

U.S. BANKRUPTCY COURT  
District of South Carolina

Case Number: 09-04624

Order

The relief set forth on the following pages, for a total of 8 pages including this page,  
is hereby ORDERED.

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**FILED BY THE COURT**  
**11/20/2009**



Entered: 11/20/2009

US Bankruptcy Court Judge  
District of South Carolina

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

IN RE:

Ray Lyle Covington,

Debtor(s).

C/A No. 09-04624-HB

Chapter 11

**ORDER**

**THIS MATTER** came before the Court for hearing on November 12, 2009, pursuant to the Motion of Branch Banking and Trust Company (BB&T) for relief from the automatic stay of 11 U.S.C. §362. After considering the testimony and documentary evidence, proffers of evidence and after careful consideration, the Court enters the following **ORDER**:

**Findings of Fact**

1. Ray Lyle Covington filed for Chapter 11 protection on June 23, 2009. No trustee has been appointed in the case.
2. Covington filed a Motion to Extend the Exclusivity period for filing a plan of reorganization and has received a brief extension until November 27, 2009.
3. On October 14, 2009, BB&T filed its Motion for Relief involving property located at 607 Meadow Street, Columbia, South Carolina.
4. Covington's schedules list various parcels of income producing and investment property. Covington is also a real estate agent in Columbia, South Carolina. Since 2003 he has operated a franchise of Weichert Realtors. This business associates numerous real estate agents and provides a portion of Covington's personal income.
5. Covington offered into evidence projections of the income and expenses for this property as set forth below:

<b>Property:</b>	807 Meadow Street	
Income Rents:	14340	
<b>Expenses:</b>		
Advertising	500	
Auto and Travel	0	
Cleaning and Maintenance	0	
Insurance	850	
Commission	1434	
Repairs	2500	
Supplies	0	
Taxes	2732	
Utilities	500	
Regime Fees	0	
Pest Control	0	
Vacancy Rate (Two Months)	2400	
<b>Total Expenses</b>	<b>10716</b>	

6. If the property is rented for \$14,340.00 annually with expenses of \$10,716.00 the rent available thereafter for debt services is \$3624 per year. However, Covington testified that many of the expenses could be inflated and the Court agrees that many of the expenses set forth in paragraph 5 are inflated, may not occur, or are possibly unnecessary.

7. BB&T's Motion seeks relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (2). The Motion includes a Certification of Facts that stated information about the property as follows:

Fair Market Value	\$171,000.00 <sup>1</sup>
Liens (Mortgages)	\$122,871.60
Equity Before Exemption	0
Debtor's Exemption (-)	0
Net Equity	0

Lienholder	Amount
Branch Banking and Trust Company	\$122,871.60
Chase (1 <sup>st</sup> Priority Lien)	\$129,200.00
Total Liens	\$252,071.60

Source/Basis of Value: Debtor's Schedules

1 The stated value is from the Debtor's schedules as to which he is bound by various theories of estoppel. Movant reserves the right to have the property valued at a greater value than set forth herein and would assert that the value of the property is in excess of the value claimed by the Debtor but not of sufficient value to create equity sufficient to cover the indebtedness of the Movant

8. Covington's objection to the Motion includes a Certification of Facts with the following information:

Fair Market Value	<u>\$ 171,000.00</u>
Liens (Mortgages)(-)	
1 <sup>st</sup> Mtg Chase	<u>\$ 129,200.00</u>
2 <sup>ns</sup> Mtg Movant	<u>\$ 122,871.00</u>
Equity Before Exemption	<u>\$ 0.00</u>
Debtor's Exemption (-)	<u>\$ 0.00</u>
Net Equity	<u>\$ 0.00</u>

9. Covington listed 607 Meadow Street on his schedules as having a value of \$111,600.00 under the "Current Value" entry, with the following explanation:

*Long Term Rental Unit located at 607 Meadow Street, Columbia, SC 29205; TMS No R11312-05-11; Tax value \$128,300; 2009 Online appraisal based on comps \$171,000. Debtor believes property to be worth \$111,600 in today's market.*

10. Covington offered into evidence a draft of a disclosure statement that included a summary of a draft plan of reorganization. Chase has a first mortgage on the 607 Meadow Street property and the draft states that Chase "filed a secured claim on August 31, 2009 in the amount of \$134,248.99. The Debtor believes the value of the property is \$110,000. The Debtor will pay the value of the claim amount in the total principal amount of \$110,000, plus 2% interest by making interest only monthly payments each in the amount of \$183.34 over 180 months...with the remainder due as a balloon payment due at the end of the 180 months..." The remainder of Chase's claim and the second lien of BB&T are treated as general unsecured claims.

11. Using Covington's projections for this property, should Covington have to pay a higher interest rate or a shorter term for amortization of the debt associated with

this property than that proposed in the plan, the projected rentals would not cover the debt service.<sup>1</sup>

12. In the draft Covington proposed similar repayments terms—2% interest only payments with a balloon note at the end of a 180 month term—on various other obligations. He testified that this was simply a “wish list” of terms that he would hope to have, but he was willing to pay more. He conceded that the prime rate of interest exceeds 2%.

13. The draft proposes to pay 1% to general unsecured claims. Covington offered evidence indicating that this distribution may be proposed in a higher amount depending on any recovery from a lawsuit and the amount of claims in this class.

14. Covington presented his monthly operating reports into evidence. Those reports indicate income from rental properties with little debt service deducted because he is paying only limited debt service to mortgage holders. The reports also include income from his business Weichert Realtors, but there was very little evidence presented to indicate the income and expenses of that company, debt structure, or sustainability of that company and its associated personal and rental income stream to Covington.

15. Covington testified that he has offered adequate protection payments to this and other creditors but those offers have not been accepted. Covington testified that currently the market for his property is poor and the realty is not appreciating.

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<sup>1</sup> \$110,000.00, the property value stated in the plan, amortized for 180 months at a modest 5% yields payments of approximately \$ 870.00 per month, \$10,440.00 per year. At this rate of repayment the rent would be exhausted after estimated taxes, insurance and utilities. At a value of \$171,000.00 at 5% for 180 months the annual payments total approximately \$16,225.00.

### **Discussion and Conclusions of Law**

BB&T has the burden of proof regarding equity in the property; Covington has the burden of proof on all other issues. 11 U.S.C. §362(g).

Section 362(d)(2) provides the following regarding when stay relief may be granted:

[W]ith respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

Valuation figures presented to the Court by Covington and BB&T range from \$110,000 to \$171,000. BB&T has met its burden of proving that Covington has no equity in the property after considering all of the liens on the property and any of the values before the Court. Therefore, to defeat the creditor's Motion under § 362(d)(2), Covington must show that the property located at 607 Meadow Street is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *see also In re Maude H. Henderson and Daniel S. Henderson, IV Irrevocable Trust*, C/A No. 08-01814-W, slip op. at 5 (Bankr. D.S.C. May 7, 2008). Covington must establish "that there is 'a reasonable possibility of a successful reorganization within a reasonable period of time.'" *In re Mullock*, 404 B.R. 800, 805-06 (Bankr. E.D. Pa. 2009). In other words, it is not enough to show "that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect*." *United Sav. Asso v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 375-76 (U.S. 1988).

Covington has offered some evidence that he can continue towards some form of reorganization by utilizing some of his assets. From the evidence presented, the Court is skeptical about Covington's reorganization prospects in today's real estate market under

the draft plan. However, Covington proposed at the hearing that he was willing to alter the draft plan to surrender property that is not necessary to an effective reorganization, and to incorporate the Court's rulings on this matter and others heard by the Court on the same day.<sup>2</sup> Based on the range of value that is before the Court, Covington has not met his burden of proving that this particular property, 607 Meadow Street, is necessary for an effective reorganization. The evidence indicates that the value of this property is between \$110,000 and \$171,000. Even *if* the property continues to be rented, *if* expenses are minimized and *if* Covington is able to limit payment of secured debt to an amount within this value range with a reasonable repayment schedule, the evidence does not indicate that there is any equity in this property for the estate or any excess cash flow available from this property on the horizon to aid a reorganization. Weighing all of the evidence presented, Covington has not met his burden of proving that the property located at 607 Meadow is necessary for an effective reorganization.

BB&T also requests relief pursuant to 11 U.S.C. §362(d)(1), which provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

BB&T argues that Covington has used its cash collateral, the rents of 607 Meadow Street, since the filing of this case without its consent or court order and that this conduct is inappropriate and constitutes cause for relief under §362(d)(1). The Court agrees that this is an additional basis for relief on the facts of this case. *See* 11 U.S.C. §363; *In re R & G*

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<sup>2</sup> Relief from stay has been granted regarding several properties since the hearing on this matter. The Debtor must file a plan by November 27, 2009.

*Props.*, 2009 Bankr. LEXIS 2100 (Bankr. D. Vt. July 6, 2009); *In re FCX, Inc.*, 54 B.R. 833, 838 (Bankr. E.D.N.C. 1985).

**IT IS THEREFORE, ORDERED:**

That the automatic stay of 11 U.S.C. §362 is hereby modified to allow BB&T to pursue actions in State Court against its collateral located at 607 Meadow Street, Columbia, South Carolina, and the rents and profits.