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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:	CASE NO. 21-03520 (MCF)
LIDUVINA DE JESUS RIVERA	CHAPTER 7
Debtor	

OPINION AND ORDER

The Debtor, Luduvina de Jesus Rivera, filed for bankruptcy relief under chapter 13 and subsequently the case was converted to chapter 7. The chapter 13 Trustee filed a motion to vacate our order directing him to pay the homeowner’s association its approved administrative fees in the amount of \$8,990.00 after the instant case was converted to chapter 7. We pointed out that the Supreme Court decision in Harris v. Viegelahn, 135 S. Ct. 1829 (2015), is inapplicable to this case because the conversion occurred before confirmation of the chapter 13 plan and the Trustee is not barred from deducting administrative fees before returning funds on hand to the Debtor (Docket No. 224). The Trustee disagrees with our position regarding the applicability of Harris to this case and asks us to reconsider our order and allow him to return all monies to the Debtor without deducting administrative fees. Various matters in this case are on appeal at the Bankruptcy Appeal Panel for the First Circuit, but the appellate court denied the Debtor’s request for a stay pending appeal in the instant case regarding this issue

1 (Docket No. 288). We proceed to resolve the Trustee’s motion to vacate
2 order and for the reasons expressed below, we decline to do so.

3 In the Harris case, the Supreme Court decided that in a chapter 13
4 case where the plan was confirmed and then converted to chapter 7, the
5 debtor is entitled to the return of post-petition wages that are not yet
6 distributed by the chapter 13 trustee. This conversion terminates the services
7 of the chapter 13 trustee, replaces her with a chapter 7 trustee pursuant to
8 11 U.S.C. § 348(e) and places the case under chapter 7’s governance. The
9 making of payments to creditors under a chapter 13 plan is a core service
10 provided by the chapter 13 trustee and upon conversion to chapter 7, the
11 chapter 13 trustee is stripped of the authority to continue to provide this
12 service. Harris, 135 Sup. Ct. at 1838. Harris discusses the issue in the
13 context of a confirmed chapter 13 case in which the chapter 13 trustee is
14 performing her duties under the plan. Courts are divided on the issue of
15 whether the Harris case applies to pre-confirmation chapter 13 cases that
16 convert to chapter 7. In pre-confirmation cases, the chapter 13 trustee is not
17 yet performing payment to creditors under a confirmed chapter 13 plan.

18 The courts that hold that the chapter 13 trustee may not make any
19 payments to administrative claims after conversion to chapter 7, argue, in
20 essence, that chapter 13 provisions cease to apply upon conversion to
21 chapter 7 and that nothing in Harris reflects an intent to limit its reach to
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1 confirmed chapter 13 cases only. In re Montilla, No. 22bk02585, 2022 WL
2 12165276 (Bankr. N.D. Ill. Oct. 12, 2022). One bankruptcy court resolved
3 that to allow payment of fees in a preconfirmation converted case would
4 ignore the Harris court's sweeping statement that "no chapter 13 provision
5 holds sway" after conversion. In re Lettie, 597 B.R. 637, 646 (Bankr. E.D.
6 Wis. 2019). These cases find that a chapter 13 trustee's services are
7 immediately terminated upon conversion and all monies must be returned to
8 the debtor. In re McCune, 2021 Bankr. LEXIS 3126 (Bankr. D.N.M. 2021); In
9 re Brown, No. 18-00189, 2019 WL 122832 (Bankr. D.D.C. Jan. 7, 2019); In
10 re Ivey, 568 B.R. 85, 90-93 (Bankr. E.D. Ar. 2017).

14 Other courts hold that Harris does not apply to pre-confirmation
15 chapter 13 cases because the statute, 11 U.S.C. § 1326(a)(2), is clear and
16 unambiguous in a pre-confirmation situation as opposed to the post-
17 confirmation situation, as resolved in the Harris case where the statute failed
18 to provide guidance. Section 1326(a)(2) states:

21 A payment made under paragraph (1)(A) shall be
22 retained by the trustee until confirmation or denial of
23 confirmation. If a plan is confirmed, the trustee shall
24 distribute any such payment in accordance with the
25 plan as soon as is practicable. If a plan is not
26 confirmed, the trustee shall return any such
27 payments not previously paid and not yet due and
owing to creditors pursuant to paragraph (3) to the
debtor, after deducting any unpaid claim allowed
under section 503(b).

1 11 U.S.C. § 1326(a)(2).

2 The Harris case dealt with a plan that was confirmed. The second
3 sentence of § 1326(a)(2) reads that “[i]f a plan is confirmed, the trustee shall
4 distribute any such payment in accordance with the plan as soon as is
5 practicable.” The statute provides for no further guidance as to the
6 administrative expenses in the event the case is dismissed or converted
7 after confirmation of the plan.
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11 When a chapter 13 case is dismissed or converted prior to plan
12 confirmation, the third sentence of § 1326(a)(2) governs the payment of
13 administrative expenses.
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15 [T]he Chapter 13 case in Harris was converted after
16 confirmation....While Harris' language is undeniably
17 broad, and can readily be applied in other contexts
18 when not at odds with provisions of the Bankruptcy
19 Code, the Court does not read the broad language
20 Harris as overriding the plain and unambiguous
21 statutory command in the third sentence of section
22 1326(a)(2), which by its terms only applies to a case
23 that is fundamentally different than Harris — one
where no plan was ever confirmed. Nothing in Harris
permits the Trustee or the Court to ignore this
statutory command.

24 In re Arnold, 618 B.R. 822, 823 (Bankr. E.D. Mich. 2020).

25 Unlike Harris, one court determined that post-conversion
26 responsibilities of the chapter 13 trustee continue to include requiring the
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1 payment of administrative expenses. In re Brandon 537 B.R. 231, 237
2 (Bankr. D. Md. 2015).

3 [Q]uite apart from the post-
4 confirmation/preconfirmation distinction, Harris did
5 not address what a trustee should do about unpaid
6 expenses of administration when a case is converted
7 from Chapter 13 to Chapter 7.... Harris did not state
8 that it was improper for the trustee to have paid these
9 expenses of administration before returning any
10 remaining funds to the debtor...

11 Arnold, 618 B.R. at 824.

12 In re Evans resolves that when a Chapter 13 case is converted to
13 Chapter 7 without a plan having been confirmed, Harris is not applicable. In
14 re Evans, 618 B.R. 493, 494 (Bankr. E.D. Mich. 2020).

15 We agree with the reasoning used by the bankruptcy courts that ruled
16 that Harris is distinguishable because the Supreme Court case applies only
17 to post-confirmation plans in chapter 13 cases.

18 [T]he relevant part of section 1326(a)(2) is the third
19 sentence of the statute, which expressly applies only
20 to cases — unlike Harris — where a plan is not
21 confirmed. That sentence tells the trustee, in plain
22 and unambiguous terms, what to do with funds that
23 the trustee holds from payments made by the debtor:
24 ‘if a plan is not confirmed . . . the trustee shall return
25 any such payments . . . to the debtor, after deducting
26 any unpaid claim allowed under section 503(b).’ The
27 Supreme Court had no occasion in Harris to consider
the third sentence of section 1326(a)(2) because, as
explained, the conversion in Harris took place after a
plan was confirmed.

1 Arnold, 618 B.R. at 823.

2 The sweeping language that "no Chapter 13 provision holds sway" does not
3 apply in a pre-confirmation scenario because the chapter 13 trustee has the
4 duty to disburse funds to the debtor and to administrative expense claimants.
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6 In addition to these reasons, another important reason Harris does not
7 apply to pre-confirmation chapter 13 cases is that the bankruptcy statute is
8 clear as to the disposition of funds being held by the chapter 13 trustee "if a
9 plan is not confirmed." 11 U.S.C. § 1326(a)(2). A chapter 13 case that "is not
10 confirmed" may result from two different situations - dismissal of the case or
11 conversion to another chapter. In the statute, Congress used the term "not
12 confirmed" which allows for either possibility - the dismissal or the conversion
13 of case. If Congress had used the term "dismissed" in § 1326(a)(2) rather
14 than "not confirmed" then it follows that the Harris case would apply to pre-
15 confirmation chapter 13 cases that are converted to chapter 7; but it chose
16 not to use it. Thus, we understand that the Trustee is mandated by the
17 statute to return monies to the Debtor upon dismissal or conversion, but only
18 after the deduction of administrative expenses. Harris was clearly resolving
19 a chapter 13 dispute in a later stage (post-confirmation) in which there is an
20 absence of guidance from the bankruptcy statute.
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1 For the reasons stated above, Harris does not apply in this case or in
2 any unconfirmed chapter 13 case, and thus the Trustee's motion to vacate
3 order (Docket No. 252) is denied. The chapter 13 Trustee is ordered to pay
4 forthwith the administrative expenses to Consejo de Titulares del
5 Condominio Pine Grove in the amount of \$8,990.00 as previously ordered,
6 pursuant to 11 U.S.C. § 1326(a)(2).
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9 IT IS SO ORDERED.

10 In San Juan, Puerto Rico, this 15th day of October, 2024.

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13 MILDRED CABAN FLORES
14 United States Bankruptcy Judge
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