



THIS ORDER IS SIGNED AND ENTERED.

Dated: January 13, 2023

Rachel Blise

**Hon. Rachel M. Blise
United States Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

In re:

James R. Snyder,

Debtor.

Case No. 22-11334-rmb

Chapter 13

ORDER DENYING MOTION TO RECONVENE MEETING OF CREDITORS

The debtor filed a chapter 13 petition on August 22, 2022. On September 23, 2022, the chapter 13 trustee held and concluded the meeting of creditors pursuant to 11 U.S.C. § 341. The debtor now seeks to reconvene the meeting of creditors so he can comply with the requirements of 11 U.S.C. § 1308. For the reasons set forth below, the debtor's motion is denied.

Section 1308 of the Bankruptcy Code provides:

Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a). If the returns are not filed before the meeting of creditors, the trustee may hold the meeting open as set forth in § 1308(b).

There are at least two consequences to a debtor's failure to comply with § 1308(a). First, if a debtor does not file tax returns as required under § 1308, on motion of a party in interest and

after notice and a hearing the court is required to dismiss the case or convert it to one under chapter 7. 11 U.S.C. § 1307(e). Second, a debtor’s compliance with § 1308 appears to be a requirement for confirmation of a chapter 13 plan. *See* 11 U.S.C. § 1325(a)(9).¹

In this case, the debtor did not file tax returns for tax years 2019 and 2020 before the meeting of creditors was concluded. At a preliminary hearing on plan confirmation, the Court suggested that the debtor’s non-compliance with § 1308 was a barrier to confirmation in light of the requirement in § 1325(a)(9). In an effort to remedy this non-compliance, on December 1, 2022, the debtor filed a motion to reconvene the meeting of creditors.

In support of his motion, the debtor cites cases holding that bankruptcy courts have the power under 11 U.S.C. § 105(a) to reopen a meeting of creditors. *See In re Mission Carpet Mills, Inc.*, 10 B.R. 494, 496 (B.A.P. 9th Cir. 1981); *In re Argon Credit, LLC*, 574 B.R. 684, 690 (Bankr. N.D. Ill. 2017). Neither case is instructive. In *Mission Carpet Mills*, the court reopened the § 341 meeting because there was a question as to the validity of the vote cast by one of the creditors in the election of a chapter 7 trustee. 10 B.R. at 496. A further meeting was necessary to hold a proper trustee election. *Id.* In *Argon Credit*, the court noted that a bankruptcy court might reopen a meeting of creditors “given the right circumstances” but declined to reopen the meeting in that case for the purpose of allowing further examination of the debtor. 572 B.R. at 690-91.

The Court has found only a single unpublished case in which a court reopened the meeting of creditors to allow a debtor to comply with § 1308: *In re Novello*, No. 06-21029, 2007 Bankr. LEXIS 2589 (Bankr. D. Kan. 2007). In *Novello*, the debtor requested that the trustee hold

¹ The Court has invited the debtor to separately brief the issue whether the Court can confirm a chapter 13 plan if the debtor has not filed tax returns as required under § 1308.

open the meeting of creditors for 20 days to allow him to file tax returns as required by § 1308. By the time the trustee concluded the meeting of creditors was concluded, the debtor had filed all tax returns except a single year's federal tax return. That tax return showed that the debtor had \$0 in taxable income, and it was unclear whether the return was even necessary. The IRS filed a motion to dismiss under § 1307(e). The court "balanc[ed] all the factors" including that the debtor initially requested that the meeting be held open, that the debtor filed all other tax returns within the time allotted, and that the debtor filed the one missing tax return soon after the meeting of creditors concluded. *Id.* at *8. The court concluded that "§ 105 relief is proper under these specific and limited circumstances and orders the § 341 meeting of creditors reopened" *Id.*

Importantly, the *Novello* case was decided before the Supreme Court's opinion in *Law v. Siegel*, 571 U.S. 415 (2014). The Supreme Court held in that case that § 105(a) allows bankruptcy courts to issue orders necessary to "carry out" the provisions of the Bankruptcy Code, but that courts cannot use the section to "override explicit mandates of other sections of the Bankruptcy Code." *Id.* at 421 (quotation omitted).

A different judge on the same court as the judge in *Novello* concluded that bankruptcy courts do not have the power to deem a debtor in compliance with § 1308. *In re McCluney*, No. 06-21175, 2007 WL 2219112 (Bankr. D. Kan. June 22, 2007). In *McCluney*, the debtor was unaware that she had not filed a tax return for 2002, and the IRS filed a motion to dismiss after the meeting of creditors concluded. The debtor thereafter filed the missing tax return and objected to the IRS's motion to dismiss. The court concluded that it had no power to "ratify" the return as timely filed under § 1308 and that § 1307(e) compelled dismissal. *Id.* at *5. Section 1308(b) provides an express mechanism for giving the debtor extra time to file tax

returns, and bankruptcy courts should not deviate from the language of that section. *Id.* The court observed that dismissal was “a harsh penalty for to be a minor deficiency,” but that the statute was unambiguous and the policy decision was for Congress to make. *Id.*

Other courts have similarly concluded that bankruptcy courts lack the authority, under § 105(a) or otherwise, to deem the debtor’s tax returns to be timely filed under § 1308(a) if they were filed after the meeting of creditors concluded. *See In re Cushing*, 401 B.R. 528, 538 (B.A.P. 1st Cir. 2009) (section 1307(e) “mandates the dismissal or conversion of the case” if tax returns are not filed as required by § 1308); *In re Broussard*, No. 09-50009, 2009 WL 1531817, at *4 (Bankr. W.D. La. May 29, 2009) (“[I]n light of the clear language of sections 1308(a) and 1307(e), Debtors’ case is subject to dismissal or conversion, whichever is in the best interest of creditors.”); *In re Perry*, 389 B.R. 62, 66 (Bankr. N.D. Ohio 2008) (the “plain meaning” of §§ 1307(e) and 1308 mandated dismissal and the court could not use § 105(a) to provide equitable relief to the debtor to absolve his non-compliance).

The Court agrees with these cases that it is not appropriate to reopen or reconvene the meeting of creditors so that the debtor can comply with § 1308. The relief requested by the debtor in this case would seem to override the explicit mandates in § 1308(b). Under that section, if a debtor has not filed the required tax returns, then the mechanism for the debtor to obtain more time to file the returns is to ask the trustee to hold open the meeting or to seek relief from the court before the meeting is concluded. 11 U.S.C. § 1308(b). If debtors could simply ask the bankruptcy court to reopen the meeting of creditors under § 105(a), then § 1308(b) would be superfluous. Moreover, § 1307(e) would likewise be rendered inoperative if a debtor could avoid dismissal by filing the missing tax returns and seeking to reopen the meeting of creditors.

For these reasons, IT IS HERBY ORDERED that the debtor's motion to reconvene the meeting of creditors is DENIED.

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