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5 UNITED STATES BANKRUPTCY COURT
6 EASTER DISTRICT OF CALIFORNIA
FRESNO DIVISION

7 In re) Case No. 13-10302-B-11
8 GMC Dairy Farms LP,) DC No. UST-1
9 Debtor.)
10 _____)

11 **ORDER ON UNITED STATES TRUSTEE'S MOTION TO DISMISS**

12 Robin Tubesing, Esq., appeared on behalf of the movant, Tracy Hope Davis, Esq.,
13 United States Trustee.

14 Thomas O. Gillis, Esq., appeared on behalf of the debtor, GMC Dairy Farms, LP.

15 René Lastreto II, Esq., of Lang, Richert & Patch appeared on behalf of the secured
creditors, Farm Credit West, PCA, and Farm Credit West, FLCA.

16 Justin D. Harris, Esq., of Motschiedler, Michaelides, Wishon, Brewer & Ryan, LLP,
17 appeared on behalf of Vincent Sola Partnership.

18 Bradley A. Silva, Esq., of the Law Offices of Bradley A. Silva, appeared on behalf
of Seley & Co.

19 Don J. Pool, Esq., appeared on behalf of secured creditors, J.D. Heiskell & Co., Inc.,
20 and Golden State Feed & Grain, LLC.

21 Ronald A. Clifford, Esq., of Blakeley & Blakeley LLP, appeared on behalf of the
Official Committee of Unsecured Creditors.

22 The United States Trustee (the "UST") moves to dismiss this case pursuant to
23 11 U.S.C. § 1112(b)¹ (the "Motion"). The UST asks that the case be dismissed on
24 numerous grounds, most of which appear to have been remedied. The lingering
25 issue relates to the fact that this bankruptcy was filed more than 14 months ago and
26 _____

27 ¹Unless otherwise indicated, all chapter, section and rule references are to the
28 Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9036, as enacted and promulgated *after* October 17, 2005, the
effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

1 until recently there was no apparent progress toward confirmation of a chapter 11
2 plan. The court has refrained from dismissing this case solely at the urging of the
3 committee of unsecured creditors, whose constituents will receive nothing without a
4 confirmed plan. Because it now appears that the parties may have successfully
5 negotiated a consensual chapter 11 plan, the UST's Motion will be denied without
6 prejudice.

7 This memorandum decision contains the court's findings of fact and
8 conclusions of law required by Federal Rule of Civil Procedure 52(a), made
9 applicable to this contested matter by Federal Rule of Bankruptcy Procedure 7052
10 and 9014(c). The court has jurisdiction over this matter pursuant to 28 U.S.C.
11 § 1334, 11 U.S.C. § 1112(b), and General Orders 182 and 330 of the U.S. District
12 Court for the Eastern District of California. This is a core proceeding as defined in
13 28 U.S.C. § 157(b)(2)(A).

14 **Background Findings of Fact.**

15 This bankruptcy was filed as voluntary chapter 11 on January 17, 2013. The
16 debtor, GMC Dairy Farms, LLP ("GMC" or the "Debtor") is a partnership that
17 owns and operates a dairy in Corcoran, California. Two of its partners, George and
18 Marilyn Lanting (the "Lantings") are also in a chapter 11 proceeding before this
19 court (case number 13-13388-B-11, the "Lanting Case"). On February 14, 2013, the
20 UST appointed an official committee of unsecured creditors in the GMC case (the
21 "Creditors' Committee) and on July 22, 2013, the court authorized the Creditors'
22 Committee to employ counsel. Since that time the Creditors' Committee has been
23 an active participant in this case.

24 The GMC schedules (amended March 13, 2013) state that GMC owns no real
25 property. They list personal property assets valued at \$4.15 million, including a
26 dairy herd valued at \$3.33 million and milk receivables of \$340,570. The secured
27 claims total \$7.73 million. GMC lists one priority tax claim of approximately
28 \$8,000 and nonpriority unsecured claims totaling \$1.46 million (exclusive of the

1 deficiency on the secured claims). The primary secured creditors in both the GMC
2 and Lanting cases are Farm Credit West, PCA and Farm Credit West, FLCA
3 (hereafter “FCW”). FCW claims to hold a lien against essentially all of the assets in
4 both cases. It therefore appears from the schedules that the unsecured creditors
5 would receive nothing through the bankruptcy process if the GMC case were
6 dismissed or (with GMC’s consent) converted to chapter 7 for liquidation.

7 GMC’s reorganization has been unusually complicated by its relationship
8 with the Lanting Case. The real property upon which GMC operates its dairy is part
9 of a 243-acre parcel owned by the Lantings (the “Dairy Property”). Essentially, the
10 only source of money to service the debt to FCW against the Dairy Property is the
11 rent which GMC must pay to the Lantings. The only source of funds to pay that
12 rent is GMC’s milk proceeds against which FCW also holds a lien. The Lantings’
13 ability to reorganize and save the Dairy Property is inextricably tied to GMC’s
14 ability to reorganize the dairy and continue paying that rent. Reciprocally, GMC
15 cannot successfully reorganize without a confirmed plan in the Lanting Case which
16 assures that the Dairy Property will remain available for operation of the dairy.
17 Overlying that relationship is the fact that FCW holds liens against essentially all of
18 the assets in both estates and a guarantee from at least one nondebtor family
19 member, Case Lanting, who is potentially at risk if GMC and the Lantings cannot
20 negotiate a “global” resolution of all claims.² Neither GMC nor the Lantings have
21 made a serious effort to “cramdown” a plan which FCW and the Creditors’
22 Committee will not not endorse.³ For that reason, the court has been tracking the
23

24 ²FCW currently has a civil action pending against Case Lanting and Jane Lanting in
25 the U.S. District Court for the Eastern District of California (case number 1:13-cv-00712-
26 AWI-SMS).

27 ³GMC first filed a chapter 11 plan and disclosure statement on May 20, 2013. Both
28 FCW and the Creditors’ Committee objected to the disclosure statement based in part on the
fact that it failed to take into consideration GMC’s relationship with the Lanting Case. The

1 GMC and Lanting Cases together and has urged the debtors in both cases to file a
2 joint chapter 11 plan which will satisfy the needs of both estates. That process has
3 taken a very long time which ultimately led to the UST's Motion.

4 **Analysis and Conclusions of Law.**

5 Dismissal of a chapter 11 case is governed by § 1112(b) of the Bankruptcy
6 Code. It requires a noticed motion by a party in interest and a hearing. Here, the
7 UST filed the Motion which was initially heard on January 30, 2014. The Debtor
8 filed an opposition with some evidence to support its argument that the monthly
9 reporting and administrative problems have been resolved.⁴ Based on
10 representations from Debtor's counsel and counsel for the Creditors' Committee in
11 response to the Motion, and in conjunction with the court's case management
12 conferences, the hearing was continued to February 27, 2014, and again to March
13 13, 2014, at which time the Motion was taken under submission.

14 Section 1112(b) provides that the court shall convert or dismiss a chapter 11
15 case if it finds "cause" for dismissal, subject to two conditions applicable here.
16 First, the court must be able to find "and specially identif[y] unusual circumstances
17 establishing that converting or dismissing the case is not in the best interests of
18 creditors and the estate" § 1112(b)(2). Second, the debtor must establish that
19 "there is a reasonable likelihood that a plan will be confirmed within . . . a
20 reasonable period of time." § 1112(b)(2)(A). If the cause for dismissal does not
21 include substantial or continuing loss to or diminution of the estate, the debtor must
22 also establish that the grounds for dismissal will be cured within a reasonable period

23 _____
24 Debtor withdrew the motion. GMC and the Lantings filed a joint disclosure statement and
25 plan on July 24, 2013, which again drew opposition from both FCW and the Creditors'
26 Committee. Approval of the disclosure statement was denied on September 26, 2013. No
27 further effort was made to bring a confirmable plan before the court until FCW filed a
28 proposed joint disclosure statement and joint plan on April 3, 2014.

⁴The UST did not file a reply or supplement the Motion with evidence to rebut the
Debtor's contention that the reporting issues had been resolved.

1 of time fixed by the court. § 1112(b)(2)(B).

2 The UST contends that the GMC case should be dismissed for cause on
3 several grounds. Specifically, the dominate factor is delay and inability to confirm a
4 plan. The Motion also points to deficiencies in the monthly operation reports, the
5 unauthorized payment of fees to the Debtor's CPA, and failure to provide proof of
6 insurance. The Debtor has offered *prima facie* evidence that these later issues have
7 been resolved. With regard to the delay issue, it now appears that the Debtor and its
8 creditors may have achieved a "global" resolution of FCW's claims against GMC
9 and its partners and guarantors. As noted above, this case has been unusually
10 complicated by its relationship with the Lanting Case and the involvement of
11 nondebtor guarantors. However, on April 3, 2014, FCW's counsel filed a joint plan
12 and disclosure statement for both the GMC and Lanting Cases (the "FCW Joint
13 Plan"). Since the FCW Joint Plan was prepared by FCW, and not the Debtor, the
14 court must assume for now that it has a reasonable likelihood of being confirmed
15 within a reasonable period of time.⁵ Both the Debtor and the Creditors' Committee
16 informed the court at the last case management conference that they would support
17 the FCW Joint Plan. The court is therefore persuaded that conversion or dismissal
18 at this time is not in the best interest of the creditors and the estate. Accordingly,

19 IT IS HEREBY ORDERED that the UST's Motion is DENIED without
20 prejudice.

21 Dated: April 17, 2014

22
23 /s/ W. Richard Lee
24 W. Richard Lee
25 United States Bankruptcy Judge
26
27

28 ⁵The joint disclosure statement is set for hearing on May 22, 2014.