UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In Re:	)	
	)	Case No. 00-10572-W
Carowinds Boulevard Homes, Inc., d/b/a Jerry Lathan's RV World	)	Chapter 11
	)	
Debtor.	)	
	)	

ORDER APPOINTING A CHAPTER 11 TRUSTEE AND APPROVING PARTIAL USE OF CASH COLLATERAL

THIS MATTER came before the Court on the Motion of NationsCredit Distribution Finance, Inc., now known as Banc of America Specialty Finance, Inc., Fleetwood Credit Corporation and Deutsche Financial Services Corporation (collectively the "Lenders") to Convert Debtor's Case to Chapter 7 pursuant to 11 U.S.C. §1112[1] (the "Conversion Motion") and on Debtor's Motion to Use Cash Collateral (the "Cash Collateral Motion"). These are core proceedings; this Court has jurisdiction to determine these matters pursuant to 28 U.S.C. § 157(b)(2)(M) and Local Civil Rule 83.X.01, DSC. Based upon the evidence presented by the parties and the pleadings before the Court, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On or about November 21, 2000, Carowinds Boulevard Homes, Inc. ("Debtor") filed its petition for relief pursuant to Chapter 11 of the United States Bankruptcy Code (the "Filing Date"). Debtor's business consists of selling recreational vehicles, repairing recreational vehicles and performing warranty work.

[1] All further references to the Unites States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., will be by section number only.

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2. The Lenders hold secured claims against Debtor in the approximate amount of $2,896,668 for Banc of America, $1,864,999 for Fleetwood and $2,453,376.67 for Deutsche Financial Services, which claims are allowed claims pursuant to § 502.

3. The Lenders' claims against Debtor arise out of loans (the "Loans") made by Lenders to Debtor. The Loans are secured by, in part, Debtor's inventory which consists of recreational vehicles.

4. The Lenders allege and presented evidence that they have valid, nonvoidable, perfected security interest in all inventory, all replacements and substitutions therefor, all parts, additions and accessions thereto, all returned or repossessed goods, all equipment, accounts, contract rights, chattel paper, documents, securities and other investment property, general intangibles, other assets of any kind or nature, the proceeds and products of the foregoing, and any and all other collateral set forth in the documents evidencing and securing the Loans (collectively the "Collateral"). However, the Court makes no determination at this time as to whether the Loans are properly perfected.

5. Gary Brown, a Vice-President at Banc of America, testified that inspections of the Collateral which were conducted on November 20 and 21, 2000 by Banc of America and Fleetwood indicate that Debtor is out-of-trust[2] to Banc of America and Fleetwood in the approximate amount of $2.1 million. Kelley Johnson, a branch manager for Deutsche Financial Services, testified that inspections of Deutsche's Collateral on November 27, 2000 indicated that Debtor was out-of-trust to it in the amount of $1.2 million. The Lenders also discovered that some of the inventory which Debtor had stated was being shown to prospective customers, used

[2] "Out of trust" is a term of art which refers to the failure by a borrower to remit proceeds which are due to a floor plan lender when a unit it has financed has been sold by the borrower.

or held off site, had in fact been sold. Moreover, the Lenders discovered that some of their Collateral was being used as trade to obtain advertising.

6. At the hearing on the Conversion Motion, the Lenders also provided evidence that substantial transfers occurred between Debtor and individuals who have an ownership interest in Debtor, other family members, and other entities owned by family members. The evidence presented to the Court also indicated that preferential transfers may have occurred. B. J. Lathan, the representative for Debtor, testified that the Debtor had made payments to credit card companies for which family members were individually responsible. Additionally, Mr. Lathan testified that the Debtor was remitting car payments for vehicles which were driven by Jerry Lathan, David Lathan[3] and David Lathan's wife, all of which are not employees of Debtor. The Court finds that the Lenders have sufficiently demonstrated that the mismanagement which occurred pre-petition rises to the level of gross mismanagement.

7. B.J. Lathan testified that Linda Lathan had been working for Debtor since May 2000 in an effort to assist in the maintenance of Debtor's books and records. B.J. Lathan's, whose activities and involvement with Debtor had been restricted to sales prior to December 1, 2000, testified that he would rely on his mother, Linda Lathan, in organizing Debtor's books and records and determining how to operate. B.J. Lathan also testified that David Lathan still had access to Debtor's facility and knew the combination to the safe where Debtor's proceeds were maintained until they could be deposited into a banking account. The Court finds that the post-petition management has not sufficiently distanced itself from the pre-petition management. While the post-petition management has taken some steps to assist Debtor in reorganizing (e.g.,

[3] On the Filing Date, David Lathan was the Debtor's President and signed the Schedules and Statements. However, he resigned on December 1, 2000. Prior to his resignation, B.J. Lathan testified that his brother, David Lathan, maintained Debtor's books and records.

reducing rent, returning inventory, laying off staff, and closing one site), these actions are not sufficient to address the concerns which the Lenders have expressed.

8. The Lenders requested various books and records which Debtor has not produced either because it failed to keep such books and records or cannot locate them.

9. The moving creditors represent more than 90% of Debtor's debt. The testimony of Gary Brown and Kelley Johnson demonstrated that the Lenders will have a substantial deficiency and are undersecured in an approximate amount of $3 million. Debtor did not present any evidence to rebut this testimony of the Lenders. The Lenders have expressed a lack of confidence in the management. The Court finds that a substantial portion of Debtor's creditors have expressed a lack of confidence in Debtor's management.

10. Gary Brown and Kelley Johnson also testified that the Lenders would not be providing any further floor plan lending to Debtor. John Barbee, a certified public accountant and Chapter 7 trustee who was admitted as an expert, testified that in his opinion Debtor would be unable to obtain floor plan lending from any other source. Based on the evidence presented at the hearing, the Court has grave concerns regarding whether Debtor can find any source of funds to continue operating.

11. Debtor has alleged that it may be able to sell its business as an on-going concern. As the Court finds that a sale of business is one form of reorganization, the Court finds that the creditors did not demonstrate that Debtor did not have an ability to reorganize at this early stage of the bankruptcy process.

12. In addition to the Conversion Motion, Debtor has moved for the Court to approve its use of the Lenders' Cash Collateral. The Lenders have objected to such use and the Court has previously allowed a temporary two-week use of funds. Debtor has now requested the use of

Cash Collateral in the approximate amount of $56,000 through January 4, 2000. Upon further inquiry by the Court, Debtor has requested the use of $18,000 of the Lenders' Cash Collateral from December 14, 2000 through December 20, 2000 to pay telephone expenses, UPS charges, the payroll service, EMC Insurance Company Garage Liability, Worker Compensation, the NC Department of Revenue, Metrolina Safe & Lock, payroll, taxes, and part purchases. The Court finds that the requested use of the Lenders' Cash Collateral in the amount of $18,000 is reasonable.

CONCLUSIONS OF LAW

Section 1112(b) provides that a case pending under Chapter 11 may be converted to Chapter 7 upon request of a party in interest and after notice and a hearing. The Court may convert or dismiss the case, whichever is in the best interest of the estate, for "cause", including in part; (1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation; or (2) inability to effectuate a plan, §1112(b)(1)-(2). The list of causes provided in § 1112 is not exhaustive and the Court is given broad discretion in determining what may constitute sufficient "cause". Toibb v. Radloff, 501 U.S. 157, 165 (1991); In re Dunes Hotel Assocs., Case No. 94-75715-W (Bankr. D.S.C. 1996), aff'd 98-0535-18 (DSC 2/18/00). In determining whether a case should be converted, the Court may also consider Debtor's conduct. See In re Tolco Properties, Inc., 6 B.R. 482 (Bankr. E.D. Va. 1980) (considering prior conduct but denying the request of conversion). In this case, Debtors' improper use of Collateral, its significant out-of-trust status, its untruthful statements regarding the location of the Collateral, and the present management's failure to distance itself from the pre-petition management all support that the current management should no longer administer or control possession of the Collateral.

Conversion is a drastic remedy and this case was only 21 days old at the time of the hearing on the Conversion Motion. In Carolin Corp. v. Miller, 886 F.2d 693 (4th Cir. 1989), the Fourth Circuit Court of Appeals cautioned against dismissing or converting a case prematurely. In the early stages of a case, the moving party has a significant burden to demonstrate that the reorganization is objectively futile. In this case, Debtor has argued among other things that a potential sale of its assets is one possible form of reorganization.

However, because the Lenders have demonstrated that their Collateral would be at risk if the current management is allowed to retain control, this Court is inclined to grant them a lesser remedy than conversion to protect their interest. Courts have generally held that where there is a loss of creditor confidence in the debtor's ability to manage, the appointment of a trustee is essential. See In re Cardinal Industries, Inc., 109 B.R. 755 (Bkrtcy.S.D. Ohio, 1990). The Lenders have testified that they have no confidence in the ability of Debtor's management to operate this estate, and the evidence presented at the hearing demonstrated that their concerns are not unfounded. Therefore, the Court finds that the appointment of a Chapter 11 trustee is appropriate in this case at this time. Due to the circumstances in this case, the Court emphasizes that time is of the essence in finding a suitable trustee.

In the interim, Debtor has current expenses which must be paid if Debtor is to continue operating; therefore, the Court also finds that Debtor may use $18,000 in Cash Collateral through December 20, 2000 to pay the expenses which Debtor identified as essential at the hearing. It is therefore;

ORDERED that a Chapter 11 trustee is to be appointed in this matter effective as of December 14, 2000. The Court will hold a hearing on December 20, 2000 to consider approval of appointment of a trustee based upon the recommendation of the United States Trustee. The Conversion Motion and Cash Collateral Motion is continued to January 4, 2001 to allow the

Chapter 11 trustee an opportunity to analyze the financial condition of Debtor and the feasibility of any reorganization efforts.

IT IS FURTHER ORDERED that Debtor is authorized to use $18,000 through December 20, 2000 in Cash Collateral for essential expenses identified at the hearing.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 18, 2000.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

DEC 20 2000

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE KST

KATHLEEN HEATHERLY KW

Bill Short
+ Bill Calloway
Linda Barnes Gyrd
Flynn Duffy