UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 27, 2014 at 10:00 a.m.

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1. 14-27620-A-12 JOE/MARIA PIMENTEL — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 9-25-14 [17]

Tentative Ruling: The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2013 Chevrolet Silverado. The debtors oppose the motion, contending that it is necessary to an effective reorganization and offering $600 a month in adequate protection payments to the movant.

The debtors have shown that the vehicle is necessary to an effective reorganization. The debtors need the vehicle: to haul equipment, tools and seed, to maintain the irrigation of the farm, and to navigate the rough terrain. Docket 25 at 1-2. Thus, relief from stay under 11 U.S.C. § 362(d)(2) is improper.

As to relief under 11 U.S.C. § 362(d)(1), the debtors have proposed to make adequate protection payments to the movant of $600 a month. However, the court is not satisfied that the proposed adequate protection payments will protect the movant's interest in the vehicle.

The movant's original loan amount was $62,627.76 (72 payments of $869.83 a month). The present outstanding balance on the movant's loan is approximately $52,801. Yet, the vehicle has a replacement value of only $42,500 and it is being used for hauling and navigating rough terrain. Docket 19 at 3; Docket 25 at 1-2. The value of the vehicle is based on evidence submitted by the movant, as of September 25, 2014, when this motion was filed. The approximately $10,000 of negative equity in the vehicle and its use as the primary vehicle in the debtors' farming operation indicates that the vehicle is subject to quick depreciation.

This is true also when considering the past depreciation of the vehicle since it was purchased. The vehicle is a 2013 model and it was purchased only on or about May 30, 2013. In approximately 16 months, then, the vehicle has lost approximately 18.26% of its value (depreciated from approximately $52,000 to $42,500).

On the other hand, the debtors are offering to make adequate protection payments to the movant of approximately $270 a month less than the contractually required installments. The proposed $600 a month payments are not sufficient to provide the movant with adequate protection of its interest in this fast depreciating vehicle. Additionally, the debtors have not made two pre-petition and two post-petition payments to the movant.

This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and is depreciating in value.

2.	13-34541-A-11 CAH-13	6056 SYCAMORE TERRACE L.L.C.	MOTION TO CONFIRM PLAN 5-28-14 [135]

Tentative Ruling: The motion will be denied.

The debtor is seeking confirmation of its chapter 11 plan filed on May 28, 2014. Docket 135.

Creditor Faran Honardoost opposes confirmation, stating that she has rejected the plan and asking the court to help her protect her rights. The court, however, is not any party in interest's advocate. The court is entrusted only with making certain that the law is properly administered and obeyed by everyone. The court cannot serve as counsel or advocate for Ms. Honardoost.

Turning to the motion, it will be denied. The May 28 plan the debtor is seeking to confirm does not provide treatment for the claims of two creditors, Mohboob Bozorgzad and Mountain Counties Plumbing, Inc., even though the debtor is valuing their collateral. See Dockets 195 & 200. The court approved the disclosure statement pertaining to the May 28 plan on September 10, 2014, after holding a hearing on September 2, 2014. Dockets 190 & 187. The motion for the approval of that disclosure statement was filed back on July 22, 2014. Docket 176. Yet, that motion was not served on Mohboob Bozorgzad or Mountain Counties Plumbing, Inc. Dockets 178 & 180. Those parties were not given opportunity to participate in the disclosure statement approval process pertaining to the subject plan.

As the court noted in its October 20, 2014 ruling on the debtor's motion for approval of an October 6, 2014 amended disclosure statement:

"*However, Mahboob Tehranian was never listed as a creditor in this case; her claim is not listed in Schedules D, E or F or the master address list. Dockets 1, 3, 106, 107. She also did not receive notice of this bankruptcy proceeding, even though this case has been pending for nearly one year now, since November 14, 2013. The proof of service for the notice of chapter 11 bankruptcy case does not list her as having been served with that notice. Dockets 7 & 10. Additionally, the master address list was never amended to include her as a creditor. The one time the master address list was amended - on March 24, 2014 (Docket 106) - Mahboob Tehranian was not added as a creditor.*

"*As Mahboob Tehranian was never given formal notice of this bankruptcy case, the court questions the debtor's authority to file a proof of claim on Mahboob Tehranian's behalf.*

"It is true that Fed. R. Bankr. P. 3004 permits a chapter 11 debtor to file a proof of claim for a creditor who does not file a proof of claim timely. "If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee." Fed. R. Bankr. P. 3004.

"But, Mahboob Tehranian seems to have never been given the opportunity to file a timely proof of claim because she did not learn of this bankruptcy case until after the March 17, 2014 deadline for filing proofs of claim had expired, in or approximately at the end of September 2014. Docket 219.

"Further, the debtor may file a proof of claim for a creditor who has not filed a timely proof of claim only "within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c)." Fed. R. Bankr. P. 3003(c)(3) provides that "The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed." The deadline for filing proofs of claim by non-governmental entities expired in this case on March 17, 2014, meaning that the debtor had only until April 16, 2014 to file a proof of claim for a creditor.

"The debtor filed the proof of claim on behalf of Mahboob Tehranian only on September 9, 2014, nearly five months after the 30-day deadline of Fed. R. Bankr. P. 3004. POC 5.

"Incidentally, this situation is similar to the way the debtor has treated Mountain Counties Plumbing and its claim. The court sees no evidence of Mountain Counties Plumbing ever receiving notice of this bankruptcy filing. Dockets 10 & 106."

Even if Mohboob Bozorgzad's debt is disputed - as the debtor argued at the October 20 hearing on its motion to amend the disclosure statement - Mountain Counties Plumbing, Inc., is still a creditor entitled to notice of all proceedings in this case. See Dockets 136, 178, 180.

Also, as noted above, Mohboob Bozorgzad and Mountain Counties Plumbing, Inc. were not given notice of the instant bankruptcy proceeding in time to file timely proofs of claim in this case. Accordingly, the court will deny confirmation of the debtor's May 28 plan.

3. 13-34541-A-11 6056 SYCAMORE TERRACE L.L.C. — MOTION TO VALUE COLLATERAL — 9-22-14 [195]
CAH-14
VS. MOHBOOB BOZORGZAD

Final Ruling: This motion has been voluntarily dismissed by the debtor. Docket 235.

4. 13-34541-A-11 6056 SYCAMORE TERRACE L.L.C. — MOTION TO VALUE COLLATERAL — 9-22-14 [200]
CAH-15
VS. MOUNTAIN COUNTIES PLUMBING, INC.

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by

statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor has not served the motion on Mountain Counties Plumbing. While the debtor served Mountain Counties Plumbing's attorney in the state court action, Edward Koons, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004); Docket 204.

The court also notes that the attorney was served at an incorrect address. The zip for the attorney's address is incorrect. It is 95063, whereas the correct zip code is 95603. Docket 204 at 2; Docket 203 at 6.

5. 13-34541-A-11 6056 SYCAMORE TERRACE L.L.C. CAH-16 — MOTION TO APPROVE COMPROMISE 9-22-14 [8]
14-2238
6056 SYCAMORE TERRACE, L.L.C. V. MEISSNER ET AL.

Final Ruling: The motion will be dismissed without prejudice because the debtor has not served all creditors with the motion as required by Fed. R. Bankr. P. 2002(a)(3). Specifically, the debtor has not served the motion papers on Mountain Counties Plumbing. While the debtor served Mountain Counties Plumbing's attorney in the state court action, Edward Koons, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004); Docket 12.

6. 14-27083-A-12 RCK CONSERVATION CO-OP, L.L.C. — MOTION TO CONVERT TO CHAPTER 11 CASE 9-26-14 [59]
DBH-3

Tentative Ruling: The motion will be granted.

The debtor seeks conversion of this case to chapter 11.

Creditors Teresa Jones and Charles Hawley, who hold the note secured by the debtor's real property, oppose conversion unless the debtor accounts for its use of the creditors' cash collateral and the case is designated as a single asset real estate.

The debtor has filed a reply, claiming that the debtor has used none of the creditors' cash collateral and disputing a designation as a single asset real estate.

Although 11 U.S.C. § 1208 does not expressly permit conversion to chapter 11, § 1208(e) provides that "Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter." The court interprets this provision as broad authority for conversion of chapter 12 cases, including conversion to chapter 11.

The debtor's lack of accounting of the creditors' cash collateral and the alleged use of such cash collateral without court approval is unhelpful to whether this case should be converted to chapter 11. 11 U.S.C. § 1208 says nothing about impermissible use of cash collateral. If the debtor is not accounting for the use of the cash collateral, the creditors may want to bring their own motion to, for instance, dismiss or have the case converted to chapter 7. But, the debtor's lack of accounting or impermissible use of cash

collateral is not relevant - at least at this point in the case - to whether the case should be converted to chapter 11. Moreover, the debtor has stated that it has not used any of the creditors' cash collateral. Docket 72 at 1.

Further, whether the debtor's chapter 11 case should be designated as a single asset real estate is also irrelevant to this conversion motion. 11 U.S.C. § 1208 makes no mention of the designation of a case as being relevant to whether the court should order conversion.

More important, the court will not issue an advisory opinion about whether the chapter 11 case should be designated as a single asset real estate. It is the debtor's initial prerogative to designate the case and, if the creditors disagree, they may file a motion that makes the issue ripe for adjudication, such as a stay relief motion. See, e.g., 11 U.S.C. § 362(d)(3).

Given that the court has declared the debtor as ineligible for chapter 12 relief, the court will convert this case to chapter 11. The motion will be granted.

7. 14-29194-A-11 CALIKOTA PROPERTIES, L.L.C. STATUS CONFERENCE
9-12-14 [1]

Tentative Ruling: None.

8. 14-30128-A-11 SUPPLY HARDWARE, INC. MOTION TO
JJF-1 CONVERT OR DISMISS
10-20-14 [19] O.S.T.

Tentative Ruling: The motion will be granted in part and the case will be dismissed.

The debtor's principal creditors, NCBCapital Corporation and National Cooperative Bank, F.S.B., move for conversion to chapter 7 pursuant to 11 U.S.C. § 1112(b). The movant argues that conversion to chapter 7 is required to protect the movant's cash and other collateral.

The movant's claim totals over $1.5 million, consisting of three loans secured by a blanket lien on the debtor's inventory, equipment, accounts, chattel paper, instruments, letters of credit, documents, deposit accounts, general intangibles, among others. Docket 22, Ex. C at 1.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation . . . (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors." 11 U.S.C. § 1112(b)(4)(A), (D).

The motion is incorrect in its vehement assertion that the debtor has failed to file its schedules and states. They were filed on October 10, 2014. They were filed with the voluntary bankruptcy petition. Docket 1. The notice of incomplete filing issued by the court on the petition date refers only to two documents the debtor did not file with the petition - an attorney's disclosure

statement and statement regarding corporate debtor ownership, both of which were filed on October 17, 2014. Dockets 2, 16, 17.

This is the debtor's second chapter 11 bankruptcy case since February 27, 2013, when the debtor filed Case No. 13-22534-A-11. That case was dismissed on March 3, 2014 - approximately eight months ago - due to the debtor's failure to file a confirmable plan within the 300-day period prescribed by 11 U.S.C. § 1121(e)(2). Case No. 13-22534, Docket 182.

In this case, the debtor has been using the movant's cash collateral without court order or consent from the movant. Docket 21 ¶ 10. Pre-petition, the movant made a demand that the debtor turn over the collateral for its loans. The debtor refused and eventually filed the instant bankruptcy case on October 10, 2014.

The debtor's use of the movant's cash collateral without permission from the court or the movant is cause for conversion or dismissal under 11 U.S.C. § 1112(b)(1).

The court has not found any significant assets that are not collateral for the claim held by the movant. The debtor has no real property listed on Schedule A, and Schedule B lists only two assets that are not collateral for the movant's claim:

- a security deposit on a building leased by the debtor, with a scheduled value of $13,500, and

- pending claims against an individual named Ethan Conrad for breach of an option to purchase a real property, with a scheduled value of "unknown."

All other assets in Schedule B are over-encumbered by the movant's claim. Schedules B & D; Docket 21 at 1-2.

The court is unpersuaded that the assets not encumbered by the movant's claim are sufficiently substantial to warrant conversion to chapter 7. The security deposit is at best a speculative asset that may not be an asset after all, due to the debtor's financial condition and likely default with the landlord holding the deposit. As to the pending litigation against Mr. Conrad, the debtor is seeking specific performance for the purchase of a real property. Docket 1, Statement of Financial Affairs, item 4. Without any funds to continue prosecuting the claims and without funds to purchase the property, in the event the claims are successful, a chapter 7 estate would not be benefitted by the claims.

Additionally, the movant is seeking conversion to chapter 7 solely to protect its interest in the assets securing its loans. This is an improper reason for converting the case to chapter 7 because it would not benefit the debtor's estate and unsecured creditors. No administrative claimants or unsecured creditors will benefit from the administration of the movant's collateral because such collateral assets are over-encumbered by the movant's claim. The collateral assets have an aggregate value of approximately $756,000, whereas the movant's claim exceeds $1.5 million. Schedules B & D.

In short, a chapter 7 bankruptcy trustee does not administer assets for the benefit of secured creditors, unless there is recovery that would benefit the unsecured creditors as well.

A dismissal permitting the movant to exercise its state law remedies with

respect to its collateral is in the best interest of the estate and the creditors. The case will be dismissed.