

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 2, 2016 at 10:00 a.m.

1. 15-27601-A-11 ELK GROVE COMMUNICATIONS MOTION TO
TOWER, INC. APPROVE DISCLOSURE STATEMENT
1-27-16 [62]

Tentative Ruling: The debtor asks the court to approve its disclosure statement filed on January 27, 2016.

The motion will be denied for the following reasons:

- (1) The disclosure statement does not have a table of contents.
- (2) The disclosure statement does not define the plan's "Effective Date." Even though the plan defines "Effective Date," the definition does not take into account the eventuality of an appeal of the order confirming the plan.
- (3) The disclosure statement contains many typos, grammatical mistakes and unintelligible statements that should be corrected. For instance, the disclosure statement's "means for implementation of the plan" section refers to a hydraulic skid winch, a 1996 Harley Davidson motorcycle and cell tower installation materials as "reasonable and necessary expenses." Docket 62 at 11. This makes no sense. The enumerated items are assets and not expenses.
- (4) The disclosure statement gives little to no details about how the debtor plans to fund the plan. While it states that the debtor will liquidate assets and lease its real property, there are no details about how and when the debtor's assets will be liquidated, or how, when and to whom the debtor is planning to lease the real property. Docket 62 at 11.
- (5) The disclosure statement says nothing about how much cash on hand, if any, the debtor possesses. As a result, the court cannot tell whether the debtor has the funds to start making plan payments.
- (6) The disclosure statement does not identify a claim objection deadline.
- (7) The disclosure statement does not include a discussion of the history of the debtor's prior bankruptcy filings.
- (8) While the plan refers to class 3 claims, the disclosure statement identifies no such claims.
- (9) The disclosure statement does not explain why the class 1 claim of the Sacramento County Tax Collector will be receiving no interest. See 11 U.S.C. § 511(a) & Cal. Rev. & Tax. Code § 4103(a).
- (10) The classification and treatment of each claim should be detailed in the

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disclosure statement as it has been detailed in the plan.

(11) The disclosure statement should incorporate the debtor's entire chapter 11 plan, not leaving parties in interest reviewing the disclosure statement to speculate about the terms of the plan.

Future amendments of the disclosure statement should be filed along with a red/black-lined version.

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| 2. | 15-27601-A-11 | ELK GROVE COMMUNICATIONS | MOTION TO |
| | UST-3 | TOWER, INC. | CONVERT OR TO DISMISS CASE |
| | | | 3-28-16 [69] |

Tentative Ruling: The motion will be granted and the case will be converted to chapter 7.

The U.S. Trustee moves for conversion to chapter 7, pursuant to 11 U.S.C. § 1112(b), arguing unexcused failure to timely file operating reports. In the alternative, the movant seeks dismissal of the case.

The debtor's counsel responds, stating that he has lost contact with the debtor's principal.

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; . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter" 11 U.S.C. § 1112(b)(4)(A), (F).

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1). Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

The debtor filed this case on September 29, 2015 but has filed no monthly operating reports. Neither is there an explanation from the debtor about the failure to file the reports. This alone is cause for conversion or dismissal.

Further, the fact that the debtor's principal is no longer communicating with counsel for the debtor indicates that the debtor is no longer engaged in the chapter 11 reorganization process. As noted in the response, due to the lack of contact with the debtor, the debtor's counsel has been unable to amend the plan and disclosure statement. This amounts to substantial loss of the estate and absence of a reasonable likelihood of rehabilitation. This is further cause for conversion or dismissal.

The debtor's sole real property has a value of approximately \$680,000, whereas

it is subject to encumbrances totaling less than \$100,000. The debtor also has a contract with T-Mobile that has been valued at \$600,000. Docket 32, Schedules A & B.

The court notes that the California Franchise Tax Board has filed a priority unsecured claim in the amount of \$9,691.96 and a general unsecured claim in the amount of \$2,138.35; the IRS has filed a priority unsecured claim in the amount of \$400 and a general unsecured claim in the amount of \$300; and the debtor has scheduled a \$600 general unsecured claim in favor of the JPMorgan Chase Bank. POCs 1 & 2; Docket 32, Schedule F.

With such assets, conversion to chapter 7 is in the best interest of the estate and the unsecured creditors.

In converting the case to chapter 7, the court also takes into account the debtor's long history of prior unprosecuted bankruptcy filings.

On February 22, 2013, the debtor filed a chapter 11 case, Case No. 13-22324. That case was dismissed on March 12, 2013 due to the debtor's failure to file its bankruptcy schedules and statements. The debtor filed another chapter 11 case on February 19, 2014, Case No. 14-21555. That case was dismissed on March 18, 2014 due to the debtor's lack of representation by an attorney. The debtor filed yet another chapter 11 case on February 20, 2015, Case No. 15-21313. That case was dismissed on March 10, 2014 due to the debtor's failure to file its bankruptcy schedules and statements. Docket 54.

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| 3. | 15-21617-A-7 | TIM/CARISSA ALDRICH | MOTION FOR |
| | 15-2116 | DNL-1 | AUTHORITY FOR WITNESSES TO APPEAR |
| | HOPPER V. ALDRICH ET AL | | REMOTELY O.S.T. |
| | | | 4-25-16 [26] |

Tentative Ruling: The motion will be granted.

The plaintiff in this proceeding, J. Michael Hopper, who is the chapter 7 trustee in the underlying bankruptcy case filed by the defendants here, Tim and Carissa Aldrich, seeks permission for the persons most knowledgeable with Travis Credit Union and Loan Mart to appear remotely at the upcoming trial on May 13, by telephone or other appropriate means, as the plaintiff bankruptcy estate's resources are quite limited. The plaintiff has on hand only approximately \$13,500 in cash.

Fed. R. Civ. P. 43(a), as made applicable here by Fed. R. Bankr. P. 9017, provides that:

"At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location."

As the plaintiff bankruptcy estate's resources in prosecuting this adversary proceeding are limited, and taking into account that the defendants have not participated in this adversary proceeding whatsoever, except for filing an answer, the court will authorize the persons most knowledgeable with Travis Credit Union and Loan Mart to appear remotely at the upcoming trial on May 13. The persons most knowledgeable may appear by telephone.

The persons are located in Vacaville, California and Los Angeles, California, respectively. By permitting the remote appearances at trial, the plaintiff bankruptcy estate will save on significant witness appearance fees and costs.

4. 15-29541-A-12 TIMOTHY WILSON MOTION TO
WW-1 CONFIRM PLAN
1-22-16 [20]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from March 21, 2016 in order for the debtor to obtain orders on pending lien avoidance and valuation motions pertaining to plan confirmation. An amended ruling from February 22 follows below.

The debtor is seeking confirmation of his chapter 12 plan filed on January 22, 2016.

At the March 21 hearing on the motion, the debtor represented that he has resolved the issues raised by the trustee in his opposition, including: satisfaction of the hypothetical liquidation test and ability to make plan payments.

The debtor also appears to have resolved all pending lien avoidance and valuation motions.

Accordingly, subject to further hearing from the trustee, the court is inclined to confirm the plan.

5. 16-21585-A-11 AIAD/HODA SAMUEL MOTION TO
LCR-1 CONVERT CASE TO CHAPTER 7 O.S.T.
4-22-16 [47]

Tentative Ruling: The motion will be granted in part and denied in part.

Creditor Fairview Holdings II, L.L.C., moves for conversion to chapter 7, pursuant to 11 U.S.C. § 1112(b), arguing unauthorized use of cash collateral, non-existence of a DIP account and undisclosed assets.

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- . . . (B) gross mismanagement of the estate; . . . (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors; . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter" 11 U.S.C. § 1112(b)(4)(D), (F).

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1).

Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

The debtors filed this case on March 15, 2016. At the meeting of creditors, the debtor Aiad Samuel admitted to collecting rent - at least some of which is being paid with checks - from tenants at a shopping center they own, and using the rents to pay expenses associated with the shopping center. Mr. Samuel also admitted that he was not utilizing and did not have a DIP account for purposes of managing the estate's cash.

Further, Mr. Samuel admitted to owning property in Hawaii and San Bernardino, California, although such property has not been disclosed in the schedules. The schedules also fail to disclose two retirement accounts with nearly \$1 million.

The debtors' use of cash collateral without court approval, their failure to establish and use a DIP account, their blatant disregard for the complete and accurate disclosure of assets, and their ongoing mismanagement of the estate, is cause for conversion or dismissal.

As some of the debtor's assets clearly contain equity that may be liquidated for the benefit of the estate and the creditors, and as there appears to be an urgent need for a neutral investigation and evaluation of the debtors' assets, a chapter 7 proceeding will better suit the interests of the estate and the creditors. Accordingly, the case will be converted to chapter 7.

Finally, Fairview requests that this Court enter an order requiring the debtors to comply with the requirements of Bankruptcy Rule 1019 after conversion of this case, including, but not limited to,

(i) requiring them to file full and complete lists, inventories, and amended schedules and statement of financial of affairs required by Bankruptcy Rule 1019(1)(A) and 1007(b),

(ii) directing them to forthwith turn over to the chapter 7 trustee all records and property of the estate under its custody or control as required by Bankruptcy Rule 1019(4),

(iii) filing a schedule of all unpaid debts incurred after the commencement of the chapter 11 case including the name and address of each creditor as required under Bankruptcy Rule 1019(5)(A); and

(iv) filing and transmitting to the United States Trustee a final report and account as required by Bankruptcy Rule 1019(5)(B).

This part of the motion will be denied.

Although the debtors have filed most of their schedules, the content of those schedules is devoid of much information. For instance, as mentioned above, Schedule A lists no real property in Hawaii or San Bernardino, California. Schedule A, as other schedules and petition documents, also include phrases such as "to come," admitting that those documents are incomplete. Docket 31.

Nevertheless, the court will deny the requests to require "full and complete" petition documents and to turn over to the chapter 7 trustee records and estate property. Fed. R. Bankr. P. 1019 & 1007 and 11 U.S.C. §§ 541 & 542 already require the debtors to do these things. Entering an order requiring them to do

these things is redundant.

The same is true with respect to Fed. R. Bankr. P. 1019(5) which provides:

(A) Conversion of chapter 11 or chapter 12 case

"Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall:

"(i) not later than 14 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

"(ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account;

(B) Conversion of chapter 13 case

"Unless the court directs otherwise, if a chapter 13 case is converted to chapter 7,

"(i) the debtor, not later than 14 days after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

"(ii) the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account."

Fed. R. Bankr. P. 1019(5) (A) already requires the debtors to account for post-petition debts and to file a final report and account. See Fed. R. Bankr. P. 1019(5) (A). The motion will be granted in part and denied in part.

6. 14-29194-A-11 CALIKOTA PROPERTIES, L.L.C. MOTION TO
UST-1 CONVERT OR TO DISMISS CASE
3-18-16 [118]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, and any other party 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 as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted and the case will be dismissed.

The U.S. Trustee moves for dismissal pursuant to 11 U.S.C. § 1112(b), arguing unexcused failure to timely file operating reports and inability to confirm a plan.

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; . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter" 11 U.S.C. § 1112(b)(4)(A), (F).

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1). Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

The debtor has not filed operating reports since March 2015. The last report, for February 2015, was filed on March 18, 2015. Docket 66. The debtor has not responded to this motion to explain why reports have not been filed for over a year now.

Further, this case was filed on September 12, 2014. The case is over one and one-half years old. Although the debtor filed a motion for approval of a disclosure statement, that motion was denied due to a procedural error and the court has not heard another motion for approval of a disclosure statement. Docket 51.

More, the court has granted stay relief as to the debtor's sole real property, an office building. On August 11, 2015, the court granted stay relief as to the property to Pettygrove Fund, L.L.C., the secured creditor. Dockets 116 & 117.

The debtor has had no source of income even before the granting of stay relief as to the property. The February 2015 operating report, for example, indicates that the debtor received only \$10 in income for that month. Docket 66 at 1.

The above is substantial loss to or diminution of the estate, with absence of a reasonable likelihood of rehabilitation.

This is cause for conversion or dismissal under section 1112(b).

The debtor's office building is overencumbered. Docket 116. Its only other asset of significant value is receivables totaling \$33,349. Docket 35, Schedule B. The court has no evidence that the debtor has successfully collected any part of those receivables since filing the case. Those receivables then are over one and one-half years old, with likely no value to the debtor's estate or its creditors.

As such, dismissal rather than conversion is in the best interest of the estate and the creditors. Accordingly, the motion will be granted and the case will be dismissed.