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at _____ o'clock & _____ min _____ M
NOV 2 2010
United States Bankruptcy Court
Columbia, South Carolina (26)

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

IN RE:

C/A No. 09-08956-JW

WH Land Company, LLC,

Chapter 11

Debtor(s).

**ORDER CONVERTING CASE UNDER
CHAPTER 11 TO CASE UNDER
CHAPTER 7**

This matter comes before the Court on a Rule to Show Cause entered by the Court on October 8, 2010 to determine if cause exists pursuant to 11 U.S.C. § 1112 (b) for the dismissal or conversion of the captioned case ("Rule"). WH Land Company, LLC ("Debtor") filed an objection to the Rule and William Floyd ("Floyd") filed a response to the Rule. A hearing on the Rule was held simultaneously with the continued confirmation hearing on October 20, 2010.

FINDINGS OF FACT

1. Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code on November 30, 2009.
2. The primary creditors are First Reliance Bank ("FRB") which holds a first mortgage interest on all of the real property owned by Debtor and Floyd who holds a second mortgage interest on the real property. There are additionally several insider creditors of Debtor and a few unsecured creditors holding small claims who have not appeared or filed proofs of claim in connection with this case.
3. On May 3, 2010, upon motion of FRB, an order was entered determining that the case constituted a single asset real estate case as defined by 11 U.S.C. 101(51B).

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4. On August 4, 2010, FRB filed a motion for relief from stay which was scheduled for a hearing on August 25, 2010 at the same time as the confirmation hearing.

5. The only objection to the FRB motion for relief from stay was filed by Debtor.

6. At the hearing held on August 25, 2010, Debtor and FRB announced a settlement agreement ("Settlement Agreement") in response to the relief from stay motion filed by FRB whereby Debtor would pay-off or refinance the debt owed to FRB by October 24, 2010. In the event that the FRB debt was not paid-off or re-financed by the deadline, FRB would be granted relief from stay. The confirmation hearing was continued to October 20, 2010.

7. A dispute arose between Debtor and FRB with respect to the language of the Settlement Agreement but was subsequently resolved with minimum clarification and FRB filed and served on all parties in interest an application for approval of the settlement.

8. A hearing was held on the application for settlement and the Court approved the settlement over the objection filed by Floyd who had requested that the Debtor's original plan be confirmed.

9. Debtor's only source of income are payments pursuant to a dirt mining permit which pass through an entity controlled by the principal of Debtor. After inquiry by the Court as to why payments to Debtor were not made or delayed, it was admitted that the principal of Debtor used the payments for his personal living expenses instead of paying Debtor. Such events raised serious concerns regarding Debtor's good faith, the administration of the case, and confirmation of Debtor's plan.

10. The Court indicated, absent a consensual resolution between Debtor and all creditors, that it would deny confirmation and convert or dismiss the case based upon several reasons including the absence of a reasonable likelihood of rehabilitation, the delay in the case being prejudicial to creditors, and the diversion of account receivables by Debtor's principal.

11. The continued confirmation and Rule hearing was held on October 20, 2010.

12. After no resolution was reached by the deadline of October 24, 2010, FRB filed an Affidavit of Default and the Court thereafter entered an order granting FRB relief from the automatic stay.

13. A judgment denying confirmation of Debtor's plan filed on May 28, 2010 was entered on November 2, 2010.

CONCLUSIONS OF LAW

In its Objection, Debtor requested the opportunity to complete its settlement with FRB by the October 24, 2010 deadline before the Court determines whether to dismiss or convert the case for cause. Debtor acknowledged in the Objection that if a settlement with FRB was unsuccessful by the deadline, FRB would be entitled to relief from the automatic stay and, because this is a single asset real estate case, no further protections under chapter 11 would be warranted.

In the Response, Floyd did not take a position on whether the Court should dismiss or convert the case, but asserted that conversion would be more appropriate than dismissal for the following reasons: 1) a Chapter 7 case would provide a means for examining potential fraudulent conveyances and avoidable transactions to be recovered

for the benefit of the bankruptcy estate and 2) a Chapter 7 case may preserve the value, if any, existing in the mining permit for the benefit of all creditors.

Upon consideration of the evidence presented to the Court including FRB obtaining relief from the automatic stay pursuant to the terms of the settlement agreement, Debtor's mishandling of its income, and confirmation of Debtor's plan being denied, the Court finds cause exists for dismissal or conversion of the case. Upon the consideration of the best interest of the creditors, it is hereby

ORDERED that this case be, and the same hereby is, converted to Chapter 7 of Title 11 of the United States Code; and it is further

ORDERED that the Chapter 7 case remain assigned to the undersigned; and it is further

ORDERED that Debtor file in the office of the Clerk of this Court, within fourteen (14) days of the entry of the order:

- (1) final statements of profit and loss and cash position through the date of conversion,
- (2) additional schedules (Schedule D - Creditors Holding Secured Claims or Interests,
Schedule E - Creditors Holding Unsecured Priority Claims or Interests,
Schedule F - Creditors Holding Unsecured Non-Priority Claims or Interests)

showing claims or interests against the debtor(s) arising subsequent to the granting of the Chapter 11 relief,

- (3) a mailing matrix,
- (4) revised schedules (Schedule A - Real Property,
Schedule B - Personal Property,
Schedule C - Property Claimed As Exempt,
Schedule I - Current Income of Individual Debtor,
Schedule J - Current Expenditures of Individual Debtor),

- (5) description of any post-petition transactions that should be reflected in a Statement of Affairs filed as of the date of conversion, and

IT IS FURTHER ORDERED that:

Debtor shall immediately turn over to the Chapter 7 interim trustee all estate property and records which the trustee shall reasonably request.

Debtor shall immediately cease all business operations and take all necessary and appropriate action to insure that estate assets are properly preserved for the Chapter 7 interim trustee.

Debtor shall immediately relinquish control of its operations and estate property to the interim trustee and permit the interim trustee and his agents unlimited reasonable access to estate property.

Counsel for Debtor shall cooperate fully with the interim trustee, upon the appointment by the United States Trustee of such interim trustee, and take all reasonable action to insure that Debtor complies with this order.

The clerk shall forward a copy of this order to Debtor, the attorney for Debtor, and the United States Trustee.

Failure to comply with this order may result in the dismissal of the case or other appropriate sanctions.

AND IT IS SO ORDERED.

Columbia, South Carolina
November 2, 2010


UNITED STATES BANKRUPTCY JUDGE