

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re:

IMPERIAL PLANTS, INC.,

Case No. 94-21818

Debtor.

Chapter 7

DECISION

I. INTRODUCTION

This matter came before the court on a motion by the United States Trustee for reconsideration of the court's July 12, 1996, order converting this case from Chapter 11 to Chapter 7 on the debtor's motion under 11 U.S.C. § 1112(a). When presented with the debtor's motion, the court had assumed the debtor had the right to convert under 11 U.S.C. § 1112(a) and signed the order converting the case ex parte. After the United States Trustee received a copy of the order, it moved the court to vacate the order pursuant to Fed. R. Bankr. P. 9023, which incorporates Fed. R. Civ. P. 59(e). Rule 59(e) allows a party to direct the court's attention to a manifest error of law or fact, and enables the court to correct its own errors. *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996). The grounds stated were that the debtor did not have standing, postconfirmation, to convert the case pursuant to 11 U.S.C. § 1112(a).

For the reasons set forth in this decision, the United States Trustee's motion is denied.

This decision constitutes the court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052.

II. FACTS

The debtor, Imperial Plants, Inc., was in the business of “interior landscaping,” supplying area businesses and offices with live plants on a rental or purchase maintenance contract program. In addition, retail sales of live plants and flowers, silk plants and flowers, custom design services, gifts, accessories, balloons, and floral arrangements were offered at the debtor’s store. After many years in business, the debtor found itself faced with various uncollectible accounts receivable, which in turn caused it to fall behind in payments to suppliers and taxing authorities. After the Internal Revenue Service placed a levy on the debtor’s assets and accounts, the debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code on April 14, 1994. The court confirmed the debtor’s plan of reorganization on April 14, 1995, with retroactive effect to March 31, 1995. The debtor never substantially consummated the plan.

On July 11, 1996, the IRS seized various assets of the debtor, including plants located at numerous customer locations around the Milwaukee area. The IRS scheduled a sale of the seized assets for July 18, 1996. On July 12, 1996 the debtor moved to have the case converted from Chapter 11 to Chapter 7 pursuant to 11 U.S.C. § 1112(a), and this court signed the order converting the case on the same day.

On July 16, 1996 the United States Trustee moved for reconsideration of the order converting the case. The court held an emergency hearing and stayed the IRS’s anticipated sale pending briefing of the issue. An interim Chapter 7 Trustee was appointed on July 17, 1996. At the request of all parties, the court then entered a stipulated order allowing the IRS to proceed with the sale of the debtor’s plants, subject to the proviso that the proceeds from the sale be

deposited with the Chapter 7 Trustee. Thereafter, the debtor filed a motion to convert from Chapter 11 to Chapter 7 and for modification of the July 12, 1996, order, this time converting the case pursuant to § 1112(b). Notice was given to creditors, and there were no objections.

The issue now before the court is whether, after confirmation of a Chapter 11 plan, the debtor had standing under 11 U.S.C. § 1112(a) to convert the case to Chapter 7. The practical effect of the court's ruling will determine whether the debtor's attorney fees or the IRS lien will be paid first. *See* 11 U.S.C. § 724. If the July 12, 1996, order is vacated and conversion is effective on August 12, 1996, the date of conversion pursuant to § 1112(b), the sale would have taken place before conversion, satisfying the IRS's secured claim to the exclusion of the Chapter 11 attorney's fees and other priority debts. If the case was properly converted pursuant to the July 12, 1996, order, the debtor's assets will be administered by the Chapter 7 trustee, and the debtor's attorney fees will be paid, as an administrative expense, prior to the IRS lien. 11 U.S.C. § 724(b)(2). The trustee will receive assets in addition to the proceeds from the sale of the plants, but probably not enough to pay the Chapter 11 administrative expenses and other priority debts. The parties agree that there are no material facts in dispute and the court can determine the matter as a question of law.

III. ARGUMENTS

The United States Trustee asserts that because the debtor is no longer a "debtor in possession," it does not have the right to convert the case pursuant to § 1112(a) after the Chapter 11 plan has been confirmed. The debtor claims that it has the absolute right in this instance to convert the case from Chapter 11 to Chapter 7 at any time without notice or a hearing.

The relevant portions of 11 U.S.C. §§ 1112(a) and (b) provide as follows:

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless —

(1) the debtor is not a debtor in possession

. . . .
(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee, or bankruptcy administrator and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause

11 U.S.C. §§ 1112(a), (b) .

The United States Trustee points out that under § 1101(1), “‘debtor in possession’ means debtor except when a person that has qualified under section 322 of this title is serving as trustee in the case.” 11 U.S.C. § 1101(1). The Code defines debtor as “person or municipality concerning which a case under this title has been commenced.” 11 U.S.C. § 101(13). While a case was commenced by Imperial Plants, Inc., and no trustee was appointed, which appears to meet the definition of “debtor,” the United States Trustee maintains that this court should follow the limitations set by the court in *In re Grinstead*, 75 B.R. 2, 3 (Bankr. D. Minn. 1985).

Grinstead held that the term “debtor in possession” is intended to refer to a debtor who during the pendency of a case prior to confirmation retains property in the fiduciary capacity of a trustee of the estate. In support of that interpretation, the United States Trustee points out that upon the filing of a Chapter 11 bankruptcy, the debtor’s property becomes property of the bankruptcy estate under 11 U.S.C. § 541. Once a Chapter 11 debtor’s plan is confirmed, however, the bankruptcy estate ceases to exist unless the plan specifically provides otherwise, and all estate property reverts in the debtor, subject to the terms and conditions imposed by the plan. 11

U.S.C. § 1141(b). Upon confirmation, the debtor is no longer “in possession” of the property of the bankruptcy estate and is therefore no longer a “debtor in possession.” *See also In re NTG Industries, Inc.*, 118 B.R. 606, 610 (Bankr. N.D. Ill. 1990) (Following confirmation, “[t]he debtor is then no longer a debtor-in-possession and the estate ceases to exist, unless the plan provides otherwise.”); *In re Pero Brothers Farms, Inc.*, 91 B.R. 1000, 1000 (Bankr. S.D. Fla. 1988) (“[T]he debtor’s statutory option under 11 U.S.C. § 1112(a) to convert this chapter 11 case to chapter 7 expired when this court entered the Confirmation Order.”); *Grinstead*, 75 B.R. at 3 (“There is no debtor in possession status of a debtor post confirmation.”). Because Imperial Plants was no longer a debtor in possession after its plan was confirmed, the United States Trustee contends that its status as “debtor” expired, and it could not move to convert to Chapter 7 under § 1112(a).

The United States Trustee further argues that a postconfirmation debtor should not retain its “debtor in possession” status because that would have the effect of continuing, post-confirmation, the debtor’s duties set forth in § 1107. As the debtor has no duties, it also has no property to administer under § 541 and the remaining property (sold by the IRS) is not property of the estate.

On the other hand, the debtor cites *In re Schuler*, 119 B.R. 191 (Bankr. W.D. Mo. 1990), to support its claim that it has the absolute right to convert a case from Chapter 11 to Chapter 7 at any time without notice or a hearing unless a trustee has been appointed, the Chapter 11 was involuntary, or the case was converted to Chapter 11 by a party in interest other than the debtor. As stated above, § 1101(1) defines “debtor in possession” as “the debtor except when a person that has qualified under section 322 of this title is serving as trustee in the case.” The debtor

maintains that because no trustee was appointed in the case, by statutory definition, Imperial Plants, Inc., continued to be a debtor within the meaning of 11 U.S.C. § 1112(a), notwithstanding the revesting of its property on confirmation. The district court in *Abbott v. Blackwelder Furniture Co.*, 33 B.R. 399, 401-02 (W.D. N.C. 1983), held that “Congress intended conversion, when sought by a debtor, to be a non-adversarial process; thus, the protection of notice and a hearing is not essential to the validity of such a conversion.” The debtor argues that *Grinstead*, 75 B.R. 2, and other cases relied upon by the U.S. Trustee were improperly decided. The debtor also points out that its plan of reorganization provided for the retention of jurisdiction for the court “[t]o enter an order concluding and terminating this reorganization case.” (Debtor’s Plan of Reorganization, ¶ 7.01).

Thus, the debtor claims that since the case was converted under § 1112(a) on July 12, 1996, its property is subject to administration by a Chapter 7 trustee. *See In re Midway, Inc.*, 166 B.R. 585 (Bankr. D. N.J. 1994). An interim trustee has been appointed in this case and the debtor is required to turn over all assets and records to the trustee. Fed. R. Bank. P. 1019(5). Furthermore, the property acquired by the trustee is “property of the estate.” 11 U.S.C. §§ 541(a)(6), (7). Consequently, the debtor claims that the proceeds of the plants sold by the IRS are property of the estate and are subject to administration by the trustee.

IV. DISCUSSION

A continuing business which undergoes a successful Chapter 11 reorganization experiences three stages: (1) as a prebankruptcy debtor; (2) as a bankruptcy estate, or debtor in possession; and (3) after confirmation of a plan of reorganization, as a post-bankruptcy business.

If the reorganization is unsuccessful, the Chapter 11 may be dismissed or converted to Chapter 7 during stage (2), voluntarily by the debtor under 11 U.S.C. § 1112(a), or involuntarily by a party in interest under 11 U.S.C. § 1112(b). Throughout the bankruptcy process, the Code and case law favor continuity of the debtor entity as it progresses through its various stages. The purpose of deciding whether there is continuity from the debtor in possession to the postconfirmation entity is to determine whether the “debtor” can convert a case pursuant to 11 U.S.C. § 1112(a) once it reaches that third stage. If it cannot do so postconfirmation, it must give notice to creditors and move to convert under 11 U.S.C. § 1112(b), as well as meet the “best interest of creditors and the estate” test required by that subsection.

In a number of contexts, courts have concluded that the prefiling entity and the postfiling debtor in possession are the same entity. For example, the taxpayer status of a corporation, like this debtor, does not change upon filing of a bankruptcy case. *See In re A.C. Williams Co.*, 51 B.R. 496, 498 (Bankr. N.D. Ohio 1985). As such, no separate taxable entity results from the filing of Chapter 11. *Id.*

The debtor and debtor in possession are also the same entity for the purpose of assuming or rejecting an executory contract in a Chapter 11 reorganization. In *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 104 S.Ct. 1188 (1984), the Supreme Court rejected the distinction between the prepetition debtor and Chapter 11 debtor in possession in the executory contract context. The Court stated:

Obviously, if the [debtor in possession] were a wholly “new entity,” it would be unnecessary for the Bankruptcy Code to allow it to reject executory contracts, since it would not be bound by such contracts in the first place. For our purposes, it is sensible to view the debtor-in-possession as the same “entity” which existed before the filing of the bankruptcy petition, but empowered by virtue of the Bankruptcy Code to deal with its

contracts and property in a manner it could not have employed absent the bankruptcy filing.

Id. at 528; 104 S.Ct. at 1197. The Court recognized the distinction between Chapter 7 and Chapter 11 proceedings, and noted that a debtor in possession should be granted more latitude in deciding whether to reject a contract than should a Chapter 7 trustee. *Id.* at 529. However, this distinction in *rights and obligations* between a debtor and debtor in possession does not necessitate a distinction in *entities*.

The Eighth Circuit also held that the pre-filing entity and the debtor in possession are the same. It opined, “[w]hether the different entity theory remains viable in any context is questionable.” *United States v. Gerth*, 991 F.2d 1428, 1435 (8th Cir. 1993) (holding that when the debtor in possession assumes an executory contract, the debtor and debtor in possession are the same entity for purposes of the mutuality required under 11 U.S.C. § 553).

Similarly, courts have found continuity through the next transition that a case may take; that is, the debtor in possession and the debtor in a case converted to Chapter 7 without confirmation of a Chapter 11 plan are one and the same. This court recently concluded that a law firm which represented a Chapter 11 debtor could not represent a defendant in a preference proceeding brought by the Chapter 7 debtor after the case was converted. *In re Peck Foods*, 196 B.R. 434 (Bankr. E.D. Wis. 1996). No Chapter 11 plan had been confirmed. A former attorney-client relationship existed between the law firm and the postconversion Chapter 7 entity because there was a continuity of the Chapter 11 estate to the Chapter 7 estate. *Id.* at 438-39. This court also pointed out various other rules applicable to debtors which show a continuity between the Chapter 11 estate and the Chapter 7 estate: the preferences existed from the date of the Chapter

11 filing, not the date of conversion; the tax identification and tax year remain the same; and both the debtor in possession and the Chapter 7 trustee are fiduciaries for creditors in existence at the Chapter 11 filing. *Id.* at 439 (citations omitted).

In general, when a plan has not been confirmed during the pendency of a Chapter 11 case, the assets remaining as property of the estate at the time of conversion become property of the Chapter 7 estate. *Cf.* 11 U.S.C. § 348(a).

Although there is continuity between the Chapter 11 debtor in possession and the Chapter 7 estate, they might not always be identical. This was demonstrated by two cases, both involving individual Chapter 11 debtors in possession. *In re Doemling*, 127 B.R. 954, 955 (W.D. Pa. 1991); *Matter of Griseuk*, 165 B.R. 956 (Bankr. M.D. Fla. 1994). Whereas a business entity has no life independent of its business, an individual usually has a personal existence apart from his or her financial affairs. The courts in these two cases involving individual debtors reached opposite results when faced with the issue of whether the Chapter 7 trustee took personal injury claims as property of the estate. These claims involved injuries to the individual debtors that occurred during the pendency of the Chapter 11 and before the conversion to Chapter 7. The Florida bankruptcy court held that the claims were included in the Chapter 7 estate because the only postpetition interests that were not property of the Chapter 11 estate of an individual debtor were the debtor's earnings for services performed. 11 U.S.C. § 541(a)(6). *Griseuk*, 165 B.R. 956. It appears that no plan was confirmed before the case was converted. The court applied the reasoning of *Bildisco* and concluded that "the debtor and the debtor-in-possession are one in the same." *Id.* at 958. Thus, any property interests, aside from wages earned, accruing to the Chapter 11 estate become property of the Chapter 7 estate upon conversion:

An individual, as debtor-in-possession, is the “estate” in Chapter 11. To allow the debtor-in-possession to select what non-exempt assets are property of the estate in a subsequent Chapter 7 is as illogical as suggesting Chapter 11 administrative claims be disallowed for being post-petition. Otherwise, it would permit a debtor to obtain a windfall whenever property is derived during the pendency of the Chapter 11 case. This unconscionable result would encourage Chapter 11 debtors to immediately convert to Chapter 7 and retain the non-exempt asset, yet discharge its debts.

Id. This reasoning indicates that the debtor, or at least the estate, is a continuous entity through conversion.

The reasoning of an earlier case, *Doemling*, 127 B.R. 954, was rejected by the *Griseuk* court. Again the issue was whether claims arising from a postpetition personal injury to an individual Chapter 11 debtor was property of the Chapter 7 estate under 11 U.S.C. § 541(a)(1). The Pennsylvania court held that the debtor and the debtor in possession are not interchangeable entities, and each has an existence separate from each other. *Id.* at 955-56. The court concluded that since the cause of action was to compensate for injury to the debtor’s person and not injury to the debtor in possession or property of the estate, the claim was not property of the Chapter 11 estate.

The *Doemling* court’s analysis is sensible and is not inconsistent with 11 U.S.C. § 541 . An individual’s body is clearly not property of the estate that could be administered. Most human bodies resist liquidation, and it is against public policy to sell them. 11 U.S.C. § 704(1). The personal injury claim did not arise on account of damage to property of the estate; therefore, it was not derived from property of the estate and not included under 11 U.S.C. § 541(a)(6). It is logical to exclude the claim from the Chapter 11 and 7 estates because the existence of an individual is fundamentally different from the existence of a corporation..

Accordingly, this court is persuaded that the better reasoned concept is that the debtor

remains the same entity from before it files a bankruptcy case, through its status as a debtor in possession, and on through its conversion to a case under Chapter 7, if the conversion occurs before a plan is confirmed.

The case now before the court is one event removed from the previous scenario; that is, the debtor obtained a confirmed plan of reorganization. The question is whether the postconfirmation entity is no longer a “debtor” that can convert its case to Chapter 7 under 11 U.S.C. § 1112(a).

There is a line of cases which concludes that the debtor in possession can be distinct from the debtor. For example, after an exhaustive and scholarly review of relevant case law, the bankruptcy court for the Eastern District of Michigan in *In re Winom Tool and Die, Inc.*, 173 B.R. 613 (Bankr. E.D. Mich. 1994), held that property removed from the bankruptcy estate upon confirmation remained outside of the estate following conversion of the case to Chapter 7. The Chapter 7 trustee had argued that the postpetition Chapter 11 debtor had no identity separate from its status as debtor in possession, such that any property interests arising postpetition fell within the reach of 11 U.S.C. §§ 541(a)(6) and (a)(7). The court rejected the trustee’s contention that the case should be analyzed as though it was always a Chapter 7 and stated that the Supreme Court’s ruling in *Bildisco* “leaves open the possibility that distinctions between the debtor and the debtor in possession may be appropriate in other contexts.” *Id.* at 622. The court held that a conversion after plan confirmation was one of those times where there is a difference between the debtor and debtor in possession and pointed out that a debtor can own property that is not property of the estate, and all property of a debtor need not be committed to the plan. Furthermore, the plan may provide that all property of the estate does not vest in the debtor.

Therefore, when property reverts upon confirmation, it remains outside the estate upon conversion.

This court believes that in determining whether there is identity or continuity in a case of a debtor, debtor in possession, postconfirmation entity and postconversion Chapter 7 estate, the case and circumstances must be analyzed consistently with Code provisions as a whole, keeping in mind the overall purposes of the bankruptcy process, with a dash of common sense thrown in. If tight focus on a particular Code provision produces an absurd result, perhaps the provision needs to be seen in a larger context. Statutory construction requires review of more than the individual Code sections. *See In re Five Star Partners, L.P.*, 193 B.R. 603, 609 (Bankr. N.D. Ga. 1996) (citing *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S.Ct. 1811, 1818 (1988)) (“In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.”) Therefore, this court respectfully suggests that the *Winom Tool* court and those reaching the same result upon a postconfirmation conversion concentrate too hard on parsing statutes and miss the point of the entire process: liquidating the corporation and paying the creditors. Furthermore, no violence is done to the words of the Code in reaching a practical result that meets these goals.

The *Winom Tool* analysis leaves assets held by a corporate debtor unliquidated. If the assets the debtor owns at the time of the conversion are not property of the estate, the Chapter 7 trustee does not administer them; in fact, the trustee has no assets to liquidate and pay creditors. *See* 11 U.S.C. § 704(1). It follows that there is no reason to convert a case when there is a default under a confirmed plan, but this would make 11 U.S.C. §§ 1112(b)(7)-(9) redundant.

The creditors looking to be paid after a failed plan are the same creditors provided for in the plan. If the debtor has remaining assets upon conversion, creditors disappointed by the failed plan would like to recover these assets, but who controls them? Not the trustee. Apparently, the debtor owns them, and if the debtor is a corporation rather than an individual, the owner is the same debtor that is supposedly being liquidated in Chapter 7 and that has ceased operations. If the corporation is one where the principals have thrown up their hands and walked off, a frequent occurrence when businesses fail, who secures the assets, takes possession and liquidates them, paying creditors in the process? Again, not the Chapter 7 trustee. Perhaps those creditors have to run to state court to have a receiver appointed, at which time recovery will be to the first one who is sufficiently swift, aggressive, and able to afford additional litigation. Besides being undignified, the result is diametrically opposed to bankruptcy policy. Alternatively, the creditors could file an involuntary Chapter 7 case against the debtor that does have the assets, but having two Chapter 7 cases open at the same time for the same debtor is usually frowned upon, even if only one case has assets. In short, the *Winom Tool* analysis makes grammatical sense but not much practical sense. True, 11 U.S.C. § 348(a) does not recreate an estate or retroactively revoke an order of confirmation, but it only makes sense that it brings any remaining property into the Chapter 7 estate to be liquidated and paid to creditors. Besides, such a finding is no wilder an interpretation of the Code than the *Winom Tool* finding that a debtor is no longer a debtor even though it meets the definition, and our interpretation works.

It is not a stretch to discern that the Code drafters did not intend postconfirmation conversion to be a vain act that leaves assets and creditors adrift. This appears to be the purpose of 11 U.S.C. § 348(a). If the postconfirmation debtor's property is not under the jurisdiction of

the bankruptcy court, there would be no point in allowing the court to convert a case under 11 U.S.C. §§ 1112(b)(7)-(9). Moreover, no creditor would want conversion if it nets them nothing, and courts are loathe to spend time on a proceeding that does nobody any good. The only logical conclusion is that the postconfirmation Chapter 11 debtor's property vests in the Chapter 7 trustee upon conversion. *In re Smith*, 201 B.R. 267, 272-73 (D. Nev. 1996). Where it does not, such as in the case of an individual debtor that clearly has a life outside the bankruptcy process, can be determined when it is appropriate.

The court is mindful of cases advanced by the United States Trustee which conclude that postconfirmation debtors do not meet the requirements of § 1112(a) for automatic conversion. *NTG Industries, Inc.*, 118 B.R. 606; *Pero Brothers Farms*, 91 B.R. 1000; *Grinstead*, 75 B.R. 2). The reasoning of these cases is expressed by the court in *Grinstead* , which held that debtors lose debtor in possession status upon confirmation. The court stated that “[t]he term ‘debtor in possession’ is intended to refer to a debtor who during the pendency of a case prior to confirmation retains property in the fiduciary capacity of a trustee of the estate.” *Grinstead*, 75 B.R. at 3. The court pointed out that once a plan is confirmed, the estate ceases to exist and all estate property reverts in the debtor under 11 U.S.C. § 1141(b). After confirmation, there is no fiduciary and the rights and duties of the debtor and creditors are determined by the plan. *Id.* The *Grinstead* court concluded that there is no need for any entity to serve in a fiduciary capacity postconfirmation and thus, the debtor is no longer a debtor in possession. *Id.* at 4. Thus, any assets held by the former debtor upon conversion to Chapter 7 were not property of the estate that could be administered by the trustee . Under this analysis, there would be no reason to

convert a postconfirmation case under either 11 U.S.C. §§ 1112(a) *or* (b), even though failure to live up to the plan is grounds for conversion under 11 U.S.C. §§ 1112(b)(7)-(9).

This court finds *Grinstead* and its progeny unpersuasive. These cases conclude that the debtor in possession and the postconfirmation entity are *distinct* because upon confirmation all estate property reverts in the debtor, there is no fiduciary, and the bankruptcy estate ceases to exist. From these Code provisions, these cases jump to the conclusion that the postconfirmation entity loses forever its debtor status and consequently loses the right to automatically convert its case under § 1112(a). As discussed above, this reasoning is unsupported by the plain language of § 1101(1) and by the Supreme Court’s discussion in *Bildisco*. Because the debtor has different duties and responsibilities upon confirmation, does not mean that the pre-filing debtor, debtor in possession and postconfirmation debtor are distinct entities or that a debtor is no longer a debtor under conditions not specified in the Code. This court’s interpretation of the Code is not perfect, but it is as good a fit as *Winom Tool* or *Grinstead*, and it fulfills bankruptcy’s purpose.

As established above, there is a continuity of interests from the debtor in possession to the postconfirmation debtor, except in unusual circumstances involving an individual Chapter 11 debtor. As long as the plan is not completely satisfied, the bankruptcy court has jurisdiction over the debtor. This follows from the subsections of 11 U.S.C. § 1112(b) that allow conversion for failure to satisfy the plan. Since the debtor continues to be a debtor postconfirmation for purposes of 11 U.S.C. § 1112(b), it must also be a debtor for purposes of 11 U.S.C. § 1112(a). . . Courts should “avoid construing one provision in a statute so as to suspend or supersede another provision.” *Rake v. Wade*, 508 U.S. 464, 471, 113 S.Ct. 2187, 2192 (1993) (“To avoid ‘deny[ing] effect to a part of a statute,’ we accord ‘significance and effect . . . to every word.’”)

(citation omitted).

Because the postconfirmation debtor is the same entity as the debtor in possession, Imperial Plants, Inc., is allowed to convert, postconfirmation, to Chapter 7 pursuant to 11 U.S.C. § 1112(a).

VI. CONCLUSION

For the reasons stated above, this court finds that the debtor in possession and postconfirmation debtor are the same legal entity. As such, the debtor has authority pursuant to 11 U.S.C. § 1112(a) to convert the case to Chapter 7. The United States Trustee's motion for reconsideration is denied and the court's July 12, 1996, order converting the case to Chapter 7 shall be given full force and effect. An order consistent with this opinion will be entered.

Dated at Milwaukee, Wisconsin, December 20, 1996.

BY THE COURT:

_____/s/_____
Honorable Margaret Dee McGarity
United States Bankruptcy Judge