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UNITED STATES BANKRUPTCY COURT EASTERN
DISTRICT OF CALIFORNIA

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:

DON ROSE OIL, INC.

Debtor.

Case No. 17-12389-A-11

MEMORANDUM

LAK-4

Argued and submitted on March 7, 2018

at Bakersfield, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances:

T. Scott Belden, Belden Blaine Raytis, LLP
for Howard M. Ehrenberg, Chapter 11
trustee; Michael Wilhelm, Walter Wilhelm
for Don Rose Oil, Inc.; Vonn Christianson
for Robert Moore, Donald Duane Rose and
Kodiak Mining & Minerals, LLC; Lori E.
Eropkin, Levinson Arshonsky & Kurtz, LLC
for Sallyport Commercial Finance, LLC;
Russell Reynolds, Coleman & Horowitz LLP
for Nations Fund; Robin Tubesing for U.S.
Trustee

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1 Sallyport Commercial Finance, LLC moves under Rule 60(b) to
2 extend for two weeks the effective date of an order issued under §
3 1112(b) converting the case from Chapter 11 to Chapter 7.¹ It brings
4 the motion to complete an in place sale of most of the debtor's
5 business assets, which all parties in interest agree is the avenue
6 most likely to maximize value for creditors. Although not opposed to
7 the sale, the U.S. Trustee opposes the extension of time to accomplish
8 it.

9 **I. FACTS**

10 Don Rose Oil, Inc. ("Don Rose Oil") sought Chapter 11 protection.
11 Its primary creditor is Sallyport Commercial Finance, LLC
12 ("Sallyport"), which holds a security interest in most of Don Rose
13 Oil's assets.

14 Shortly after the case was filed, the U.S. Trustee successfully
15 moved to remove the debtor from possession. Howard M. Ehrenberg was
16 appointed as the Chapter 11 trustee.

17 Sallyport sought, and received, stay relief to foreclose its
18 security interests in most of Don Rose Oil's assets. Sallyport has
19 scheduled a sale of Don Rose Oil as an operating business. If
20 successful, the sale will substantially reduce, if not retire,
21 Sallyport's debt, leaving the remaining assets of the estate for
22 payment of other creditors.

23 After Sallyport obtained stay relief, the U.S. Trustee moved to
24

25 ¹ Unless specified otherwise, all chapter and section references are to
26 the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references
27 are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.
28 All "Civil Rule" references are to the Federal Rules of Civil
Procedure, Rules 1-86.

1 convert or dismiss the case to Chapter 7. After a short but
2 contentious battle that pitted the U.S. Trustee against creditors,
3 this court converted the case to Chapter 7. With the acquiescence of
4 the U.S. Trustee, the court delayed implementation of the conversion
5 order 14 days to allow Sallyport to complete its in place sale.

6 Sallyport now moves for a 14-day extension of the effective date
7 of the conversion to finalize the sale and to "transition [Don Rose
8 Oil's] operating business to the buyer."

9 **II. DISCUSSION**

10 Section 1112(b)(3) requires the court to commence the hearing on
11 a motion to dismiss or convert within 30 days after its filing and to
12 decide the motion not later than 15 days after the commencement of the
13 hearing. This court did so and, as a result, has satisfied each of
14 the deadlines in § 1112(b).

15 This court construes Sallyport's motion to extend the deadline
16 for implementation of the conversion date to Chapter 7 as a motion
17 under Rule 60(b)(1) for excusable neglect. This excusable neglect is
18 based on the trustee and Sallyport's underestimation, at the time of
19 the hearing on conversion, of the time necessary to complete the
20 unified sale.

21 At the outset, Don Rose Oil, creditors and the U.S. Trustee
22 agreed that preserving the going concern value of the debtor is the
23 course of action most likely to maximize asset value for creditors.

24 This court is aware of no authority that Rule 60(b) precludes
25 relief from an order under § 1112(b). Fed. R. Bankr. P. 9024. And
26 those authorities extend not just to merits decisions but also to
27 ancillary matters. The suggestion that implementation of the
28 conversion order be delayed 14 days first occurred at the hearing on

1 the U.S. Trustee's motion to dismiss or convert. This court finds
2 Sallyport's and the trustee's prior inability to predict precisely the
3 time necessary to fully complete the sale before conversion to be a
4 circumstance that falls squarely within the ground of excusable
5 neglect.

6 Moreover, the court has discretion as to the implementation dates
7 of its orders. As a rule, orders are effective upon their entry. 10
8 *Collier on Bankruptcy* ¶ 8007.01 (Alan N. Resnick & Henry J. Sommer
9 eds., 16th ed. rev. 2017). Subject to the confines of the Bankruptcy
10 Code, this court has authority to craft orders suitable to the needs
11 of the case. *In re At Home Corp.*, 392 F.3d 1064, 1075 (9th Cir.
12 2004); *Adelphia Business Solutions, Inc. v. Abnos*, 482 F.3d 602, 609
13 (2d Cir. 2007); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re*
14 *Lionel Corp.)*, 722 F.2d 1063, 1069 (2d Cir. 1983). And this court is
15 unaware of any authority that precludes it from fashioning an order
16 that slightly delays the implementation of a prior order. There is no
17 evidence that Sallyport has not acted with diligence or that the
18 additional 14 days will harm creditors.

19 Lastly, § 1112(b)(3) only requires that a motion to dismiss or
20 convert must be "decided" within 15 days of the commencement of the
21 hearing. And this court did precisely that.

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1 **III. CONCLUSION**

2 The motion will be granted. The court will issue a separate
3 order.

4 Dated: March 8, 2018

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Fredrick E. Clement
United States Bankruptcy Judge