

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

POSTED ON WEBSITE

UNITED STATES BANKRUPTCY COURT  
EASTER DISTRICT OF CALIFORNIA  
FRESNO DIVISION

|                     |   |                        |
|---------------------|---|------------------------|
| In re               | ) | Case No. 13-10302-B-11 |
| GMC Dairy Farms LP, | ) | DC No. UST-1           |
| Debtor.             | ) |                        |

---

**ORDER ON UNITED STATES TRUSTEE’S MOTION TO DISMISS**

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

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

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

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

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

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

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

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

---

<sup>1</sup>Unless otherwise indicated, all chapter, section and rule references are to the 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.<sup>2</sup> 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.<sup>3</sup> For that reason, the court has been tracking the  
23

---

24 <sup>2</sup>FCW 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 <sup>3</sup>GMC 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.<sup>4</sup> 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.

<sup>4</sup>The 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.<sup>5</sup> 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 /s/ W. Richard Lee  
23 W. Richard Lee  
24 United States Bankruptcy Judge  
25  
26  
27

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