

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

April 30, 2015 at 3:30 p.m.

1. [14-91023](#)-E-11 JOSEPH TEDESCO

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-16-14 [[1](#)]

Debtor's Atty: David C. Johnston

Notes:

Continued from 3/26/15. Joseph Tedesco, the Debtor and Debtor in Possession, and Barbara Cortese, the bookkeeper for the Debtor in Possession, to appear in person at the continued status conference. No telephonic appearance permitted.

Operating Reports filed: 4/16/15 [Feb, Mar]

APRIL 30, 2015 STATUS CONFERENCE

On April 16, 2015, the Debtor in Possession filed the Amended Monthly Operating Report for February 2015, and March 2015. In comparing the first page of the Original and Amended Monthly Operating Reports for February 2015, the court first notes that the cumulative case to date totals are substantially higher in the amended report. The Amended Report deletes the prior month information from the Summary Page.

The Statement of Cash Receipts and Disbursement page states lower rental income, but now lists Social Security Income and an insurance claim payment. Dckt. 69 at 3. Previously, the Original February 2015 Monthly Operating Report stated under penalty of perjury that the Debtor in Possession received \$20,185.00 in rent monies in February. Dckt. 62 at 2.

The Amended February 2015 and the March 2015 Monthly Operating Reports fail to provide the Cumulative Case to Date information on the Statement of Cash Receipts and Disbursements for either receipts or disbursements. The Monthly Operating Reports misstate that the cumulative receipts and disbursement from the commencement of the case to the date of the monthly report were \$0.

MARCH 26, 2015 STATUS CONFERENCE

The February 2015 Monthly Operating Report does not provide any case filing to current month income or disbursement information. The court addressed this at the prior Status Conference (Civil Minutes, Dckt. 59) and the Debtor in Possession continues to fail to provide this information. Taken on

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its face, the latest Monthly Operating Report states that other than making an interest payment of \$16,167, property expenses of \$1,122, and "personal expenses" of \$887, the Debtor in Possession is not making any other monthly payments (at least in February). Dckt. 62. While the Debtor in Possession has explained he lives with family, stating that he has only \$887 in monthly personal expenses appears to be fanciful (and false).

This is the Debtor's fourth bankruptcy case since April 2010, with each case filed by his current counsel. These cases are:

1. The first case, 10-91296, was filed on April 7, 2010, and dismissed on February 18, 2011.

2. The second case, 11-90779, was filed on March 3, 2011, converted to one under Chapter 7 on April 27, 2011 [FN.1], and discharge entered August 12, 2011.

FN.1. The court converted the case after concluding that Debtor had failed to notify creditors of the bankruptcy case and used cash collateral without authorization or order. As stated by the court,

"The refiled Chapter 11 case appears to be a continuation of the non-productive bankruptcy strategy of this Debtor. Though recognizing that there is cash collateral, no stipulation has been filed or order entered authorizing the use of cash collateral. Rather, the Debtor merely intends to address the express prohibition on the use of cash collateral at a later date. Further, the Debtor fails to disclose cash collateral of other creditors. It may be that he intends to let the creditors foreclose on those properties and is not worried about the use of cash collateral. It may be that there is no cash collateral being generated by those properties. However, it is not for the court and parties in interest to guess as to whether the Debtor is complying with the Bankruptcy Code.

The Debtor offers no explanation in his Status Report as to what transpired in the 15 days from dismissal to the filing of this case that eviscerates his representation that a repeat case would not be filed. The court appreciates that events change and debtors may have an epiphany concerning what may be accomplished in a bankruptcy case. However, when express representations and findings have been made in a prior case, it is incumbent on the party to clearly describe those changes for the court and parties in interest. Based on the information provided, the conclusion is that this Debtor is merely engaging in non-productive repeat filing of bankruptcy cases. This abuse of the Bankruptcy Code and parties in interest is not approved by the court.

11-90779, Civil Minutes, Dckt. 34.

3. The third bankruptcy case, 14-90205, was filed on February 14, 2014, and dismissed on March 10, 2014.

In substance, this Debtor has been in bankruptcy for five years and has

been unable to prosecute a Chapter 11 Plan. The Debtor has been unable to even propose a Chapter 11 Plan and Disclosure Statement. That is almost 1,825 days in which the Debtor and his counsel have failed to fulfill the most basic of activities in a Chapter 11 case (presuming that one is attempting to prosecute a case in good faith) - propose a Chapter 11 plan and disclosure statement in good faith.

Other than filing a motion for authorization to hire his attorney to serve as counsel for the Debtor in Possession, in this Chapter 11 case the Debtor in Possession has not filed any other motion, application, or pleading other than the petition, schedules, statement of financial affairs, and monthly operating reports. There is no apparent activity taking place in this Chapter 11 case.

JANUARY 29, 2015 STATUS CONFERENCE

The latest Monthly Operating Report is the once filed for December 2014. Dckt. On the Statement of Cash Receipts and Disbursements, it fails to provide the cumulative report of income and expenses - rather, it only provides the information for December 2014. The Debtor in Possession reports receiving \$27,423 in rent income and having expenses of \$20,382 in "Principal Payment on Debt," \$1,117 payments for utilities, \$10,091 for property taxes, and \$1,390 for "personal." It is reported that the Debtor in Possession ran a deficit of (\$5,558) for the month of December 2015.

The U.S. Trustee has filed a Status Conference Statement (Dckt. 53) in which she brings several items to the court attention. First, the Debtor in Possession is receiving additional monthly income, Social Security Benefits, but that income is not shown on the Monthly Operating Reports.

In July 2014, without court authorization the Debtor in Possession borrowed \$7,500.00 from an unidentified source. This unauthorized loan is the reason that the DIP bank accounts are not negative. Additional, the U.S. Trustee believes that the Debtor in Possession is maintaining other, undisclosed bank accounts.

The Schedules state that the estate includes two valuable properties with more than \$200,000 in equity. However, the Debtor in Possession states that he does not intend to sell those properties to fund his bankruptcy reorganization.

OCTOBER 30, 2014 STATUS CONFERENCE

The Monthly Operating Report for September 2014, provides the following financial information"

- A. Total Cash Receipts.....\$21,900
- B. Total Cash Disbursements.....(\$20,350)
- C. Net Increase for September 2014.....\$ 1,550

The September Monthly Operating Report does not provide the Cumulative financial information from the commencement of the case. Dckt. 43. No cumulative information is shown on the August 2014 Monthly Operating Report.

Dckt. 37. For the July 2014 Monthly Operating Report the Debtor provides only the currently monthly data (it being the first monthly operating report filed).

If taken as true and accurate, the September 2014 Monthly Operating Report states that the Debtor in Possession spent only \$247.00 for the entire month on personal expenses.

This is the Debtor's fourth Chapter 11 case since April 2010. No plan has been filed in this case. No Status Report for this Status Conference has been filed.

AUGUST 21, 2014 STATUS CONFERENCE

Status Conference Summary

Joseph Tedesco, the Debtor in Possession, (Δ IP) has commenced and had dismissed or converted two prior Chapter 11 cases. In each of the two prior unsuccessful cases he was represented by the same counsel as proposed to represent him in the present Chapter 11 case. The first Chapter 11 case was filed on April 7, 2010, and dismissed on February 18, 2011. 10-91296. In determining that relief was proper, the court found,

"Since the filing of this case on April 7, 2010, debtor has not filed a plan or disclosure statement. The Debtor's failure to file necessary documents strongly suggests both that the debtor is not taking his obligations as a chapter 11 debtor-in-possession seriously and that the debtor has no intention of reorganizing in bankruptcy."

10-91296, Civil Minutes, Dckt. 146. The court elected to dismiss the case as requested by the Debtor, rather than convert it as argued by the Trustee, giving the Debtor a break.

Debtor immediately turned around and filed a second Chapter 11 bankruptcy case on March 3, 2011. 11-90779. In converting the second bankruptcy case to one under Chapter 7 (April 27, 2011), the court found that the Debtor was merely abusing the bankruptcy laws with filing the second case and not attempting to engage in a good faith, bona fide Chapter 11 reorganization. *Id.*, Civil Minutes, Dckt. 34.

August 21, 2014 Status Report - Filed August 8, 2014, Dckt. 18

Δ IP states that the estate consists of a shopping center, duplex, small rental house, and a resort rental in Aptos, California. He further states that pre-petition the Debtor made the monthly payments on his loan, but has defaulted on property tax payments, which are calculated to be \$114,000.00 in default by the creditor.

Δ IP states that on or before September 30, 2014, the Δ IP will file a Chapter 11 Plan.

In this Fourth Bankruptcy Case, Debtor and Counsel have filed the basic pleadings (Schedules and Statement of Financial Affairs) and a Status Report (Dckt. 18). Schedule A lists four properties - commercial (\$2,500,000.00 value - \$1,998,713.00 debt), condo (\$625,000.00 value - \$447,583.00 debt), duplex

(\$250,000.00 value - \$342,138.00 debt), and a small house (\$95,000.00 value - \$50,417.00 debt) owned by Debtor. Dckt. 16 at 3. On Schedule B owning personal property with a value of \$26,889.00. Of this \$10,000.00 is for household goods/personal effect, \$10,000.00 for back rent owed by tenants, \$5,000.00 for a 2005 Silverado (224,000 miles), \$1,329.00 in a business checking account, and \$560.00 in a personal checking account. *Id.* at 4-6.

On Schedule D Debtor lists several creditors with secured claims. These include Stanislaus County owed \$114,000.00 in property taxes on the commercial property and Westamerica Bank owed \$1,884,713.00 secured by the commercial property. No creditors are listed on Scheduled E (priority unsecured claims) or Schedule F (general unsecured claims).

On Schedule I, Debtor lists having \$23,800.00 in net monthly income from his business. *Id.* at 16. No list of business expenses is attached to Schedule I. Schedule J lists \$24,591.00 in total expenses, most of which appear to be business expenses. For personal expenses Debtor states under penalty of perjury the following:

- A. Rent/Mortgage.....(\$ 650.00)
- B. Electricity.....(\$ 0.00)
- C. Water/Sewer/Garbage.....(\$ 0.00)
- D. Telephone/Cable/Internet.....(\$ 0.00)
- E. Food/Housekeeping.....(\$ 300.00)
- F. Clothing/Laundry.....(\$ 200.00)
- G. Personal Care.....(\$ 25.00)
- H. Medical/Dental.....(\$ 65.00)
- I. Transportation.....(\$ 300.00)
- J. Entertainment.....(\$ 0.00)
- K. Health Insurance.....(\$1,046.00)
- L. Vehicle Insurance.....(\$ 60.00)

Id. at 17-18. All of the other expenses appear to be business expenses.

Based on these expenses, Debtor computes his Monthly Net Income to be \$21.00.

In his Status Report, Debtor while he has been able to stay current on the mortgage payments for his investment properties, he is \$114,000.00 in default on property taxes. Westamerica Bank asserted the default in the taxes (the senior lien) on the property securing its claim as a default and appears to have taken steps to foreclose. Debtor states that to avoid the "substantial expense of foreclosure proceedings" he commenced the Fourth Chapter 11 Case to confirm a plan to pay the delinquent property taxes.

For a Plan, Debtor does not intend to sell any assets, but "reorganize." The Status Report does not identify what caused the default in the property taxes or how Debtor can pay the delinquent taxes and future taxes, in addition to the other expenses (person and business) which he states are all current as of the filing of the case.

On July 30, 2014, the Stanislaus Tax Collector filed a secured proof of claim in the amount to \$88,823.69. Proof of Claim No. 1. The "Default Date" stated on the attachment to the Proof of Claim is June 30, 2010.

2. [14-91454-E-11](#) THE CIVIC PLAZA, LLC
CAH-6

CONTINUED MOTION FOR
CONDITIONAL APPROVAL OF
DISCLOSURE STATEMENT FILED BY
DEBTOR
1-13-15 [[112](#)]

Tentative Ruling: The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on January 13, 2015. By the court's calculation, 107 days' notice was provided. 28 days' notice is required.

The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Disclosure Statement is continued to 3:30 p.m. on July 2, 2015.

The Civic Plaza, LLC ("Debtor-in-Possession") filed the instant Motion to Approve Disclosure Statement on January 13, 2015. Dckt. 112.

The hearing on the Motion was set March 5, 2015. On February 6, 2015, in light of the stipulation filed by the parties, the court continued the hearing to 3:30 p.m. on April 20, 2015. Dckt. 132.

On March 26, 2015, the Debtor-in-Possession filed a Motion to Sell. Dckt. 145. On April 16, 2015, the court granted the Motion to Sell and authorized the Debtor-in-Possession to sell the real property commonly known as 1727 N Street, Merced, California. Dckt. 153.

A review of the Disclosure Statement and Plan shows that the Debtor-in-

Possession premised both on the assumption that the Debtor-in-Possession would be retaining the Property.

In light of the court authorizing the sale of the Property, it appears that the Disclosure Statement and Plan no longer reflect the intentions of the Debtor-in-Possession. To offer the Debtor-in-Possession the opportunity to file an amended Disclosure Statement and Plan, the court continues the hearing to 3:30 p.m. on July 2, 2015. An amended disclosure statement, if any is desired in connection with the present proceedings, shall be filed on or before June 1, 2015, and any responses or objections thereto shall be filed and served on or before June 18, 2015. Notice of the continued hearing date and the deadline for filing an amended disclosure statement and objections thereto shall be filed and served by the Debtor in Possession on or before May 15, 2015. Any responses or objections to the Disclosure Statement shall be filed and served on or before June 18, 2015.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Approval of the Disclosure Statement filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is continued to 3:30 p.m. on July 2, 2015.

IT IS FURTHER ORDERED that an amended disclosure statement, if any is desired in connection with the present proceedings, shall be filed on or before June 1, 2015, and any responses or objections thereto shall be filed and served on or before June 18, 2015. Notice of the continued hearing date and the deadline for filing an amended disclosure statement and objections thereto shall be filed and served by the Debtor in Possession on or before May 15, 2015.