

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**September 17, 2024 at 10:00 a.m.**

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1. [24-21363-E-12](#) **JEDIAH HOFFMAN**  
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
4-3-24 [1]**

Debtor's Atty: Noel Knight

Notes:

The 9/12/24 status conference date changed by order of the court filed 8/26/24 [Dckt 110]. Status conference to be heard in conjunction with other matters on the 9/17/24 10:00 a.m. calendar. Jediah Hoffman, the Debtor and Debtor in Possession, and Noel Knight, Esq., counsel for the Debtor in Possession, SHALL APPEAR IN PERSON - no telephonic appearances permitted.

[NCK-3] Debtor's Motion to Sell to Heavy Equipment filed 9/9/24 [Dckt 116], set for hearing 10/24/24 at 10:00 a.m.

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COMMERCIAL CREDIT GROUP INC.  
VS.

**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.

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Local Rule 9014-1(f)(2) 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, Chapter 12 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 6, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the Chapter 12 Trustee, 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.

<p><b>The for Relief from the Automatic Stay is granted.</b></p>
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#### SEPTEMBER 17, 2024 HEARING

The court specially set the hearing on this matter, continuing it from the August 22, 2024 calendar. The court issued the following Order in setting this hearing:

**IT IS ORDERED** the hearing on the Motion for Relief is continued to **10:00 a.m. on September 17, 2024**. The hearing is continued to allow the Debtor in Possession to file and have set for hearing on September 17, 2024, a Motion to Sell Property which will pay Movant's secured claim in full.

The hearing on the Motion to Sell may be specially set at 10:00 a.m. on September 17, 2024.

Order, Docket 106. The court continued the hearing based on the representation that Debtor in Possession had a buyer ready, and Movant's secured claim could be paid in full from proceeds of the sale of the Crawlers.

The Debtor in Possession has not set for hearing a Motion to Approve the Sale of the Equipment on September 17, 2024. Rather, the Debtor in Possession filed two Motions to Sell, assigning them Docket Control Numbers NCK-3 and NCK-4, and setting the hearing on that Motion for October 24, 2024 at 10:00 a.m. Dockets 117, 121.

The Motions to Sell state with particularity (Fed. R. Bank. P. 9013) the following grounds and relief that is requested (the two Motions appears to be the same pleading, the court references below from the latest Motion filed by Debtor in Possession):

- A. Debtor seeks authority to seel the estates interest in six pieces of heavy equipment. Mtn., ¶ 1; Dckt. 120.
- B. The Property will be sold “as is /where is” and the secured claim will be paid in full at the time of sale. *Id.*; ¶ 2.
- C. The sales price is \$311,249.29. *Id.*; ¶ 3.
- D. Exhibit A, the Declaration of Steven Singh Samara is provided in support of the Motion. *Id.*; ¶ 4.
- E. The Sale “should be about 90 days” after the entry of the order authorizing a sale. *Id.*; p. 3:2-4.

With a hearing date of October 22, 2024, the sale dat would not be until January 22, 2025, approximately four months after the September 17, 2024 hearing.

The Declaration of Steven Singh Samra has been filed in support of the Motion. Dckt. 118. Mr. Samra’s testimony includes:

- 1. Mr. Samara is the representative of the “prospective purchaser Westside Production Solutions, Inc. Dec., ¶ 1; Dckt. 118.

In the Declaration, Mr. Samra uses the term “prospective purchaser,” and not the “buyer pursuant to the contract.”

- 2. If the court authorizes the Debtor in Possession to sell the equipment, “it is Westside’s intention . . . to purchase the Debtor’s heavy farm equipment. . . .” *Id.*; ¶ 3.
- 3. “Westside will be purchasing this equipment for the sum of \$311,249.29.” *Id.*; ¶ 4.
- 4. “At closing of purchase, Westside will be paying off the secured claim of Creditor Commercial Credit Group, Inc., Claim #23759590.” *Id.*; ¶ 6.

No contract between the Debtor in Possession and Westside Production Solutions, Inc. is provided as an exhibit. No explanation is provided why the sale would not occur approximately 120 days

after the September 17, 2024 hearing that was set on an expedited basis so the Debtor in Possession could move forward with a sale that his counsel said was ready to be made.

As addressed below, the \$311,249.29 purchase price is equal to what Movant computes its secured claim to be as of the April 3, 2024 filing of this case. The possible sale of the equipment is not to occur until January 2025 - nine and one-half months later.

On Amended Schedule A/B the Debtor lists having equipment with a value of \$700,000. Amd. Sch. A/B, ¶ 40; Dckt. 63. On Amended Schedule D the Debtor lists Movant as having a (\$300,000) secured claim, for which the collateral is identified as “D10T, D10R, John Deer 9520, Komatsu Wheel Loader, and Peterbuild truck” with a value of \$400,000.” Amd. Sch. D, ¶ 2.1; Dckt. 67.

## MOVANT’S STATUS REPORT

Movant filed a Status Report on September 12, 2024. Docket 123. Movant states:

1. Debtor in Possession indicated at the previous hearing that he had a sale ready to go and would be filed the week of August 26, 2024, which would pay off Movant in full; however, the sale Motion was filed on September 9 and is set for hearing in late October. *Id.* at 1:22-23.
2. Debtor in Possession did not provide any sale agreement with the Motion. *Id.* at 1:23-24.
3. The sale will not generate enough proceeds to pay off Movant’s claim in full. *Id.* at 1:24-25.
4. The proposed deal is simply a further delay of a case in which court orders have been ignored and compliance with the Code has not been met. *Id.* at 1:27-2:1.
5. The sales price is \$311,249.29, which is the amount of Movant’s secured claim before taking into account accrued interest and potential other fees. Furthermore, there is an IRS junior security interest in the Crawlers in the amount of \$143,852.71, and the sale is not free and clear of this lien. *Id.* at 2:14-20.

In the Motion for Relief From the Stay, Movant states that its secured claim as of the commencement of this Bankruptcy Case on April 3, 2024, is computed by Movant to be \$311,249.29. Motion, ¶ 14; Dckt. 35.

## DISCUSSION

As discussed in this Ruling, the Motion for Relief was filed on June 6, 2024, and the first hearing was conducted on June 20, 2024. That hearing was continued to August 1, 2024, with the Parties then agreeing (Stipulation; Dckt. 73) to continue it to August 22, 2024.

By the time of the August 22, 2024 hearing, the Debtor in Possession had not filed any Monthly Operating Reports and counsel for the Debtor in Possession reported difficulty in communicating with the Debtor in Possession since he, the Debtor in Possession, had taken on employment as a fire fighter to make \$1,000 a day in compensation.

As reported at the August 22, 2024 hearing, the Debtor in Possession and his counsel were still trying to get insurance for the equipment for the benefit of the Bankruptcy Estate (which owns the equipment) and to protect the interests of Movant.

At the August 22, 2024 hearing, as a final plea, counsel for the Debtor in Possession stated that they have a buyer for the equipment securing this claim, the sales price is enough to pay off Creditor's secured claim, and that the buyer will lease it back to the Debtor in Possession. It was represented to the court this buyer was in place and the sale could be promptly completed.

In reviewing the Motions to Sell Property, there is not a contract between the Debtor in Possession and the buyer for the sale of the equipment. There are no contractually binding terms. Though requesting an extended period in which the buyer can act on its "intention," but clearly not contractual commitment, to purchase the equipment, there is no nonrefundable deposit presented to the court.

The Motion to Sell is not brought pursuant to 11 U.S.C. § 363(f) to authorize a sale free and clear of junior liens. The Internal Revenue Service secured claim filed in this case is stated to be in the amount of (\$143,852.71). POC 15-1.

#### **11 U.S.C. § 362(d)(2)**

A Debtor in Possession has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a Debtor in Possession or estate has no equity in property, it is the burden of the Debtor in Possession or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor in Possession or the Estate. 11 U.S.C. § 362(d)(2).

While the Debtor in Possession argues that the Crawlers are necessary for an effective reorganization, Debtor in Possession has not shown that there is a reorganization in process. Rather than acting as the Debtor in Possession and operating the business of the Bankruptcy Estate, the Debtor has taken the opportunity to obtain money by working as a fire fighter. While such service is laudable and of great value to society, it has left this Bankruptcy Estate floundering. The Motion is granted.

## REVIEW OF THE MOTION

Commercial Credit Group Inc. (“Movant”) seeks relief from the automatic stay with respect to the following two assets:

1. A 2007 Caterpillar D10T Crawler Dozer, Serial No. RJG01025 (“2007 Crawler”)
2. A 1997 Caterpillar D10R Crawler Dozer, Serial No. 3KR00943 (“1997 Crawler”) (collectively, “Crawlers”).

The Crawlers are a type of bulldozer with a heavy plate used to load and push heavy objects, ideal for maneuvering over uneven surfaces and hauling heavy materials.

The moving party has provided the Declarations of Michael Mikulan and Gabriel Herrera to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jediah Hoffman, the Debtor and Debtor in Possession. Decls., Dockets 37, 38. According to Movant, Mr. Hoffman testified at the 341 Meeting that the Crawlers were not necessary to reorganize in his Chapter 12 case. Mot. 3:1-3, Docket 35. However, Debtor in Possession’s counsel explained at a subsequent status conference that the Crawlers may be needed by Debtor in Possession to reorganize. *Id.* at 3:4-5.

Debtor executed a promissory note to Creditor in the amount of \$517,770, secured by the Crawlers, containing the following terms:

(a) repayment was to be in consecutive monthly installments of 22 installments in the amount of \$21,690.00 and 1 installment in the amount of \$40,590.00; (b) payments were to begin on January 15, 2023; (c) upon default, including by failing to make payment, default interest would accrue at 18% per annum, plus collection and other charges, and reasonable attorneys' fees; (d) the proceeds of the loan were to refinance other loans issued by the Creditor to the Debtor in Possession; and (e) the Debtor in Possession provided a blanket lien against his assets, including against the 2007 Crawler and the 1997 Crawler.

*Id.* at 3:12-18. Debtor immediately defaulted under these terms, failing to make a single installment. Creditor repossessed various items of collateral, including the Crawlers, prepetition. *Id.* at 23-27.

The Creditor does not significantly dispute the Debtor in Possession's Schedule D valuation of the collateral identified. Post-petition, the Creditor has received and forwarded to the Debtor in Possession offers for the purchase of the 2007 Crawler at \$243,000, and the 1997 Crawler at \$42,000. *Id.* at 4:6-8. Creditor continues to accumulate storage fees and interest while in possession of the Crawlers.

The 2007 Crawler has a value of \$243,000, with liens encumbering it in the amount of \$776,008.73. *Id.* at 5:15-19. The 1997 Crawler has a value of \$42,000 with liens encumbering it also in the amount of \$776,008.73. *Id.* As such, there is no equity in the Crawlers. Creditor requests relief pursuant to 11 U.S.C. § 362(d)(2) as the Crawlers are not effective for a reorganization and there is no equity in the Crawlers. In the alternative, if the court finds that the Crawlers are necessary for an effective reorganization, Creditor requests the Motion be denied without prejudice.

## OPPOSITION FILED BY DEBTOR IN POSSESSION

On June 14, 2024, the Debtor in Possession filed Opposition Pleadings. Dckts. 43-45. In the Opposition it is asserted that the Crawlers are necessary “for the success of the Debtor’s business endeavors and the success and feasibility of the Debtor.” Opposition, p. 2:11-13; Dckt. 43. The court is directed to the Declaration of the Debtor in Possession is support of this statement.

In looking at the above stated ground of opposition, it is not stated that the equipment is necessary for an effective reorganization.

The Debtor in Possession then states that “the Debtor” has obtained Liability Insurance for all the heavy equipment being used in ‘his’ ranch and farm operations.” *Id.*; p. 2:15-17.

The Debtor in Possession then requests an Evidentiary Hearing,

so that it can evaluate the live testimony of agricultural experts in order to make its determination on the condition of the Property and its trees for purposes of ruling upon Movant’s request for relief from the stay under Section 362(d)(1).

*Id.*, p. 2:18-22.

In his Declaration, the Debtor in Possession provides testimony, as summarized by the court, including the following (identified by paragraph number in the Declaration):

1. I am a resident of the State of California and am over eighteen years of age. The following facts is within my personal knowledge, except as to those matters, if any, which are stated on information and belief and as to those matters I believe to be true; accordingly, if called as witness I could and would, competently testify thereto

It appears that the Debtor in Possession is stating that he does not have personal knowledge of all of what he is testifying to, as required by Federal Rule of Evidence 602,<sup>FN.1</sup> but merely has been informed from some source or believes it to be true because it supports his Opposition.

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FN. Fed. R. Evid. 602.Need for Personal Knowledge (emphasis added)

A witness may testify to a matter **only if** evidence is introduced sufficient to support a finding that the **witness has personal knowledge of the matter**. Evidence to prove personal knowledge may consist of the witness’s own testimony. This rule does not apply to a witness’s expert testimony under Rule 703.

Additionally 28 U.S.C. § 1746 set forth the requirements for declarations and the affirmation that must be provided by the declarant (emphasis added):

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or **proved by the unsworn declaration**, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: **“I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).**

(Signature)”.

(2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)”.

The Debtor in Possession has not provided a declaration that complies with 28 U.S.C. § 1746.

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In the Declaration, the Debtor in Possession state that the court:

2 . BE ADVISED, that ALL of my heavy equipment, particularly my Caterpillar D10T and my Caterpillar D10R and necessary for my income streams and for a feasible Chapter 12 Plan.

With this statement, the Debtor in Possession dictates to the court a finding of fact and does not provide the court with any evidence of how and why the two Crawlers are necessary for generating monies to fund a Chapter 12 Plan.

The Debtor in Possession continues, telling the court to “BE FURTHER ADVISED” that he has sent to Movant a Certificate of Liability Insurance covering all of “his” equipment, and directs the court to see the Certificate of Insurance as an exhibit. *Id.*, ¶¶ 4, 5.

The Exhibit is filed at Dckt. 45, without a cover page identifying this Bankruptcy Case and the contested matter to which it relates. The Certificate of Liability Insurance is dated June 7, 2024, and states that the Insured is “Westside Production Solutions.” Dckt. 45, p. 1. It is not clear from the Schedules and Statement of Financial Affairs who “Westside Production Solutions,” the insured, is.

On page 2 of the Exhibit is a document titled “Inland Marine Coverage Part Contractors Equipment Coverage Form Supplemental Declarations” which is dated June 7, 2024. The insured person



named is “Westside Production Solutions, Inc.” Neither the Debtor in Possession nor the Bankruptcy Estate are named as insureds. *Id.*

On all of the other pages of the Exhibit, the identified insured is “Westside Production Solutions, Inc.”

The Debtor in Possession has also filed a Statement of Disputed Facts, Dckt. 46, stating the disputed fact as to whether or not the Crawlers are necessary for Debtor’s effective reorganization.

While stating this opposition, the Debtor in Possession offers no evidence of what possible reorganization will be sought, what business operations are ongoing in the Bankruptcy Estate, and how such will be funded.

### **June 20, 2024 Hearing**

At the hearing, the court addressed the evidentiary shortfalls with respect to the Opposition. This being a Motion filed with notice provided pursuant to Local Bankruptcy Rule 9014-1(f)(2), the written Opposition was treated by the court as the oral opposition and has set the briefing schedule based on that.

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on August 1, 2024. On or before July 12, 2024, Amended Opposition to the Motion shall be filed and served by the Debtor in Possession. Reply pleadings, if any, shall be filed and served on or before July 19, 2024.

### **August 1, 2024 Hearing**

The court continued this hearing as counsel for Debtor in Possession reported that he would likely argue the Crawlers, the collateral that is subject to the Motion, are necessary for an effective reorganization. The court set the following deadlines in continuing this hearing: “On or before July 12, 2024, Amended Opposition to the Motion shall be filed and served by the Debtor in Possession. Reply pleadings, if any, shall be filed and served on or before July 19, 2024.” Order, Docket 51. The parties complied with their respective time lines.

On July 11, 2024, Debtor in Possession filed a Declaration in support of the proposition that the Crawlers are going to be necessary for an effective organization. Docket 61. Debtor in Possession states:

1. The Crawlers have proved integral to Debtor in Possession’s profitability over the course of many years and will in turn will be critical to his effective organization in that the income to be derived from the Crawlers will assist in supporting Plan payments. Decl. 2:9-12, Docket 61.
2. Debtor in Possession provides an income history for each Crawler, reporting that since 2016 the 1997 Crawler has cumulatively earned \$2,456,200, and since 2018 the 2007 Crawler has cumulatively earned \$1,834,000. *Id.* at 3:15, 3:25.
3. Debtor in Possession provides the following tables of income projections for each Crawler:

<b>1997 Crawler</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>
Deep Ripping	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
Pushing Dirt/ Leveling	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
Rental	\$360,000	\$360,000	\$360,000	\$360,000	\$360,000

<b>2007 Crawler</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>
Deep Ripping	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Pushing Dirt/ Leveling	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000
Rental	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000

*Id.* at 4:2-9.

4. Debtor in Possession states Movant is adequately protected in the Crawlers possessing a total market value of \$700,000, while Movant’s claim is in the amount of \$331,000. *Id.* at 4:20-23.
5. Movant is in possession of all of Debtor in Possession’s farm equipment, including the Crawlers, in the total market value of approximately \$1,000,000. *Id.*

### **Movant’s Sur Reply**

In Movant’s reply pleading filed on July 19, 2024, Movant states:

1. One concern raised at the hearing held on June 20, 2024, was the issue of insurance policies on the Crawlers. On or about July 2, 2024, an updated declaration page was received from Debtor in Possession for the insurance. The declaration page continues to identify the insured as Westside Production Solutions, Inc. and that “loss payables” were added, and states that only “Inland Marine Coverage” is provided. The full policy, however, has not been produced. Reply 2:11-14, Docket 69.
2. The court entered an Order on May 24, 2024, requiring Debtor in Possession to file monthly operating reports (“MOR”). Debtor in Possession has not filed any MORs. *Id.* at 2:21-24.
3. In Debtor in Possession’s Motion to Confirm the Plan, an unsubstantiated projection is attached which identifies the anticipated revenue from “custom farming” as \$1,250,000 for 2025, which is over \$1 million less than the projections for the use of the Crawlers. *Id.* at 3:3-4.

4. Debtor in Possession fails to provide any evidence or testimony establishing that the 2007 Crawler and the 1997 Crawler are necessary to an effective reorganization. No explanation is provided as to how the profitability from several years ago is relevant to a successful reorganization now or within a reasonable time. *Id.* at 3:23-28.
5. Debtor in Possession does not provide any term sheets, agreements, or other documentation that would demonstrate that income will be generated in the future by the use of the Crawlers. Debtor in Possession already admitted that his custom farming operation is not doing well and he only has one farmer client, who pays \$350 per acre for 20 acres. *Id.* at 4:4-7.
6. Despite this relatively minimal income, Debtor in Possession somehow speculates that he will earn \$2.41 million per year from the use of the Crawlers. *Id.* at 4:7-9.
7. Notably, \$960,000 per year of the combined projections come from the “Rental” of the Crawlers. Yet, the rental of the Crawlers is expressly prohibited by the terms of the loan documents with the Movant. *Id.* at 4:14-16.
8. Debtor in Possession has not yet even attempted to recover the Crawlers from Movant’s possession. *Id.* at 4:20-21.
9. Debtor in Possession has not received the court’s permission through a noticed hearing or Movant’s permission to use the cash collateral. *Id.* at 4:26-5:1.

#### **Proof of Claim 13-1**

#### **Filed by Movant**

Movant filed Proof of Claim 13-1 on June 11, 2024. Movant asserts a secured claim in the amount of (\$311,249.29), and states that the property securing the claim has a value of \$400,000. POC 13-1, Part 2 ¶ 9. Movant also states in Proof of Claim 13-1 that the annual interest rate of the Claim is 18%. *Id.*

Based on Movant’s Proof of Claim 13-1, there is an equity cushion of approximately 30%.

The UCC-1 Financing Statement attached to Proof of Claim 13-1, p. 15, lists the following items as collateral securing the (\$311,249.29) Claim:

Description:

- (1) 2000 Murray 16 Wheel Lowboy Trailer 1M9G45208YA056042
  - (1) 2011 Caterpillar 430E Backhoe Loader CAT0430ECSWC00383
  - (1) 2007 Caterpillar D6T XW Crawler Dozer with EROPS, Enclosed Cab, Heat, Air Condition, 6-Way Blade, Multi Shank Ripper, Laser DJG00316
  - (1) 2006 Peterbilt 367 Day Cab Tractor with a 550 Horse Power Cat Engine, 18 Speed Transmission, 22K lb Front Axle, 46K Rear Axles 1XPFD80X16D889446
  - (1) 2002 John Deere 544H Wheel Loader DW544HX583752
  - (1) 1997 Caterpillar 623F Elevating Scraper 6BK00396
  - (1) 2007 Caterpillar 330DL Excavator with Hydraulic Thumb, Hydraulic Quick Coupler MWP01950
  - (1) 2015 John Deere 9520R Scraper Tractor with 115GPM Hydraulic System, Drawbar Support, Hydraulic Trailer Brakes 1RW9520RCFE016196
  - (1) 2007 Caterpillar D10T Crawler Dozer RJG01025
  - (1) 1997 Caterpillar D10R Crawler Dozer 3KR00943
  - (1) 2013 Komatsu WA320-7 Wheel Loader with Tier 4 Interim, Bucket & A/C Cab KMTWA121C01080219
- and all attachments, accessions, improvements, tooling, replacements, replacement parts, software and software upgrades and all cash and non-cash proceeds (including rental proceeds, insurance proceeds, accounts and chattel paper arising out of or related to the sale, use, rental or other disposition thereof) of and to all of the foregoing. In addition to the foregoing collateral, all assets now owned or hereafter acquired. Secured Party includes Commercial Credit Group Inc. on behalf of itself and on behalf of all Affiliates of Commercial Credit, Inc.

## **Prosecution of Chapter 11 Case by Debtor in Possession**

As Movant notes, the Debtor in Possession has not filed any monthly operating reports, notwithstanding the required to so do. See Order Setting Chapter 12 Status Conference, stating:

**IT IS FURTHER ORDERED**, the debtor-in-possession shall prepare, file, and serve Monthly Operating Reports as required by LBR 2015-1 using the form found on the court's website

Order, p. 2; Dckt. 10.

Since the April 3, 2024 filing of this Bankruptcy Case, there are at least three Monthly Operating Reports that are required to be filed and have not been by the Debtor in Possession.

## **DISCUSSION**

Debtor in Possession makes the case that the Crawlers are going to be essential to an effective reorganization, even earning millions of dollars in revenue per year. However, Debtor in Possession does little to describe how he will achieve such a high income after seemingly winding up his business over the recent years. The record indicates Debtor in Possession only has one farmer client for his custom farming operation, earning a meager \$350 per acre for 20 acres.

Debtor in Possession has not filed any monthly operating reports despite this court order Debtor to do so on May 24, 2024. Docket 31. Of additional concern to the court is a lack of a Motion for Authorization to Use Cash Collateral on the Docket. If the Crawlers truly can generate such a large income, the court would expect to see not only efforts to quickly recover the Crawlers from Movant's possession, but also a Motion on the Docket seeking immediate authorization to use the cash collateral and start generating income.

11 U.S.C. § 363(c) provides:

(c)

(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

Movant has not consented to using the cash collateral, and this court has not granted authorization to use the cash collateral.

Furthermore, Movant states Debtor is yet to fully resolve the issue whether insurance has been properly provided.

### **Continuance of Hearing**

Pursuant to the Joint *Ex Parte* Motion and Stipulation of Movant and the Debtor in Possession, the court has continued the hearing to 10:00 a.m. on ` , 2024. Order; Dckt. 74.

### **August 22, 2024 Hearing**

As of the court's review of the Docket on August 16, 2024, no new documents have been filed with the court. At the hearing, counsel for the Debtor in Possession argued that Chapter 12 existed for debtors such as his client, but could not present any evidence of prosecution of this case. Counsel reported that the Debtor is working as a firefighter, earning \$1,000 a day fighting forest fires. Counsel states that the Debtor in Possession and counsel were still working get an insurance policy issued that named the Debtor, Estate, and Trustee as insureds, and Creditor as the loss payee. Counsel placed this on the insurance company as causing the problem.

Though five months into this Case, the Debtor in Possession has not been able to prosecute it. The Debtor in Possession has not been able to file monthly operating reports. The Debtor in Possession has not been able to operate any farming business due to the inability to obtain possession of the farming equipment due to the inability of Debtor in Possession to get an insurance policy.

As a final plea, counsel for the Debtor in Possession stated that they have a buyer for the equipment securing this claim, the sales price is enough to pay off Creditor's secured claim, and that the buyer will lease it back to the Debtor in Possession.

The court continues the hearing a final time to allow the Debtor in Possession to get a hearing set on the Motion to Sell Property and to have the property promptly sold. The hearing is continued to 10:00 a.m. on September 17, 2024.

The court shall issue an 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 for Relief from the Automatic Stay filed by Commercial Credit Group Inc. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the following two assets:

1. A 2007 Caterpillar D10T Crawler Dozer, Serial No. RJG01025 (“2007 Crawler”);
2. A 1997 Caterpillar D10R Crawler Dozer, Serial No. 3KR00943 (“1997 Crawler”) (collectively, “Crawlers”),

under the security agreements, loan documents granting a lien in the Crawlers, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Crawlers to the obligation secured thereby.

**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.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

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, Chapter 12 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on August 8, 2024. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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Creditor Commercial Credit Group Inc. ("Creditor") moves this court for an Order dismissing Jediah David Hoffman's ("Debtor in Possession") Chapter 12 case pursuant to 11 U.S.C. § 1208(c). Creditor states:

1. Among the assets of the Debtor in Possession's bankruptcy estate is an interest in various equipment, including (a) a 2007 Caterpillar D10T Crawler Dozer, Serial No. RJG01025 ("2007 Crawler"); and (b) a 1997 Caterpillar D10R Crawler Dozer, Serial No. 3KR00943 ("1997 Crawler"). Debtor in Possession's Amended Schedule D, in turn, identifies the Creditor's secured claim in the amount of \$300,000, lists its collateral as the 2007 Crawler, the 1997 Crawler, a John Deer 9520, Komatsu Wheel Loader, and a Peterbilt Truck, and collectively values the collateral at \$400,000.00. Mot. 2:4-11, Docket 80.
2. On or about June 14, 2024, the Internal Revenue Service ("IRS") filed Proof of Claim No. 15 in the amount of \$1,086,397.63, of which \$143,852.71 is secured and \$686,547.00 is unsecured priority. The IRS' claim is not identified on Debtor's Amended Schedule D. *Id.* at 2:12-15.
3. Debtor in Possession has continued to generally delay prosecution of the case, including by failing to provide proof of insurance of Creditor's collateral, filing a Chapter 12 Plan that is not confirmable, and by failing to

file monthly operating reports (despite the court ordering Debtor in Possession to do so).

4. Debtor in Possession's Chapter 12 case should be dismissed for cause because the Debtor in Possession is unreasonably delaying the case and there is gross mismanagement that is detrimental to creditors, and the Debtor in Possession will be unable to confirm a Plan as he has negative disposable income and cannot demonstrate feasibility. *Id.* at 4:24-27.
5. Here, over 125 days have passed since the filing of the Debtor's petition. Yet, the case is no closer to confirmation of a Plan than the day the case was filed. *Id.* at 5:6-7.
6. There is no hope for a reorganization. It is apparent that no plan will be feasible taking in consideration all of the secured claims and the priority claims asserted by the IRS. Debtor in Possession's Schedules identify negative disposable income. Debtor has not provided any information as to how any Plan will be funded. *Id.* at 5:20-23.

Creditor submits the Declaration of its attorney, Gabriel P. Herrera, in support to authenticate the facts alleged in the Motion. Docket 82.

## **CREDITOR'S STATUS REPORT**

Creditor filed a Status Report on September 12, 2024. Docket 123. Creditor states:

1. Debtor in Possession indicated at the previous hearing that he had a sale ready to go and would be filed the week of August 26, 2024, which would pay off Movant in full; however, the sale Motion was filed on September 9 and is set for hearing in late October. *Id.* at 1:22-23.
2. Debtor in Possession did not provide any sale agreement with the Motion. *Id.* at 1:23-24.
3. The sale will not generate enough proceeds to pay off Creditor's claim in full. *Id.* at 1:24-25.
4. The proposed deal is simply a further delay of a case in which court orders have been ignored and compliance with the Code has not been met. *Id.* at 1:27-2:1.
5. The sales price is \$311,249.29, which is the amount of Creditor's secured claim before taking into account accrued interest and potential other fees. Furthermore, there is an IRS junior security interest in the Crawlers in the amount of \$143,852.71, and the sale is not free and clear of this lien. *Id.* at 2:14-20.

## **DISCUSSION**



Dismissal of a Chapter 12 Case is governed by 11 U.S.C. § 1208(c), which provides:

(c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including—

- (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1221 of this title;
- (4) failure to commence making timely payments required by a confirmed plan;
- (5) denial of confirmation of a plan under section 1225 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1230 of this title, and denial of confirmation of a modified plan under section 1229 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan;
- (9) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation; and
- (10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

This list is not exhaustive. Regarding 11 U.S.C. § 1208(c), Collier's treatise on bankruptcy states:

The provisions of section 1208(c) are similar to sections 1112(b) and 1307(c), which govern dismissal of chapter 11 and chapter 13 cases, respectively. Unlike those two sections, section 1208(c) only authorizes dismissal of the case. Because the chapter 12 debtor is a farmer, the court may not convert a case involuntarily to chapter 7 even if the court believes that doing so is in the best interests of creditors. . .

Unreasonable delay can be found from the debtor's failure to file or confirm a plan on a timely basis, from the debtor's failure to modify a plan after confirmation has been denied, or from the debtor's failure to consummate or perform under the terms of a confirmed plan.<sup>6</sup> Prejudice to creditors ought to be fairly easy to demonstrate if either unreasonable delay or gross mismanagement has occurred. . .

If the debtor has tried but failed to obtain confirmation of a plan, and is attempting to obtain confirmation of a modified plan, the debtor should bear a greater burden in showing that the debtor still has reasonable prospects for rehabilitation. In considering the debtor's prospects, the court can refer to evidence introduced at the original confirmation hearing.

8 COLLIER ON BANKRUPTCY ¶¶ 1208.03[1] & [9].

In this case, the court finds dismissal is warranted pursuant to 11 U.S.C. § 1208(c)(1) and (9). Debtor in Possession has failed to adhere to the orders of the court, including by failing to file monthly operating reports. Moreover, the Plan filed in this case has no reasonable likelihood of confirmation, Debtor in Possession including inconsistent and unclear terms in the Plan. *See* Opp'n, Docket 76. The liquidation analysis attached to the proposed Plan is not even for this case. *See* Ex., Docket 56. There is no amended plan on file to correct any of these issues.

Instead of filing an amended plan, Debtor in Possession proposes to sell the collateral securing Creditor's claim and pay Creditor in full. However, a review of the Motion to Sell shows there is no purchase agreement submitted to the court. The court is unable to authorize the purchase of the heavy equipment without a written contract. Moreover, Debtor in Possession has not complied with the court's time lines. Debtor in Possession represented a sale was all but imminent; instead, Debtor in Possession now is asking for 90 days to close on the sale. Debtor in Possession further did not set the Motion to Sell for September 17, 2024, in violation of this court's order.

At the hearing, **XXXXXXX**

The court shall issue an 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 Dismiss the Chapter 13 case filed by Creditor Commercial Credit Group Inc. ("Creditor"), 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 to Dismiss is granted, and the case is dismissed.