

In the United States Bankruptcy Court

for the Northern District of Iowa

S.O.S. ENTERPRISES INC.

Debtor(s).

Bankruptcy No. 95-10203KC

Chapter 11

ORDER RE MOTIONS TO DISMISS

This matter came on for hearing before the undersigned on January 11, 1996 pursuant to assignment. The appearances were: Dan Childers for Debtor; Martin McLaughlin for IRS; Gary Norton for Allstate Financial Corp.; Joseph Peiffer for Unsecured Creditors' Committee; Morris Eckhart for Creditor Gary Oberreuter; and John Schmillen, Assistant U.S. Trustee. The matters heard were a Motion to Dismiss filed by Debtor and a Motion to Dismiss or Convert filed by the IRS. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

Debtor requests an order dismissing its Chapter 11 case. It states that it is unable to reorganize and has ceased operations. All assets are secured and secured creditors will be owed deficiencies after liquidation. Debtor states dismissal is in the best interests of all concerned. The U.S. Trustee supports Debtor's motion stating that a conversion to Chapter 7 would generate nothing for unsecured creditors and it is difficult to satisfy the requirement that the trustee file tax returns for Debtor after conversion. Creditor Gary Oberreuter also supports dismissal.

Allstate Financial Corp., Debtor's primary secured creditor, objects. It states that its rights have been affected during the pendency of the case, specifically by the Court's authorization of secured debt. It asks the Court to preserve its rights and priorities under the Order for Secured Debt in the event of dismissal. Allstate Financial has filed an adversary complaint concerning issues such as the status of its collateral, transfers, control of certain premises, identification and turnover of records, and status of property of the estate, specifically concerning Debtor and J & G Custom Printing. It argues that, prior to dismissal, the Court should resolve the issues raised by its Complaint.

The Unsecured Creditors Committee also resists the Motion to Dismiss. It states that an analysis of preferences and post-petition transfers should be made prior to dismissal.

The IRS seeks an order converting the case to Chapter 7 or dismissing the case, whichever is in the best interests of creditors. It states that Debtor has failed to pay third quarter 1995 employment taxes and is unable to reorganize.

On request of a party in interest, including a debtor or creditor, the Court may, "for cause", dismiss a Chapter 11 case or convert it to a case under Chapter 7, whichever is in the best interests of creditors and the estate. 11 U.S.C. § 1112(b); In re Lumber Exch. Bldg. Ltd. Partnership, 968 F.2d 647, 648 (8th Cir. 1992); In re Gonic Realty Trust, 909 F.2d 624, 626 (1st Cir. 1990). A nonexhaustive list of situations constituting "cause" appears in § 1112(b)(1) through (10), including "continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation" and "inability to effectuate a plan." 11 U.S.C. § 1112(b)(1), (2). The bankruptcy court has broad discretion in deciding whether to dismiss or convert a Chapter 11 case. Lumber Exch., 968 F.2d at 648.

The Court concludes that cause exists to dismiss this case. It is clear that no reorganization can take place. Debtor is a custom printing business with no financing and very few accounts remaining. There is no chance of Debtor being able to go forward with a Chapter 11 reorganization. A conversion to Chapter 7 would accomplish very little. The primary creditors are (1) Allstate Financial which has a security interest in all of Debtor's property and (2) the IRS. Allstate Financial would be entitled to all of the bankruptcy estate's hard assets and the IRS obligation is nondischargeable. As such, nothing could be done if the case was converted to Chapter 7.

The more difficult issue is how to deal with Allstate Financial's adversary proceeding. Allstate Financial asserts that many of the secured assets were disappearing or unaccounted for with some possibly ending up at J & G Custom Printing, Inc., a printing business owned by the brother of Debtor's primary stockholder. As a result, Allstate Financial filed the adversary proceeding concerning the collateral, the turnover of records, and some injunctive relief. The question is whether the adversary should also be dismissed or whether it should be preserved and heard and determined in bankruptcy court.

The Court concludes that dismissal of Debtor's Chapter 11 case is appropriate at this time. However, the Court will take the issues of (1) retention of jurisdiction over Allstate Financial's adversary proceeding, including its request for an injunction and (2) protection of Allstate Financial's post-petition security interest under advisement.

WHEREFORE, the Court takes under advisement the issue of retention of jurisdiction over Allstate Financial's adversary proceeding, No. 95-1197KC, filed December 4, 1995.

FURTHER, the effectiveness of the Order for Secured Debt and Factoring, and the rights and priorities of Allstate Financial Corp. derived from that Order and from the documents related to the debt and liens granted as part of that Order shall be preserved, protected and maintained in their entirety.

FURTHER, the Order for Preliminary Injunctive Relief filed January 12, 1996 in the related adversary proceeding, Allstate Financial Corp. v. S.O.S. Enterprises & J&G Custom Printing, Inc., Adv. No. 95-1197KC, shall continue in full force and effect according to its own terms.

FURTHER, in all other respects, this case is now DISMISSED.

FURTHER, since this case is now dismissed, the hearing set for January 25, 1996 at 10:30 a.m. on the Motion to Approve Sale of Equipment is cancelled as the Motion is now moot.

SO ORDERED this 24th day of January, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge