding of bad faith is reviewed  
28 for clear error. In re Eisen, 14 F.3d 469, 470 (9th Cir. 1994).

1 **V. DISCUSSION**

2 A. Debtor Had an Absolute Right to Dismiss His Chapter 13 Case  
3 Prior to the Entry of the Order Converting It to Chapter 7

4 Under § 1307(b), the court "shall dismiss" a chapter 13 case  
5 that has not previously been converted "on request of the debtor  
6 at any time." This panel recognized the absolute right of a  
7 debtor to obtain a dismissal of a chapter 13 case in Beatty.  
8 There, the debtor requested the dismissal of her chapter 13 case  
9 following the court's oral decision to grant a motion to convert  
10 but prior to the entry of a written order. The bankruptcy court  
11 nevertheless entered an order converting the case and denying  
12 dismissal. On appeal, we reversed, holding that the bankruptcy  
13 court "must dismiss the case upon the debtor's request for  
14 dismissal under section 1307(b) if that request is made prior to  
15 the effective time of an order converting the case to chapter 7."  
16 In re Beatty, 162 B.R. at 857.

17 Though much of Debtor's filed pleadings in the case are  
18 difficult to follow and fairly indecipherable, his oral request  
19 for dismissal of the chapter 13 case at the conversion hearing  
20 was clear and unequivocal. The bankruptcy court clearly erred in  
21 entering the order converting the case in the face of the  
22 dismissal request. While it is true that Debtor did not appeal  
23 the conversion order, it is also true that the court did not  
24 specifically acknowledge or rule on Debtor's request (though  
25 denial is implicit in the decision to grant conversion).  
26 Further, it is not clear from the transcript of the hearing that  
27 the court ever considered the request.

1 Under the circumstances, Debtor's post-conversion motion to  
2 dismiss may be deemed either a request for a ruling on the  
3 original request or a motion for reconsideration of the implicit  
4 denial of the request pursuant to Rule 60(b). However the motion  
5 is treated, our decision in Beatty dictates that Debtor's oral  
6 request for dismissal of the chapter 13 case should have been  
7 granted. We believe not granting the motion was an abuse of  
8 discretion.

9 B. Denial of Exemptions/Denial of Motion to Dismiss Chapter 7  
10 Case

11 While the record might very well support the bankruptcy  
12 court's decision to deny the exemptions, see In re Arnold, 252  
13 B.R. at 784, and the denial of Debtor's motion to dismiss the  
14 chapter 7 case, because we find that the court abused its  
15 discretion by not granting the request to dismiss the case in the  
16 first instance, i.e., while it was a chapter 13, we need not  
17 render a ruling on the subsequent post-conversion request for  
18 denial of Debtor's exemptions.

19 **VI. CONCLUSION**

20 Based upon the foregoing, this matter is REVERSED and  
21 REMANDED to the bankruptcy court with instructions to enter  
22 orders 1) dismissing the chapter 13 case and 2) vacating the  
23 orders converting the case to chapter 7 and denying Debtor's  
24 exemptions.