

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 4, 2018 at 10:00 a.m.

1. 17-26125-A-11 FIRST CAPITAL RETAIL, MOTION TO
UST-1 L.L.C. CONVERT OR TO DISMISS CASE
7-31-18 [475]

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

The United States Trustee moves for conversion dismissal or conversion to chapter 7, asserting failure to file operating reports, failure to pay quarterly fees to the United States Trustee, and no likelihood of rehabilitation.

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; [and] (K) failure to pay any fees or charges required under chapter 123 of title 28." 11 U.S.C. § 1112(b)(4)(A), (F), (K).

These examples 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).

This case was filed on September 14, 2017. The debtor has not filed operating reports since the report filed for February 2018 (Docket 464) and the debtor has not paid quarterly fees for any quarter of 2018 yet. For the first quarter of 2018, the debtor is at least \$18,401 delinquent to the U.S. Trustee. For the second quarter of 2018, the debtor is at least \$14,587 delinquent to the U.S. Trustee.

Moreover, the debtor has sold substantially all its assets. The court has approved that sale, which closed in April 2018. Nor has the debtor filed a plan and disclosure statement, as stated on several occasions in open court. As such, there is no reasonable likelihood of rehabilitation.

September 4, 2018 at 10:00 a.m.

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

The case will be converted to chapter 7. While the debtor has sold virtually assets, the estate still holds causes of action against various parties, including among others avoidance claim transferees, MCA Recovery, L.L.C. (over its assertion of an interest in approximately \$244,000 of the debtor's funds), and the debtor's prior owner Suneet Singal and some of his related entities. The case will be converted to chapter 7 for these claims to be liquidated.

The debtor's response to the motion agrees that the case should be converted to chapter 7.

- | | | |
|----|--|---|
| 2. | 15-29136-A-12 P&M SAMRA LAND
DB-1 INVESTMENTS L.L.C.
RECLAMATION DISTRICT 1001 VS. | MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-30-18 [601] |
|----|--|---|

Final Ruling: The hearing on this motion has been continued to September 17, 2018 at 10:00 a.m. Docket 610.

- | | | |
|----|--|--|
| 3. | 09-39791-A-11 UMESH/LEE PATEL
RPG-1 | AMENDED MOTION TO
DISMISS OR TO CONVERT CASE
7-25-18 [248] |
|----|--|--|

Tentative Ruling: The hearing on the motion will be continued to December 10, 2018 at 10:00 a.m.

Secured and unsecured creditor 1332 Broadway Note, L.L.C. seeks dismissal or conversion to chapter 7 based on 11 U.S.C. § 1112(b)(1) and (4)(N), asserting default by the debtors on their promised payment of 100% disposable income to the general unsecured creditors.

The movant is the assignee of a claim held by Wells Fargo Bank under the plan. The debtors bifurcated the claim by stripping it down, into a \$1.2 million portion secured by a first deed against the debtors' motel property in Placerville, California and into a \$430,060.65 general unsecured claim.

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- . . . (N) material default by the debtor with respect to a confirmed plan." 11 U.S.C. § 1112(b)(4)(N).

This case was filed on September 15, 2009. The debtors obtained confirmation of their chapter 11 plan on September 19, 2011. Dockets 161 & 178. The case was closed on October 24, 2014. Docket 241. The court reopened the case on July 23, 2018 in order to entertain this motion. Dockets 242, 243 & 248.

The movant complains that it has received nothing on account of its \$430,060.65 general unsecured claim, even though the plan requires the debtors to pay 100% of their disposable income to general unsecured creditors. See Docket 161 at 8. The movant asserts that the three quarterly post-confirmation reports filed by the debtors prior to the closure of the case on October 24, 2014 show a gain in the debtors' cash balance of over \$60,000. Dockets 236, 237, 240.

The debtors deny that they earned any disposable income since confirmation of the plan.

The court rejects the debtors' assertion that the movant delayed asserting the default or that its remedy is limited to a breach of contract action against the debtors. The court has not entered the debtors' discharge and under 11 U.S.C. § 1141(d)(5) they must establish compliance with the terms of their confirmed chapter 11 plan before a discharge may be entered.

The court will provide the movant with 90 days to conduct discovery to establish the amount of debtors' disposable income as prescribed by 11 U.S.C. §§ 1129(a)(15), 11 U.S.C. § 707(b)(2)(A) and (B), and 1325(b)(2). This will entail a calculation of "disposable income" and by determining gross income less reasonable and necessary support, maintenance and business expenses. The existing record is insufficient to make this calculation.

The hearing on the motion will be continued to December 10, 2018 at 10:00 a.m. to permit this discovery. Further evidence in support of the motion shall be filed and served by December 24, and evidence in opposition shall be filed and served by December 31. Due to Judge McManus' upcoming retirement, the final hearing will be before a different judge. When that judge is assigned, a continued hearing date will be set.

4.	18-22498-A-12 HAYDEN HARTER WW-1	MOTION TO CONFIRM CHAPTER 12 PLAN 7-23-18 [26]
----	-------------------------------------	--

Tentative Ruling: The motion will be conditionally granted.

The debtor seeks confirmation of its chapter 12 plan filed on July 23, 2018. Docket 28.

Plan confirmation will be granted, subject to the debtor clarifying the following:

(1) The plan does not set a deadline for the filing of objections to proofs of claim. Is the debtor planning to file objections? There are some discrepancies in claim amounts between the plan and proofs of claim, suggesting that the debtor is planning to file some claim objections. For instance, the plan says that the claim of Rabobank is \$600,000, whereas Rabobank's proof of claim is for \$725,096.92. Docket 28 at 2; POC 10-1. In Amended Schedule D filed July 5, 2018, Rabobank's claim is listed as \$775,000. Docket 21.

(2) The debtor must clarify how it plans to reduce the claim of Rabobank to \$600,000.

(3) The debtor must clarify the reference to creditor PSB in the additional provisions of the plan. See Docket 28 at 6. The court sees no claim by a creditor PSB in the schedules or elsewhere in the plan.

(4) The plan refers to claim 9 as being held by Baymark, but the creditor identified in proof of claim 9 is Emma Rosow, Robert E. Friedman, Susan H. Friedman, Bruce Landecker et al. This must be clarified.

(5) The stipulation with the holder of claim 9-1 says that the collateral for the claim will be surrendered. The debtor must identify this collateral and owners of it.

(6) The explanation about the debtor's family situation, siblings, and inheritance in the supporting declaration is vague and ambiguous concerning the collateral identified as "interest in partnership property 260 Main St. Colusa, CA." Docket 21 at 2.

(7) The stipulation with the 9-1 claimant does not identify the precise interest the debtor is surrendering to that claimant. Docket 32.

(8) The court does not see a description of the collateral for Rabobank's claim. Amended Schedule D says only that it is "business equipment." Docket 21 at 4.