UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 8, 2018, at 10:00 a.m.

---

1. **18-90029-E-11** **JEFFERY ARAMBEL**
MF-12 **Matthew Olson**

CONTINUED MOTION TO SELL FREE AND CLEAR OF LIENS
4-5-18 [200]

MATTER TO BE HELD IN DEPT. D, COURTROOM 34, SACRAMENTO

Final Ruling: No appearance at the May 8, 2018 hearing is required.

Local Rule 9014-1(f)(2) Motion.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The hearing on the Motion to Sell Property has been continued by prior order of the court to 10:30 a.m. on May 31, 2018.

2. **18-90030-E-11 STJ-3** | **FILBIN LAND & CATTLE CO., INC. Michael St. James** | **MOTION TO SET REORGANIZATION SCHEDULE AND TO FIND COMPLIANCE WITH CODE 4-10-18 [130]**

MATTER TO BE HELD IN DEPT. D, COURTROOM 34, SACRAMENTO

No Tentative Ruling: 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, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 10, 2018. By the court's calculation, 28 days' notice was provided. The court set the hearing for 10:00 a.m. on May 8, 2018. Dckt. 145.

The Motion to Set Reorganization Schedule and to Find Compliance with the Bankruptcy Code was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing **----------**.

The Motion to Set Reorganization Schedule and to Find Compliance with the Bankruptcy Code is xxxxxxxxxxxxxxxx.

Filbin Land & Cattle Co. Inc. ("Debtor in Possession") moves for the court to enter an order finding two things: (1) that the proposed plan satisfies 11 U.S.C. § 362(d)(3), and (2) that Debtor in Possession may delay prosecuting plan confirmation for 120 days. Debtor in Possession presents that this is a single asset real property case and that the property has sufficient equity to be sold through the plan.

Debtor in Possession states that there are current negotiations to sell the property in this case, but more time is needed to finish those negotiations. Under the current deadlines, Debtor in Possession presents arguments that plan confirmation and approval of a potential sale would occur at inopportune and

cumbersome dates. Debtor in Possession requests that the court allow confirmation proceedings to be delayed.

CREDITOR'S OBJECTION

Dorothy Arnaud, individually, and as Co-Trustee of the Patrick H. and Margaret J. Filbin Trust UTA, dated December 30, 1973; and Helen Jacobson, individually, and as Co-Trustee of the Patrick H. and Margaret J. Filbin Trust UTA, dated December 30, 1973 ("Creditor") filed an Objection on May 3, 2018. Dckt. 146. The Opposition was not filed timely, and the court could disallow Creditor's arguments as being in violation of Local Bankruptcy Rule 9014-1(f)(1), but fortunately for Creditor, the court was able to review the pleadings before the hearing.

Creditor argues that Debtor in Possession is attempting to delay proceedings in this case without prosecuting a plan, while also preventing Creditor from seeking relief from the automatic stay. Creditor argues that the vague information about a potential sale is unpersuasive.

As to the Motion, Creditor argues that it is improper procedurally because it calls for the court to issue an impermissible advisory opinion about a potential controversy between the parties. *See Flast v. Cohen*, 392 U.S. 83, 96 (1968); *Earth Island Inst. v. Ruthenbeck*, 490 F.3d 687, 694 (9th Cir. 2007); *Atwood v. Chase Manhattan Mortgage Co.*, 293 B.R. 227, 231 (B.A.P. 9th Cir. 2003).

Finally, Creditor argues that granting a request to extend filing deadlines for an additional 120 days harms creditors because 11 U.S.C. § 362(d)(3) was meant to ensure quick action by a debtor. Creditor does not believe that the request is warranted because there has been no showing that the potential sale and filing deadlines would create substantial delays and additional work and that they may not be any equity in the real property as Debtor in Possession alleges.

DISCUSSION

11 U.S.C. § 362(d)(3)(B) [emphasis added] states:

> (d) On request of a party in interest and after notice and a hearing, the **court shall grant relief from the stay** provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
>
> > (3) with respect to a **stay of an act against single asset real estate** under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—
> >
> > > (A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; **or**

> (B) the debtor has commenced monthly payments that—
>
> > (i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and
> >
> > (ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate.

It is true that Debtor "checked the box" that this is a "single asset real estate case" on the Amended Petition filed in this case. Petition ¶ 7, Dckt. 94. Debtor did not "check the box" on the original Petition. Dckt. 1.

Basis Provided for the Court Preemptively Declaring
Debtor in Possession in Compliance with 11 U.S.C. § 362(d)(3)

In the Motion, Debtor in Possession states that the relief is sought pursuant to 11 U.S.C. §§ 105(d), 362(d), and 1121, as well as Federal Rules of Bankruptcy Procedure 2002 and 3017. Beginning with 11 U.S.C. § 105(d), Congress provides that the district court or bankruptcy court judge before whom the bankruptcy case is pending:

> (d) The court, on its own motion or on the request of a party in interest–
>
> > (1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and
> >
> > (2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that–
> >
> > > (A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or
> > >
> > > (B) in a case under chapter 11 of this title–
> > >
> > > > (i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

> (ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;
>
> (iii) sets the date by which a party in interest other than a debtor may file a plan;
>
> (iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
>
> (v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or
>
> (vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

11 U.S.C. § 105(d). The court may hold status conferences and set mandatory deadlines forcing a debtor in possession or trustee to file a disclosure statement and plan, as well as permissive dates for such filings by other parties in interest. That is not a grant of a "declaratory relief" power to address potential rights of parties who have not brought them before the court.

In 11 U.S.C. § 362(d)(3) Congress has specified grounds by which a creditor may seek relief from the automatic stay. It also specifies how a debtor in possession or trustee can act to defeat such a motion, if it is brought by a creditor.

Finally, 11 U.S.C. § 1121 creates statutory deadlines and dates when persons other than the debtor in possession may file a plan. It is true that 11 U.S.C. § 105(d) provides a statutory basis for the court to modify those dates.

Federal Rule of Bankruptcy Procedure 2002 sets the notice period for various motions and other proceedings in the bankruptcy case. That Rule does not specify the grounds or basis (with three exceptions) for the court modifying such dates and periods. Federal Rule of Bankruptcy Procedure 3017 provides the procedure for considering disclosure statements in Chapter 11 cases.

It does not appear that any of the above provide a basis for the court preemptively issuing a declaration on the rights of parties to the case. With respect to the scheduling and deadlines, the Motion appears to request the court to opine that the dates used by Debtor in Possession would be proper, but it does not appear to request that the court set deadlines and dates by which Debtor in Possession must prosecute this case.

The Memorandum of Points and Authorities is long on arguing case facts and Debtor in Possession's contentions. Dckt. 132. It provides two Bankruptcy Appellate Panel decisions arguing the confirmability of a plan with terms of the type that Debtor in Possession states it intends to prosecute in the

future. No legal authorities are provided for the court issuing the requested Declaratory Relief prospectively determining the respective rights of the parties in the event they should raise them at a later date.

Debtor in Possession has not presented the court with any legal authority for why 11 U.S.C. § 362(d)(3)(B) is the proper code provision to request that the court enter an order declaring that the Code is not being violated. Additionally, a review of the docket shows that no motion for relief has been filed in this case. Debtor in Possession appears to be asking (at least partially) for relief that it is not entitled to under the cited Code provision. As Creditor notes, that relief would require the court to issue a type of advisory opinion, which is not allowed.

It may well be that a proposed plan to sell the property of the estate, with commercially reasonable marketing terms, would create a bar to relief from the stay if a creditor seeks relief pursuant to 11 U.S.C. § 363(d)(3). But as discussed, Debtor in Possession has hedged its bet, not proposing a "Plan," but only an "Initial Plan."

Issue of Whether This Is a Single Asset Bankruptcy Case

In the present Motion to have the court summarily determine that Debtor in Possession has "satisfied the requirements of Section 362(d)(3)," Debtor in Possession states that Debtor (the person responsible for filing the petition in a voluntary case, not the "debtor in possession") identified itself as "Single Asset Real Estate." (Technically, it is Debtor's "business" that would be a "Single Asset Real Estate Business," not Debtor individually.)

The Opposition jumps on this statement, asserting a detailed opposition as to why delay in a single asset business case is not proper for this Debtor in Possession.

As the United State Supreme Court explained in *United Student Aid Funds, Inc. v. Espinosa*, a federal judge does not merely rubber stamp an order granting or denying relief because a party so demands. 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010). The court must, in good faith, actually apply the correct law.

On Amended Schedule A, Debtor states under penalty of perjury that it owns a Single Real Estate Asset—two parcels of land constituting 94.31 acres, the uses which include: (1) a Shell gas station/mini-mart, (2) truck scale, (3) restaurant (closed), (4) single family home (occupied by security guard), (5), and rangeland. Schedule A/B, Part 9; Dckt. 94 at 16. That real property is stated to have a value of $9,638,300.

Debtor's personal property listed on Schedule A/B is stated to have a combined value of $148,039. Schedule A/B, Part 12; Dckt. 94 at 19. $120,000 of that value sits in the Shell Station fuel and mini-mart equipment. *Id.* at 15.

On Amended Schedule D, Debtor lists secured claims totaling $2,537,333, and on Schedule E/F, unsecured claims total $104,306. *Id.* at 20–21, 22–24.

On the Statement of Financial Affairs, Part 1, Debtor shows income being generated from the Restaurant on the property, which was closed in 2017. *Id.* at 28. No other income is stated.

The most recent Monthly Operating Report was filed on February 14, 2018, which was for the period from the filing of this case on January 17, 2018, to January 31, 2018. Dckt. 42. The business for the bankruptcy estate is listed as "Ranching/Commercial Rentals." *Id.* at 1. The bank statement attached to the Monthly Operating Report is for something called Ingram Creek Coffee Shop. *Id.* at 5. This name is used in identifying a bank account for Debtor on Schedule A/B. Dckt. 94 at 13.

The term "Single Asset Real Estate" is defined by the Bankruptcy Code in 11 U.S.C. § 101(51B) as follows:

> The term "single asset real estate" means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

One exception is when the debtor is a family farmer, and it is required that there be no "substantial business" conducted by the debtor other than operating the real property.

The term "family farmer" is defined in 11 U.S.C. § 101(18)(B) [emphasis added], as it applies to a corporation, as follows:

> (B) corporation or partnership in which **more than 50 percent** of the outstanding stock or equity is **held by one family**, or by one family and the relatives of the members of such family, and such family or such relatives **conduct the farming operation**, and
>
> > (i) **more than 80 percent of the value** of its assets consists of assets related to the **farming operation**;
> >
> > (ii) its **aggregate debts do not exceed $ 4,153,150** and **not less than 50 percent** of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, **arise out of the farming operation** owned or operated by such corporation or such partnership; and
> >
> > (iii) if such corporation issues stock, such stock is **not publicly traded**.

Here, all parties know that this corporate case is related to that of Jeffery Arambel, whose farming operating is being restructured and some farm properties being liquidated in his case. 18-90029. Mr. Arambel is the 100% shareholder in the debtor corporation. Statement of Financial Affairs, Question 20; Dckt. 94 at 24. The Statement of Financial Affairs states that Debtor's former business (closed in January 2017) in operating a restaurant on th 94 acre, $9.6 Million property was a restaurant.

On Schedule G, Debtor lists having leases of $235 per month for a truck scale and Debtor being lessor of the real property for $3,000 per month (with an additional payment for tenant improvements). That appears to be a *de minimis* amount for the "value" of the real property asset.

Debtor in Possession in this case and the debtor in possession in the Arambel case filed their respective motions to have the two bankruptcy cases substantively consolidated. Dckt. 44. In the Motion filed in this case, the allegations in the Motion (made subject to Federal Rule of Bankruptcy Procedure 9011) include the following:

> 3. Mr. Arambel is the sole shareholder of Filbin Land & Cattle Co., and each debtor is the affiliate of the other within the meaning of Bankruptcy Code § 101(2). While Mr. Arambel and Filbin Land & Cattle Co. have kept their books and records separately, they have been treated as a single entity. Mr. Arambel and Filbin Land & Cattle Co. maintain a single joint bank account. The properties of the two Debtors in Possession are adjacent and they are operationally treated as one. The assets of the two separate Debtors in Possession secure a single fund of claims held by a nearly identical group of creditors.
>
> . . .
>
> 11. Here, substantive consolidation is appropriate under either prong of the test. First, the creditors dealt with the two debtors as a single economic unit as demonstrated by the fact that the creditor bodies in the two cases are nearly identical and the voluntary secured liens are cross collateralized by the real properties owed by the two estates. Second, creditors will benefit from substantive consolidation because the affairs of the two debtors are so intertwined. The pre-petition debtors maintained a single joint bank account and they are obligated on each other's debts. By combining the estates, creditors will be advantaged by eliminating confusion related to which against debtor they should assert their claim. While the Debtors in Possession do not believe that they hold debts against one another, substantive consolidation has the added benefit of eliminating any such claims, to the benefit of creditors by avoiding the dilution of funds available to pay claims.
>
> . . .

Dckt. 44.

In his Declaration, Jeffrey Arambel (the responsible representative of Debtor in Possession and the Chapter 11 debtor in possession in his related case) states under penalty of perjury:

> 2. My business Filbin Land & Cattle Co., Inc. and I sought bankruptcy protection in part by concurrent trustee sales scheduled for a series of real properties comprising some thirty-two parcels of land. I own interests in all of the properties except for one, which is owned by Filbin Land & Cattle Co., Inc. The loans secured by the properties owned my Filbin Land & Cattle Co. and I are cross-collateralized, with the liens held by the same creditors, and the issues related to the use and encumbrances of all such properties are substantially identical.

> 3. I am the sole shareholder of Filbin Land & Cattle Co. While I have kept my books and records separate from those of Filbin Land & Cattle Co., we have been treated as a single entity. Filbin Land & Cattle Co. and I maintain a single joint bank account. Our real properties are adjacent, and they are operationally treated as one. Our assets secure a single fund of claims held by a nearly identical group of creditors.

Dckt 46. The motions to consolidate were lost in a flurry of "first day motions" in which the two debtors in possession "enthusiastically" sought to upend the Bankruptcy Code and have the court issue case preclusive orders when accurate, clear schedules and statement of financial affairs had not been filed. The overreaching by the two debtors in possession ended up with most of the motions being dropped, appropriate professionals hired, and the cases prosecuted consistent with the Bankruptcy Code.

The discussion in the Motion about how this Debtor has been guaranteeing debts of Mr. Arambel, security credit facilities for Mr. Arambel, and seeing its debts climb without any economic value for Debtor is consistent with what was originally being argued and then dropped.

That being said, it may well be that the two cases should be consolidated or that the corporation and its property are part of the larger Arambel "farming operation."

Denial of Motion

What Debtor in Possession truly seeks is permission from the court to delay prosecuting a plan because there may be a pending sale that may resolve the debts in this case. That type of request is more akin to the type of information that a debtor in possession would present at a status conference, rather than a motion for declaratory relief of the rights of a creditor who has not filed a motion asserting such rights.

Debtor in Possession's "inaction" is indicated in the Plan filed, with its very title stating that it is not the "real plan," but only an "Initial Plan of Reorganization." Dckt. 135 at 1. The "Initial Plan," which by its very name indicates that it is not the "real plan," is for the Plan Administrator to liquidate such portion of the real property to pay the claims. That will have to be done in conjunction with the Chapter 11 Plan in the Jeffery Arambel Chapter 11 case.

It appears that Debtor in Possession could be prosecuting a rather simple plan toward confirmation, but the Motion states that Debtor in Possession is negotiating for a sale of the property and believes that such will be concluded in 120 days. Such would be consistent with the Chapter 11 Plan in this relatively "simple" (to the extent any Chapter 11 case can be "simple") case. Such negotiations could be conducted in parallel with the confirmation process. Presumably Debtor in Possession would request the scheduling in the confirmation process to proceed at a pace with the negotiations so that if a sale can be achieved, those amendments could be made at confirmation.

But Debtor in Possession does not request that and instead requests that the court put the case on hold for the negotiations. Debtor in Possession does not have the support of the few creditors in this case, either unwilling or unable to impress on them the reasonableness of putting a hold (rather than Debtor persuading the court of the reasonableness to s-l-o-w-d-o-w-n the confirmation process. Rather, Debtor in

Possession just asks for a 120-stay of doing anything—no plan prosecution, no adequate protection payments.

It may well be that the Objecting Creditor and its knowledgeable counsel recognize that they need to keep Debtor in Possession in this case and Mr. Arambel (responsible representative of Debtor in Possession and the debtor in possession) focused on addressing the claims in the two cases. This Creditor and other creditors appear to be successfully prosecuting that agenda, with Mr. Arambel and his counsel in his personal case actively moving real property from ownership to sale. In the current case, the concept for a plan to commercially reasonably market the property does not appear facially inappropriate.

Further, it appears that Objecting Creditor and its knowledgeable counsel recognize that pressing a weak motion for relief may not be wise (and possibly subject Creditor to prevailing party attorney's fees if Debtor in Possession were to prevail). But Objecting Creditor is equally reasonable in asserting that this court declaring in advance that possible grounds that could be asserted, if Objecting Creditor decided to assert them, would fail is not proper.

As has broken out in the Arambel bankruptcy case, the creditors and Debtor in Possession in this case need to embrace the sweetness of the reorganization process that allows Debtor in Possession to preserve the equity in the property, reasonably provide for payment of the creditors' claims, and get the creditors the cash they are owed on their debts. (True, a creditor might not be able to foreclose and reap millions in excess of what they are owed through a foreclose against an unwitting debtor outside of bankruptcy, but fortunately there is no such debtor in this case, and the Objecting Creditor is just looking to being reasonably paid on its debt.)

The Motion is denied without prejudice. (The court denies the Motion without prejudice not to encourage Debtor in Possession to refile this Motion, but to ensure that no party in interest incorrectly believes that it can assert that the denial precludes Debtor in Possession (or a successor trustee) from opposing relief from the automatic stay.)

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 to Motion to Set Reorganization Schedule and to Find Compliance with the Bankruptcy Code filed by Filbin Land & Cattle Co., Inc. ("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 denied without prejudice.