

ENTERED

7-19-96 L.A.B.

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

FILED
at _____ O'clock & _____ min. _____ M.
JUL 19 1996
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina

IN RE:)	Chapter 11
)	
)	
TJN, Inc.,)	BK No. 94-73386-W
)	
Debtor,)	Adv. Proceeding No. 8108-W
)	
TJN, Inc.,)	
)	
Plaintiff,)	JUDGMENT
)	
vs.)	
)	
Superior Container Corporation)		
and Cal Western, Inc.,)		
)	
_____ Defendants.)		

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Defendant's motion to dismiss for lack of subject matter jurisdiction is denied.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
July 19, 1996.

ENTERED

7-19-96 L.A.B.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FILED

at 8 O'clock 8 min PM

JUL 19 1996

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (4)

IN RE:)	Chapter 11
)	
TJN, Inc.,)	BK No. 94-73386-W
)	
Debtor,)	Adv. Proceeding No. 8108-W
)	
TJN, Inc.,)	
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
Superior Container Corporation)	
and Cal Western, Inc.,)	
)	
<u>Defendants.</u>)	

This matter comes before me as a result of a Motion to Dismiss filed by Superior Container Corporation ("Superior") and joined by Cal Western, Inc. ("Cal West") (together, the "Defendants"). The Defendants assert that the Complaint filed herein should be dismissed pursuant to Fed.R.Civ.P. 12(b)(1) because this court lacks subject matter jurisdiction. They allege that confirmation of the plan in this case resulted in a withdrawal of jurisdiction and that a contractual issue cannot be determined by this court post-confirmation.

This matter was heard on July 8, 1996. Based upon the

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allegations in the pleadings and the matters presented to the court at the hearing, the court announced at the hearing that the Motion would be denied and supplements the oral ruling with this written opinion and makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. TJN is a debtor in the United States Bankruptcy Court for the District of South Carolina as a result of an involuntary petition filed by creditors, to which the debtor consented, on September 19, 1994.

2. On December 15, 1994, this court entered an order authorizing the sale of certain equipment (the "Equipment") to Superior Container Corporation ("Superior"). This sale was financed by TJN (the "Loan") and various loan documents were executed by Superior, including a note and a security agreement.

3. In July, 1995, TJN filed an Amended Plan (the "Amended Plan") and Disclosure Statement, with payments through the plan premised upon the payments to be received from the sale of Equipment.

4. In January, 1996, a Third Amended Plan (the "Third Amended Plan") was filed, which was subsequently confirmed by order of this court dated January 24, 1996.

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5. This adversary proceeding was filed in March, 1996, and alleges breach of the post-petition contract by Superior and Cal West. It asks for a declaratory judgment, for an award of monetary damages against the Defendants and for foreclosure of its security interest.

CONCLUSIONS OF LAW

The issue before the court is the existence of subject matter jurisdiction to enable this court to resolve the issues raised in the Complaint. The Defendants frame the issue as one involving resolution of a contractual issue, in a case in which the plan has been confirmed without a specific reservation of jurisdiction by this court. The court believes that the issue is more properly framed as one involving litigation of a post-petition contract between a debtor and a purchaser, approval of which contract is based on a separate Order of this court. The debtor's plan contains a specific reservation of jurisdiction. Given this analysis by the court, it is not necessary to reach a decision with regard to jurisdiction in a hypothetical case in which no reservation of jurisdiction is contained in the plan.

The Amended Plan contains a specific retention of jurisdiction which provides that the court continues to retain jurisdiction post-confirmation as follows:

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ARTICLE VII

JURISDICTION

7.1 Retention of Jurisdiction. The Court shall retain jurisdiction over the reorganized debtor, his property, and all other parties appearing in the reorganization proceeding as provided by this plan or by Order of the Court. The Court may authorize the debtor to examine, copy and produce the debtor's books, records and papers for the purposes of (i) determining all claims that have been asserted against the debtor, or the debtor's estate; and (ii) carrying out and giving effect to any and all provisions of the plan and the Order Confirming Plan; and the Court shall retain jurisdiction as provided in the Bankruptcy Code until entry of the final decree discharging the debtor in the reorganization proceeding.

7.2 Prosecution and Defense of Claims. The debtor shall retain full power after Substantial Consummation to prosecute and defend any causes of action or proceedings existing at Substantial Consummation by or against him, or resulting from the administration of the estate of the debtor or resulting from any other claim by or against the debtor or his assets, or arising prior to or existing before Substantial Consummation, including collection of outstanding accounts receivable. The debtor may use the services of his attorney and accountants in the prosecution or defense of such claims, and shall have full power, subject to the approval of the Court, to employ, retain and replace special counsel to represent him in the prosecution or defense of any action, and to discontinue, compromise, or settle any action or proceeding, or adjust any claim. The net proceeds received from any such litigation by the debtor shall be deposited with the debtor's estate for payment of the claims of the debtor's estate. (emphasis added).

Amended Plan, pp. 21 and 22.

The clear, unambiguous language in the Amended Plan

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provides for retention by this Court of jurisdiction, especially with regard to the property of the reorganized debtor. It further provides that this Court shall retain jurisdiction to carry out the provisions of the plan and the Order confirming the plan. It also specifically provides for the retention of the ability to prosecute causes of action by the debtor, including ones resulting from the administration of the estate and including collection of accounts receivable.

The Third Amended Plan also discussed the possibility of litigation in the event of non-payment by the Defendants and the use of such litigation proceeds to fund the plan. Moreover, the Order of Confirmation also specifically retains jurisdiction by this court, pending the final decree in this case.

A reservation of jurisdiction in the plan is sufficient to retain jurisdiction concerning post-confirmation issues. In re American Body Armor & Equipment, Inc., 172 B.R. 659 (Bankr. M.D.Fla. 1994). The language in the Amended Plan, the Third Amended Plan and the Order of Confirmation is sufficient to retain jurisdiction.

The Defendants also assert that this is not a core proceeding and thus this court could not retain jurisdiction. Pursuant to 28 U.S.C. §157(b), this court has jurisdiction to hear

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and determine all core proceedings arising under Title 11 or arising in a case under Title 11, such matters having been referred by the U. S. District Court. While core proceedings are not specifically defined, a non-exclusive list of examples of core proceedings is provided, which includes matters concerning administration of the estate and other matters affecting the liquidation of the assets of the estate. 28 U.S.C. §157(b)(2).

The term "core proceeding" is not explicitly defined in the Bankruptcy Code. Generally speaking, however, core proceedings are "those proceedings which would not exist in law absent the Bankruptcy Code." In re Landbank, 77 B.R. at 47 (citation omitted). A non-exclusive list of core proceedings is set forth in 28 U.S.C. § 157(b)(2). They include: "matters concerning the administration of the estate [see § (b)(2)(A)], allowance of claims against the estate [see § (b)(2)(B)], orders to turn over property of the estate [see § (b)(2)(E)], as well as proceedings to determine preferences [see § (b)(2)(F)], and to avoid fraudulent conveyances [see § (b)(2)(H)]." In re National Enterprises, Inc., 128 B.R. at 959. In addition, 28 U.S.C. § 157(b)(2)(O) is a "catch-all" provision which encompasses "other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship,...." Id.

In re Murray, 149 B.R. 383 (E.D.Va. 1993). It appears to this court that this litigation alleging the breach of a post-petition contract directly involves the administration and liquidation of

the estate and is a core proceeding. The litigation involves the possible recovery of the only asset available to the creditors in this case and will be determinative of the ability of this debtor to successfully perform under the plan and to make payments pursuant to the plan. See In re Ben Cooper, Inc., 896 F.2d 1394 (2nd Cir. 1990) (finding that the bankruptcy court has core jurisdiction pursuant to 11 U.S.C. § 157(b)(2)(A) over contract claims under state law when the contract was entered into post-petition) and In re Arnold Print Works, Inc., 815 F.2d 165 (1st Cir. 1987) (finding post-petition action by debtor-in-possession to collect a post-petition account receivable was a core matter).

The Defendants have requested dismissal pursuant to Fed.R.Civ.P. 12(b)(1), which means that the court must determine that no subject matter jurisdiction exists in order to grant the Motion. In reaching its decision, the court must assume that the allegations in TJN's complaint are true and must assume that all reasonable inferences to be made from such allegations are also true. Great Lakes Educational Consultants v. Federal Emergency Management Agency, 582 F.Supp. 193 (W.D.Mich. 1984); MacKenzie v. International Union of Operating Engineers, 472 F.Supp. 1025 (N.D.Miss. 1979); Barton v. City of Eustis, 415 F.Supp. 1355 (M.D.Fla. 1976).

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It appears to the Court that the Amended Plan, the Third Amended Plan and the Order of Confirmation contain language specifically retaining jurisdiction and that such language is sufficient to preserve this court's jurisdiction with regard to this litigation. It further appears to this court that this proceeding is a core proceeding, in that it is integral to the administration and liquidation of assets of this case and the ability of this debtor to perform the plan. For all of these reasons, it is therefore

ORDERED, that the Motion to Dismiss filed by the Defendants is hereby denied.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
July 19, 1996.

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