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OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

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In re:	)	BAP No.	NV-12-1032-DJuKi
	)		
CHARLENE CHARM FINNEY,	)	Bk. No.	11-13330-LBR
	)		
Debtor.	)		
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KATHLEEN A. LEAVITT,	)		
Chapter 13 Trustee,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>O P I N I O N</b>	
	)		
CHARLENE CHARM FINNEY,	)		
	)		
Appellee.	)		
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Argued and Submitted on January 25, 2013  
at Las Vegas, Nevada

Filed - February 6, 2013

Appeal from the United States Bankruptcy Court  
for the District of Nevada

Honorable Linda B. Riegler, Bankruptcy Judge, Presiding

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Appearances: Sarah E. Smith, Esq., argued for Appellant, Kathleen A. Leavitt, Chapter 13 Trustee; Christopher P. Burke, Esq., argued for Appellee, Charlene Charm Finney.

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Before: DUNN, JURY, and KIRSCHER, Bankruptcy Judges.

1 DUNN, Bankruptcy Judge:  
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3 This appeal requires that we interpret the Bankruptcy Code to  
4 determine when a chapter 13<sup>1</sup> debtor is eligible for a discharge  
5 where that debtor previously received a chapter 7 discharge in a  
6 case converted from chapter 13.  
7

### 8 I. FACTS

9 The facts in this appeal are straightforward. Charlene Charm  
10 Finney filed a chapter 13 case ("First Case") on July 25, 2008.  
11 Approximately eight months later, Ms. Finney sought and obtained a  
12 voluntary conversion of the First Case to a chapter 7 case.  
13 Ms. Finney was granted a chapter 7 discharge in the First Case on  
14 July 7, 2009.

15 On March 10, 2011, Ms. Finney filed another chapter 13 case  
16 ("Second Case").<sup>2</sup> The chapter 13 plan form used in the District of  
17 Nevada requires a chapter 13 debtor to indicate whether she is  
18 eligible for a discharge upon completion of all plan obligations.  
19 Ms. Finney marked her chapter 13 plan form to indicate that she  
20 would be eligible for a discharge. The chapter 13 trustee  
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23 <sup>1</sup> Unless otherwise indicated, all chapter and section  
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

25 <sup>2</sup> This case actually is Ms. Finney's third. An intervening  
26 chapter 13 case was filed by Ms. Finney on September 4, 2009 but was  
dismissed on January 11, 2011 after Ms. Finney failed to confirm a  
plan.

1 ("Trustee") objected, asserting that because Ms. Finney had received  
2 a chapter 7 discharge in a case filed within four years of the  
3 filing date of the Second Case, Ms. Finney was not eligible for a  
4 chapter 13 discharge in the Second Case.

5 The bankruptcy court ruled that Ms. Finney was eligible for a  
6 chapter 13 discharge in the Second Case and confirmed Ms. Finney's  
7 chapter 13 plan.

8 The Trustee filed a timely notice of appeal.  
9

## 10 **II. JURISDICTION**

11 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
12 and 157(b) (2) (J) and (L). We have jurisdiction under 28 U.S.C.  
13 § 158.  
14

## 15 **III. ISSUES**

16 Whether § 1328(f) (1) or (f) (2) contains the applicable "look  
17 back period" for determining Ms. Finney's eligibility for a  
18 discharge in the Second Case.  
19

## 20 **IV. STANDARDS OF REVIEW**

21 We review issues of statutory construction and conclusions  
22 of law de novo. Ransom v. MBNA Am. Bank, N.A. (In re Ransom), 380  
23 B.R. 799, 802 (9th Cir. BAP 2007), aff'd 577 F.3d 1026 (9th Cir.  
24 2009), aff'd 131 S. Ct. 716 (2011).

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1 **V. DISCUSSION**

2 Generally, a chapter 13 debtor who has complied with the  
3 provisions of §§ 1328(a) and (b) is entitled to a discharge of all  
4 debts provided for by the chapter 13 plan or disallowed under § 502.  
5 Stated very broadly, the debtor need only complete all payments  
6 under the plan and certify that she is current on any existing  
7 domestic support obligations in order to be entitled to a discharge  
8 in chapter 13.

9 We do not address any of the nuances or exceptions to discharge  
10 under §§ 1328(a) and (b), because the issue on appeal requires only  
11 that we interpret the application of § 1328(f) to Ms. Finney's right  
12 otherwise to receive a discharge in the Second Case.

13 "[W]hen the statute's language is plain, the sole function of  
14 the courts--at least where the disposition required by the text is  
15 not absurd--is to enforce it according to its terms." Lamie v. U.S.  
16 Trustee, 540 U.S. 526, 534 (2004) (quoting Hartford Underwriters  
17 Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6 (2000))  
18 (internal quotation marks omitted). However, as stated by one  
19 court, "[§ 1328(f)] is an example of an ambiguity, not an example of  
20 a literal construction leading to an absurd result." In re Grydzuk,  
21 353 B.R. 564, 567 (Bankr. N.D. Ind. 2006). "Whether a statute is  
22 ambiguous is determined by reference to the language itself, the  
23 specific context in which that language is used, and the broader  
24 context of the statute as a whole." Hough v. Fry (In re Hough), 239  
25 B.R. 412, 414 (9th Cir. BAP 1999) (quoting Robinson v. Shell Oil  
26 Co., 519 U.S. 337, 341 (1997)) (internal quotation marks omitted).

1 "It is a fundamental canon of statutory construction that the words  
2 of a statute must be read in their context and with a view to their  
3 place in the overall statutory scheme." Davis v. Mich. Dept. of  
4 Treasury, 489 U.S. 803, 809 (1989).

5 Applying these principles of statutory construction we turn to  
6 the issue before us.

7 Section 1328(f) establishes a "look back period" for measuring  
8 when a debtor may receive a discharge in a subsequent bankruptcy  
9 case. Section 1328(f) provides:

10 Notwithstanding subsections (a) and (b), the court shall  
11 not grant a discharge of all debts provided for in the  
12 plan or disallowed under section 502, if the debtor has  
13 received a discharge-

14 (1) in a case filed under chapter 7, 11, or 12 of this  
15 title during the 4-year period preceding the date of the  
16 order for relief under this chapter, or

17 (2) in a case filed under chapter 13 of this title during  
18 the 2-year period preceding the date of such order.

19 The Trustee asserts that § 1328(f)(1) precludes Ms. Kinney from  
20 obtaining a discharge in the Second Case. The Trustee's argument is  
21 that § 1328(f) must be read in conjunction with § 348(a).

22 Section 348(a) provides:

23 **Effect of conversion**

24 (a) Conversion of a case from a case under one chapter of  
25 this title to a case under another chapter of this title  
26 constitutes an order for relief under the chapter to which  
the case is converted, but, except as provided in  
subsections (b) and (c) of this section, does not effect a  
change in the date of the filing of the petition, the  
commencement of the case, or the order for relief.

The trustee contends that application of § 348(a) establishes that  
the effect of converting the First Case from a chapter 13 case to  
chapter 7 is that the First Case is deemed to have been filed under

1 chapter 7. In other words, § 348(a) provides that a conversion of a  
2 chapter 13 case to chapter 7 effects an order for relief under  
3 chapter 7 that relates back to the original case filing date. See  
4 In re Michael, 699 F.3d 305, 310 (3d Cir. 2012) (“[W]hen a debtor  
5 converts a Chapter 13 case to Chapter 7, the order converting the  
6 case is effectively backdated to the time of the order for relief  
7 under Chapter 13, which is the date of the filing of the Chapter 13  
8 petition.”); and Resendez v. Lindquist, 691 F.2d 397, 399 (8th Cir.  
9 1982) (“[W]hen there is a conversion, the debtors are deemed to have  
10 filed a Chapter 7 case at the time the Chapter 13 case was filed.”).  
11 Accordingly, where a bankruptcy case originally filed in chapter 13  
12 is converted to chapter 7, it can be characterized as “filed under”  
13 both chapter 13 and chapter 7, but the discharge is only entered in  
14 the chapter 7 case unless the case later is reconverted to chapter  
15 13.

16 The vast majority of courts that have considered the issue  
17 support the Trustee’s interpretation of these statutes. See, e.g.,  
18 In re Dalton, 2010 WL 55499 (Bankr. M.D.N.C. 2010) (because  
19 conversion of a case from chapter 13 to chapter 7 constitutes an  
20 order for relief under chapter 7, the prior case will be treated as  
21 “filed under” chapter 7 for purposes of section 1328(f)); In re  
22 Ybarra, 359 B.R. 702 (Bankr. S.D. Ill. 2007) (section 348(a) demands  
23 that a converted chapter 13 case be treated as though it were filed  
24 as a chapter 7 case on its petition date); In re Knighton, 355 B.R.  
25 922, 924-26 (Bankr. M.D. Ga. 2006) (“Section 1328(f) cannot be read  
26 in a vacuum; it must be read in conjunction with § 348(a) . . . .”);

1 In re Grydzuk, 353 B.R. 564, 568 (Bankr. N.D. Ind. 2006) (section  
2 348(a) provides that conversion of a chapter 13 case to chapter 7  
3 constitutes an order for relief under chapter 7 such that the case  
4 became "filed under" chapter 7 rather than under chapter 13); McDow  
5 v. Sours (In re Sours), 350 B.R. 261, 268 (Bankr. E.D. Va. 2006)  
6 (extensive case law interpreting section 348(a) makes it clear that  
7 a converted case relates back to the initial filing date for all  
8 purposes, including matters relating to discharge); McDow v. Capers  
9 (In re Capers), 347 B.R. 169, 171-72 (Bankr. D.S.C. 2006) ("Debtor  
10 would have this Court conclude that Congress sought to limit a  
11 debtor's opportunity to receive a discharge in a subsequent filing  
12 based solely on the chapter under which the previous case was filed,  
13 without regard to the type of discharge the debtor received in the  
14 previous case. This reading of the statute is illogical.").

15 Ms. Finney asserts that the Trustee's reading of the statutes  
16 effectively eliminates the "filed under" language of § 1328(f).  
17 Only one decision supports Ms. Finney's position. See In re  
18 Hamilton, 383 B.R. 469 (Bankr. W.D. Ark. 2008). The Hamilton court  
19 compared the language Congress used in creating the "look back  
20 period" in § 1328(f) with the language used in § 727(a)(8) and (9).  
21 There, Congress directed that the "look back period" for a chapter 7  
22 discharge be measured from the date a prior case was "commenced."  
23 Under the Hamilton court's analysis, (1) § 301(a) provides that "[a]  
24 voluntary case under a chapter of this title is commenced by the  
25 filing with the bankruptcy court of a petition under such chapter by  
26 an entity that may be a debtor under such chapter"; (2) § 348(a)

1 explicitly provides that conversion of a case does not effect a  
2 change in the commencement date for the case; and (3) Congress could  
3 easily have stated that the "look back period" set in § 1328(f) is  
4 determined based on the chapter under which a prior discharge was  
5 entered, which it did not do. We do not find the reasoning of the  
6 Hamilton court persuasive.

7 We agree with the Trustee, who asserts that a literal  
8 application of the words "filed under" to the facts of the case is  
9 contrary to Congress' intent to create more stringent discharge  
10 rules. As characterized by one court, the legislative history  
11 regarding the purpose of § 1328(f) is "meager." In re Ybarra, 359  
12 B.R. at 708. Nevertheless, that court relied on the House Report to  
13 the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,  
14 which stated that the purpose of § 1328(f) is to:

15 prohibit the issuance of a discharge in a subsequent  
16 chapter 13 case if the debtor received a discharge in a  
prior chapter 7, 11, or 12 case within four years  
preceding the filing of the subsequent chapter 13 case.  
17 In addition, it prohibits the issuance of a discharge in a  
subsequent chapter 13 case if the debtor received a  
18 discharge in a chapter 13 case filed during the two-year  
period preceding the date of the filing of the subsequent  
19 chapter 13 case.

20 Id. (quoting H.R. Rep. No. 109-31, at 76 (1st Sess. 2005)) (emphasis  
21 added).

22 Section 348(a) explicitly provides that "[c]onversion of a case  
23 from a case under one chapter of this title to a case under another  
24 chapter of this title constitutes an order for relief under the  
25 chapter to which the case is converted." As explained by the  
26 Grydzuk court, "upon conversion, the order for relief--the critical



1 component in the initiation of a bankruptcy case--became 'an order  
2 for relief under the chapter to which the case was converted,' i.e.,  
3 Chapter 7. Thus, the case became 'filed under' Chapter 7 rather  
4 than under Chapter 13." Grydzuk, 353 B.R. at 568. Because § 348(a)  
5 effectively converts the First Case to "filed under" chapter 7,  
6 Ms. Finney is not eligible for a chapter 13 discharge in the Second  
7 Case pursuant to § 1328(f)(1).<sup>3</sup>

## 8

## 9 VI. CONCLUSION

10 The bankruptcy court erred when it concluded that Ms. Finney's  
11 eligibility for a chapter 13 discharge in the Second Case was  
12 governed by § 1328(f)(2) rather than (f)(1). Accordingly, we  
13 REVERSE the order of the bankruptcy court and REMAND for further  
14 proceedings consistent with this disposition.

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<sup>3</sup> If the current case is dismissed, Ms. Finney will be  
25 eligible for a discharge in any new chapter 13 case she might file,  
26 since the four-year limitation set forth in § 1328(f)(1) expired  
while this appeal was pending.