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K.R.W.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at 12 o'clock & 11 min M
MAR 31 2005
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (S)

IN RE:

Jack L. Green, Jr.

Debtor.

C/A No. 03-05607-W

ORDER

Chapter 11

THIS MATTER comes before the Court upon Motion to Reopen Chapter 11 Case (the "Motion") filed by Jack L. Green, Jr. (the "Debtor"). Debtor seeks relief pursuant to 11 U.S.C. § 350(b) and 11 U.S.C. § 1142 for the purpose of aiding the consummation of his confirmed plan of reorganization (the "Plan"). Debtor states that he has an opportunity to fully pay and consummate the terms of the Plan one (1) year ahead of schedule by refinancing his real estate holdings through Beach First National Bank ("Beach First"). Debtor indicates that the case needs to be reopened for Debtor to file a motion seeking approval of the refinancing inasmuch as Beach First will be obtaining a first lien on Debtor's real property.

While it is likely that Debtor is responding to Beach First's desire for a "comfort" order, Debtor's Motion appears unnecessary for two reasons. First, the Court retains jurisdiction in many instances without reopening the case. Second, following confirmation in a Chapter 11 case, property vests in the debtor free and clear of court supervision. The debtor is emancipated from the bankruptcy court and is free to act without court approval. Nevertheless, Debtor indicated that its obtaining refinancing and providing advance payment to his creditors may be to a certain extent contingent upon Court approval. Since the necessity for reopening a case has been a source of confusion among practitioners and courts for some time, and in order to satisfy any requirements being placed on Debtor, the Court will expound upon the reasons that the Court need not grant Debtor any relief.

Jurisdiction is conferred upon the bankruptcy court by Title 28 of the United States Code. 28

U.S.C. § 1334 provides as follows, in relevant part:

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. § 1334(a) and (b). 28 U.S.C. § 1334(b) addresses three categories of subject matter jurisdiction: “arising under,” “arising in,” and “related to.” There is no requirement in 28 U.S.C. § 1334 that a case be open for a court to act.

It has been recognized that the continuation of jurisdiction by a bankruptcy court even in a closed case is clearest with respect to proceedings “arising under” title 11, and “arising in” and “related to” jurisdiction is arguably more attenuated given the reference in 28 U.S.C. § 1334(b) to proceedings arising in or related to *cases under title 11*. Menk v. Lapaglia (In re Menk), 241 B.R. 896, 907 (B.A.P. 9th Cir. 1999) (noting that jurisdiction with respect to arising in and related to cases is less clear in a closed case but concluding that reopening a case is not a jurisdictional prerequisite to subject matter jurisdiction). See also Aiello v. Providian Financial Corp. (In re Aiello), 231 B.R. 693, 707 (Bankr. N.D. Ill. 1999) (courts have held that closing of case does not affect jurisdiction to determine matters relevant to the case); In re Walker, 198 B.R. 476, 482 (Bankr. E.D. Va. 1996) (noting that court retains jurisdiction in a closed case when party is claiming a specific right or remedy created by a substantive provision of the Code). Nevertheless, courts have concluded that reopening a case is not the triggering mechanism for conferring jurisdiction and has no independent legal significance. Id. These courts typically relate the reopening of a case to a ministerial act designed to aid the clerk’s office

administrative processes.¹ See id. See also Millenium Energy, L.L.C. v. Kleban (In re Petroleum Prod. Mgmt.), 282 B.R. 9, 14-15 (B.A.P. 10th Cir. 2002) (noting that reopening affords no substantive relief and is of no legal significance); In re Coastline Care, Inc., 299 B.R. 373, 377 (Bankr. E.D.N.C. 2003) (reopening Chapter 11 case would be a ministerial act with no substantive effect); In re Ransom, No. 99-41389, 2000 WL 33712560, at *3 (Bankr. D. Idaho 2000) (noting that jurisdiction over a civil proceeding is not dependent upon the existence of an open case).

Based upon an analysis of 28 U.S.C. § 1334's jurisdictional provisions and case law interpreting the effect of reopening a case, it appears that reopening Debtor's case will not create jurisdiction. Reopening the case is of no independent legal significance and it thus appears unnecessary for this Court to act.

Additionally, the Court does not need to reopen this case because the relief to be ultimately sought by Debtor needs no blessing from this Court. Debtor seeks to refinance his real estate holdings in order to fully complete all payments due Debtor's Class 11 unsecured creditors in advance of the time period set forth in the Plan. 11 U.S.C. § 1141 provides as follows, in relevant part:

§ 1141. Effect of confirmation

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

Accordingly, property of the estate vested in Debtor upon confirmation. Debtor is now free to "transfer property, or enter agreements affecting the property, so long as no violation of the plan

¹ It now appears that with the advent of electronic case filing, the administrative necessity of reopening a case in order to retrieve a file or for other practical reasons is no longer as significant.

occurs.” See David G. Epstein et al., Bankruptcy § 10-29, at 56 (West 1992). Once the property vested in Debtor, Debtor can enter into contracts regarding the property whether advantageous or disadvantageous. Id. See also Alabama Fuel Sales Co. v. Newpark Resources, Inc. (In re Alabama Fuel Sales Co.), 45 B.R. 365, 366 (N.D. Ala. 1985) (debtor need not obtain approval of court to deal with its property). There is no indication from Debtor, and a review of the Plan confirms, that Debtor’s refinancing and paying its creditors earlier than anticipated is inconsistent with the terms of the Plan - creditors are simply to be paid ahead of schedule. The Plan provides for retention of liens of creditors, as provided therein, until payment of their claims. Debtor’s refinancing and encumbering of its properties is Debtor’s prerogative once the Plan was confirmed and his assets vested -- so long as such actions are not in violation of the Plan provisions. There appears to be no such prohibition in the Plan. An Order from this Court authorizing Debtor to take action with respect to its property and pay Class 11 creditors earlier than anticipated is unnecessary.² Nevertheless, the Court provides this Order to assist Debtor in its refinancing attempt for the benefit of its creditors. Accordingly, it is hereby

ORDERED that Debtor’s Motion to Reopen is denied.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
March 31, 2005.

² The Court recognizes that 11 U.S.C. § 1142(b) provides that the Court may issue orders to aid in consummation of the plan, and that Debtor’s Plan retained jurisdiction for this Court to issue orders necessary to carry out the Plan. The precise issue before the Court is whether an order is necessary, and the Court has found for the reasons stated herein that it is not. Further, Debtor has informally indicated that he may seek to abandon assets upon reopening of the case. Inasmuch as property has vested in Debtor and there is no longer an estate, the Court likewise views such relief as unnecessary.