UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 11-02958-JW
	Chapter 11
Charles R. Ferguson,	**ORDER**
Debtor(s).	

This matter comes before the Court upon a motion for relief from stay (the "Motion") filed by Regions Bank ("Regions"). Debtor objected to the Motion and a hearing was held on February 7, 2012. In accordance with Fed. R. Bankr. P. 7052 and 9014(c), and based upon the pleadings and testimony presented at the hearing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code on May 2, 2011. Debtor later filed an amended petition for relief on June 24, 2011.

2. Debtor owns over twenty properties and has at least eight secured creditors and over forty unsecured creditors, which are collectively owed over $8,000,000.00.

3. Regions is one of Debtor's secured creditors. Debtor is indebted to Regions under five promissory notes, each of which is secured by mortgages on numerous parcels of real property owned by Debtor. As of the date Debtor filed his petition for relief, each of these promissory notes was due in full.

4. Debtor's first plan and disclosure statement were filed on October 31, 2011.[1] Seven objections were filed to the disclosure statement. A hearing to determine the adequacy of

[1] The delay was due in part because Debtor's attorney at the commencement of the case withdrew as counsel on August 9, 2011—after the United States Trustee raised concerns about the attorney's business connections with Debtor.

the disclosure statement was initially scheduled for December 28, 2011, but was continued twice in order to give Debtor time to address all of the objections. A hearing on the disclosure statement was subsequently held on February 7, 2012, at which time the United States Trustee asked the court to deny approval of the disclosure statement and convert the chase to a chapter 7 based on the shortfalls in the disclosure statement, the length of time Debtor had been in bankruptcy without a confirmed plan, and his belief that Debtor would be unable to reorganize under chapter 11.[2]

5. Regions filed the Motion on January 11, 2012, seeking relief as to fourteen parcels owned by Debtor and secured by Regions' mortgages. According to the Certificate of Service accompanying the Motion, it appears that all of Debtor's secured creditors were served with the Motion. None of them filed an objection to the relief sought. Debtor filed an objection, but only objected to the relief as it related to three of the properties. Regions subsequently elected not to pursue relief from stay as to two of these properties, leaving 94.15 acres of unimproved property located on 100 Pap Kee Lane in Seabrook, South Carolina (the "Rural Parcel") as the only property in dispute. The Rural Parcel secures payments of two of the notes held by Regions.

6. A hearing on the Motion was held on February 7, 2012. While the parties disagreed as to how much the Rural Parcel was worth, Debtor conceded that the amount of liens on the property exceeded its value and that Regions was undersecured.[3] The parties' disagreement centered on whether the property was necessary for an effective reorganization and whether Regions was entitled to relief from stay for cause.

[2] On February 15, 2012, immediately prior to the entry of this Order, Debtor filed an amended disclosure statement. As a result of that filing, the United States Trustee withdrew his objection to the disclosure statement.

[3] Regions stated that the amount owing on the notes at the time of the hearing was well over $1,000,000.00 and that the Rural Parcel was worth $800,000.00. At the hearing, Debtor stated his belief that the Rural Parcel was only worth $200,000.00.

7. At the hearing, Debtor argued that if relief from stay is granted as to the Rural Parcel, various other parcels of property which border the Rural Parcel and are also owned by Debtor and subject to other mortgages, would suffer a diminution in value and hinder Debtor's ability to effectively reorganize. Regions contended that the Rural Parcel was not necessary to an effective reorganization because it is raw, unimproved property that does not produce any income and for the additional reason that Debtor's chapter 11 plan does not propose to sell, farm, develop, or make any income producing use of the Rural Parcel. Regions further challenged whether the Rural Parcel added value to the surrounding properties owned by Debtor.

8. Debtor was the only witness who testified at the hearing. On direct examination, Debtor testified that he also owned two parcels adjacent to the Rural Parcel, including a nine acre parcel on which Debtor's personal residence sits (the "Residential Parcel") and a twenty-four acre unimproved parcel located to the northwest of the Rural Parcel (the "Northwest Parcel"). Debtor admitted that there was no equity in the Rural Parcel. Regarding the necessity of the Rural Parcel to an effective reorganization, Debtor stated that the Residential Parcel contained equestrian facilities and that the Rural Parcel contained the grazing pastures necessary for these facilities to function as originally intended. However, Debtor disclosed that he had sold his horses approximately five years ago and that the grazing pastures were not being used. Additionally, Debtor stated that the value of the Northwest Parcel was inextricably tied to the Rural Parcel because the former was inaccessible without traveling through the latter.

9. On cross examination, Debtor admitted that he has not paid the 2011 property taxes and was unsure whether he had paid the 2010 taxes on the Rural Parcel. No animals were currently housed in the facilities on the Residential Parcel or using the pastures on the Rural Parcel. It was also revealed during Debtor's testimony that he had timbered a portion of the

Rural Parcel last year; however, Debtor's proposed plan does not propose to continue to do so as a means of generating income to fund his plan of reorganization. Debtor also stated that in 2002 through 2004, he planned to subdivide the Rural Parcel into twenty smaller parcels, but that this idea was later abandoned. However, Debtor did state that if the economy improved, the subdivision would be a "viable" option. Debtor does not intend to subdivide the Rural Parcel to fund his plan of reorganization.

CONCLUSIONS OF LAW

Regions seeks relief from stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2). Those subsections provide:

> 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;
>
> (2) with 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.

With respect to § 362(d)(2), the party requesting such relief has the burden of proving that no equity exists in the collateral at issue. § 362(g)(1). Regions contends that it is owed over $1,000,000.00 on the notes secured by the mortgage on the Rural Parcel and that the property is worth approximately $800,000.00. While Debtor disagrees as to the value of the Rural Parcel, he concedes that there is no equity in the property. Therefore, Regions has met its burden under § 362(g)(1).

Once the movant has established that there is no equity in the collateral, the burden shifts to the debtor to prove that the collateral is necessary for an effective reorganization. § 362(g)(2).

The United States Supreme Court has elaborated on what needs to be shown in order for a debtor to satisfy this second element of the two-part test:

> What this requires is not merely a showing 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.* This means, as many lower courts, including the en banc court in this case, have properly said, that there must be "a reasonable possibility of a successful reorganization within a reasonable time."

United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd. (Timbers), 484 U.S. 365, 375–76 (1988) (quoting In re Timbers of Inwood Forest Assocs., Ltd., 808 F.2d 363, 370 (5th Cir. 1987) (emphasis in original).

This Court finds that Debtor has failed to prove that the Rural Parcel is necessary to an effective reorganization. According to Debtor, the primary reason that the Rural Parcel is necessary to an effective reorganization is that granting Regions relief from stay would have an adverse effect on the values of the surrounding properties. However, Debtor testified that his original plan was to subdivide the Rural Parcel into twenty smaller parcels, which contradicts his assertion that the Rural Parcel and surrounding properties need to be under common ownership in order to retain their value. While Debtor testified that the Northwest Parcel was inaccessible without crossing the Rural Parcel, no evidence was offered to show that access to the Northwest Parcel would be denied if the Motion is granted or that such access could not be obtained through other legal or equitable means. Considering the minimal evidence presented by Debtor on this issue, the Court finds that any adverse effect on the values of the surrounding properties is merely speculative.

Even assuming that the value of the surrounding properties would decrease if relief from stay is granted, this does not prove that the property is "essential for an effective reorganization that is in prospect." See Timbers, 484 U.S. at 376. The creditors with interests in the adjacent

parcels were served with the Motion and did not object. Additionally, as Regions pointed out, the proposed plan makes no use of the Rural Parcel. The Rural Parcel would not provide any funding to the proposed plan, and Debtor admitted that it is not currently needed for any animals. Therefore, the Court is not convinced that the Rural Parcel is essential to Debtor's reorganization.

Further, Debtor has failed to meet his burden of showing that there is a reasonable possibility of an effective reorganization within a reasonable amount of time. An effective reorganization "contemplates a plan that is feasible, meaning that there exists a 'probability of actual performance of provisions of the plan. . . . The test is whether things which are to be done after confirmation can be done as a practical matter under the facts.'" In re Eskim, LLC, No. 08–509, 2008 WL 4093574, at * 3 (Bankr. N.D. W. Va. Aug. 28, 2008) (quoting Clarkson v. Cooke Sales and Serv. Co. (In re Clarkson), 767 F.2d 417, 420 (8th Cir. 1985)).

Debtor proposes to finance monthly plan payments, which include mortgage payments on the properties that Debtor proposes to keep, of $12,427.45 from the earnings of his business, Meridian Company, LLC ("Meridian"). Attached to the disclosure statement is Meridian's 2011 profit and loss statement, which indicates that Meridian had a net income of $39,792.31 in 2011. This equates to a monthly net income of $3,316.03 for that year. According to financial projections attached to the disclosure statement, Meridian is projected to make an average net income of $16,037.50 per month in 2012—a considerable increase from 2011. No evidence was offered at the February 7, 2012 hearing to support the 2012 projections. The disclosure statement also recognizes that Meridian may not be as profitable as anticipated. Given the current state of the economy and the lack of convincing evidence offered to support these

figures, the Court cannot conclude that Debtor has met his burden of proving that an effective reorganization is within reasonable prospect.

CONCLUSION

For the foregoing reasons, the Court finds that Debtor has not shown that the Rural Parcel is necessary for an effective reorganization or that there is a reasonable possibility of a successful reorganization within a reasonable time. Therefore, Debtor has not met his burden under § 362(g)(2) and Regions Bank is granted relief from stay pursuant to § 362(d)(2) in order to pursue its state law remedies with respect to the 94.15 acre tract on Pap Kee Lane as well as to the other eleven parcels to which Debtor did not oppose the relief requested. Regions' Motion is considered to be withdrawn with regards to the Residential Tract and to the three acre tract at Old Sheldon Township. In light of the granting of relief under § 362(d)(2), the Court need not address whether to grant relief under § 362(d)(1) at this time.

AND IT IS SO ORDERED.

FILED BY THE COURT
02/16/2012

Entered: 02/16/2012

John E. Waites
Chief US Bankruptcy Judge
District of South Carolina