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JUL - 7 2006

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

United States Bankruptcy Court
Columbia, South Carolina (7)

IN RE:

Derivium Capital, LLC,

Debtor(s).

C/A No. 05-15042-JW

Chapter 7

JUDGMENT

ENTERED

JUL - 7 2006

R.P.P.

Based upon the findings of fact and conclusions of law made in the attached order of the Court, the Chapter 7 Trustee's Application for Abandonment of Property is granted, and the objections filed by Debtor and other objecting parties are overruled.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
July 7, 2006

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Debtor(s).

ORDER

A.P.P.

This matter comes before the Court upon the Chapter 7 Trustee's Notice and Application for Abandonment of Property ("Application"). In the Application, the Chapter 7 Trustee, pursuant to 11 U.S.C. § 554(a), seeks to abandon the estate's interest in any causes of action against the Internal Revenue Service ("IRS") and any state taxing authority pursuant to 11 U.S.C. § 505 (the "§ 505 Actions"). By filing the Application, the Chapter 7 Trustee seeks to abandon causes of action that would require him to obtain a declaratory judgment that characterizes certain stock transactions conducted by Derivium Capital, LLC ("Debtor") as loan transactions for taxing purposes.

The Chapter 7 Trustee filed the Application on May 17, 2006. Charles Cathcart, one of Debtor's managing members, and nine individuals, who were parties to Debtor's stock transactions, (collectively Cathcart and the nine individuals shall be referred to as the "Objecting Parties") filed objections to the Application. During the hearing on the Application, counsel for the Chapter 7 Trustee indicated that upon the advice of Debtor, the Chapter 7 Trustee consulted with Debtor's tax counsel, Ned Ord, to investigate the benefits and merits of pursuing certain § 505 Actions. Debtor's tax counsel, however, advised the Chapter 7 Trustee that he would not pursue the § 505 Actions unless the Chapter 7 Trustee agreed to forego suing the Debtor's officers.

In light of the conditions expressed by Debtor's tax counsel and his apparent unwillingness to assist, the Chapter 7 Trustee procured his own tax counsel to review the merits and benefits of pursuing the § 505 Actions. After conducting an investigation of the financial records that were available to the Chapter 7 Trustee, the Chapter 7 Trustee's tax counsel concluded that pursuing the § 505 Actions would not benefit the estate and that it would be very difficult to succeed on the merits. After considering that advice, the Chapter 7 Trustee concluded that pursuing the § 505 Actions would be costly, produce no benefit to the estate, and would not be in the best interest of the estate. Furthermore, the Chapter 7 Trustee testified¹ that the estate does not have available funds to pursue the §505 Actions, and that by abandoning the § 505 Actions, the Debtor could independently pursue the tax dispute. The Objecting Parties do not dispute that abandonment of the §505 Actions would allow the Debtor to independently pursue the tax dispute. Nevertheless, the Objecting Parties believe that the Chapter 7 Trustee's Application should be denied because he has a fiduciary obligation to protect the Objecting Parties' interests.

In determining whether to abandon any estate property the Chapter 7 Trustee is guided by the best interests of the estate, not necessarily the best interests of the debtor and creditors. See In re Pilz Compact Disc, 229 B.R. 630, 639 (Bankr. E.D. Pa. 1999) (citing 3 Norton Bankruptcy Law and Practice 2d, § 53.1 at 53.2 to 53.4 (1997) (footnotes omitted). Accord L. King, 5 Collier on Bankruptcy P. 554.02[3] at 554-5 (15th ed. rev. 1998); In re Dewsnup, 908 F.2d 588 (10th Cir. 1990)).

¹ Without objection, the Chapter 7 Trustee's counsel proffered the testimony of the Chapter 7 Trustee and the Chapter 7 Trustee's tax counsel into the record for this matter.

Section 554(a) of the Bankruptcy Code provides that “the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” To decide whether a trustee has properly determined that abandonment of an asset is proper, the Court must examine whether the decision to abandon was (1) based upon the trustee’s business judgment, (2) made in good faith, (3) upon reasonable grounds, and (4) within the trustee’s scope of authority. In re Fulton, 162 B.R. 539, 540 (Bankr. W.D. Mo. 1993).

Upon the advice of his tax counsel, the Chapter 7 Trustee has concluded that pursuing the § 505 Actions would not benefit the estate or be in its best interests because (1) pursuing the § 505 Actions would not generate any monetary recovery for the estate and (2) success on the merits of the § 505 Action would be difficult. Moreover, the Chapter 7 Trustee indicated that the estate does not currently have the funds to pursue the § 505 Actions. In light of the steps taken by the Chapter 7 Trustee during his investigation and examination of the benefits and merits of the § 505 Actions and Debtor’s apparent failure to provide further assistance to the Trustee, this Court concludes that the Chapter 7 Trustee has taken adequate steps to meet the four requirements for determining whether to abandon the § 505 Actions. Accordingly, based upon the record developed during the hearing on the Application, the Court concludes that the Chapter 7 Trustee has adequately demonstrated that the § 505 Actions are burdensome and are of inconsequential value and benefit to the estate.

Furthermore, abandonment by the Chapter 7 Trustee does not appear to harm Debtor because upon abandonment, the Debtor can pursue the tax dispute on its own behalf. See In re Dewsnup, 908 F.2d 588, 590 (10th Cir. 1990); aff’d 502 U.S. 410, 116

L. Ed.2d 903 (1992). See also Vongrabe v. Mees, et al (In re Vongrabe), 332 B.R. 40, 44 (Bankr. M.D. Fla. 2005). Furthermore, the other Objecting Parties may litigate tax issues affecting their interests in appropriate alternative forums.

Therefore, based upon the record of this case and the authority cited herein, the Chapter 7 Trustee's Application is granted, and the Objecting Parties' objections are overruled.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
July 7, 2006