

In the United States Bankruptcy Court

for the Northern District of Iowa

PARIS & SONS INC.
Debtor(s).

Bankruptcy No. 98-02475-C
Chapter 11

RULING ON MOTION TO DISMISS

This matter came before the undersigned on April 27, 2000 on U.S. Trustee's Motion to Dismiss. Attorney John Titler represented Debtor Paris & Sons, Inc. Janet Reasoner appeared on behalf of the U.S. Trustee. Martin McLaughlin appeared for the SBA and the IRS. Wesley Huisinga and Steve Pace appeared for Midwest Agriculture Warehouse Co., d/b/a United Agri Products MN-IA ("UAP"). Greg Epping appeared for Creditor Timothy Terry. After hearing arguments of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

STATEMENT OF THE CASE

Debtor Paris & Sons, Inc. filed its Chapter 11 petition on August 14, 1998. It now intends to file a plan of liquidation rather than reorganize. Creditor UAP filed an adversary proceeding on June 21, 1999. Debtor's plan of liquidation depends on the outcome of the adversary proceeding. Through the adversary proceeding, UAP intends to litigate the priority of liens and interests in Debtor's property and to determine environmental issues relating to the property involving the Environmental Protection Agency ("EPA") and the Iowa Department of Natural Resources ("DNR"). Debtor is not a party to the litigation. UAP's complaint lists 37 defendants.

The U.S. Trustee requests an order dismissing the case. She states it does not appear that there will be any funds available for distribution to unsecured creditors in this case. Debtor's total receipts for the past nine months were only \$1,600. It no longer has any employees. Debtor is receiving monthly payments from UAP for the use of its facilities. These payments are remitted to Debtor's secured creditors.

The U.S. Trustee asserts there is no legitimate reason for this Chapter 11 case to continue. She argues UAP can avail itself of an alternate forum to resolve issues regarding the priority of liens. The U.S. Trustee asserts that the only authority of the Court to determine environmental issues in the adversary proceeding is based on its equitable powers under §105(a). UAP is requesting injunctions against the EPA and the DNR from attaching environmental liability to Debtor's real estate. The U.S. Trustee asserts this type of relief is not appropriate in a bankruptcy proceeding.

Debtor resists dismissal. It acknowledges that its birdseed and snow melt business is no longer operating. Debtor now subcontracts fertilizer mixing services through UAP. It is attempting to sell its Oelwein facility which is not being used. Debtor is not a party to the adversary proceeding. It acknowledges no funds will be available for unsecured creditors as all property is secured. Debtor

argues that it is in all parties' best interests to have an orderly liquidation in the bankruptcy case and that keeping the status quo is the most practical option.

UAP explains that the adversary proceeding is quite complex. Of the 37 original defendants, five secured creditors, the EPA and DNR, and eight individuals in the Paris family remain. UAP has been engaged in discovery with Terry and other defendants. The priority of liens of UAP, the SBA, Terry and RIC will be determined through the proceeding. UAP asserts dismissal of the Chapter 11 case will be detrimental to the interests of the secured creditors and Debtor. If the adversary proceeding cannot continue in this court, UAP would have to start from scratch, wasting judicial resources. It would rather complete the adversary proceeding here than to proceed piecemeal in other forums.

Also, serious environmental issues exist. Debtor's Oelwein and Masonville properties are "brownfields", contaminated from herbicides, insecticides and other materials. UAP is trying to negotiate with the EPA and DNR to protect future buyers of the properties from potential liability for environmental problems. UAP states it is ready to recast the complaint in the adversary proceeding to reflect its progress so far and is ready for a scheduling conference.

Creditor Timothy Terry resists dismissal. He wishes to stay in this court to deal with his security interest in Debtor's personal property, including machinery and equipment. The United States reports that the SBA loan is being sold and its interest will be resolved. It questions whether this is an appropriate forum for resolving environmental liability with the EPA. The United States asserts that if UAP's adversary proceeding is dismissed and reasserted in a state court, the EPA would seek to remove the action to Federal court.

CONCLUSIONS OF LAW

On request of a party in interest 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). A nonexhaustive list of circumstances 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; In re Hatcher, 218 B.R. 441, 448 (B.A.P. 8th Cir. 1998), aff'd, 175 F.3d 1024 (8th Cir. 1999).

In this case, its clear that there is no chance of Debtor being able to go forward with a Chapter 11 reorganization. In fact, Debtor has ceased doing business and anticipates liquidating rather than reorganizing. A conversion to Chapter 7 would accomplish nothing. All of Debtor's property is entirely encumbered by secured claims. No property will be available for distribution to unsecured creditors.

UAP and other parties arguing against dismissal of the Chapter 11 case focus on their desire to sort out their interests and avoid environmental liability through the related adversary proceeding. Courts have considered whether an adversary proceeding should also be dismissed or whether it should be heard and determined by bankruptcy court after dismissal of the underlying case. As a general rule, related proceedings ordinarily should be dismissed following the termination of the underlying case. In re Porges, 44 F.3d 159, 162 (2d Cir. 1995).

This general rule favors dismissal because a bankruptcy court's jurisdiction over such related proceedings depends on the proceedings' nexus to the underlying bankruptcy case.

Notwithstanding this general rule, however, nothing in the Bankruptcy Code requires a bankruptcy court to dismiss related proceedings automatically following the termination of the underlying case. Indeed, section 349 of the Bankruptcy Code authorizes bankruptcy courts to alter the normal effects of the dismissal of a bankruptcy case if cause is shown.

Id.(citations omitted); In re S.O.S., Inc., No. 95-10203KC, slip op. at 2-3 (Bankr. N.D. Iowa Feb. 26, 1996).

A bankruptcy court may use its discretion to hear an adversary proceeding, even if it originated in a subsequently dismissed bankruptcy case. In re Morris, 950 F.2d 1531, 1535 (11th Cir. 1992). In exercising this discretion, the court considers four factors: (1) judicial economy, (2) convenience to the parties, (3) fairness, and (4) comity. Porges, 44 F.3d at 163; Morris, 950 F.2d at 1535. However, when dismissal of the main case will resolve a pending matter, or when adversary proceedings could best be handled in state court or other forum, retention of jurisdiction is not warranted. In re Nugelt, Inc., 142 B.R. 661, 670 (Bankr. D. Del. 1992). State court is the place to resolve an adversary proceeding that is based on state law and is of interest to no one except the adversaries, once the underlying bankruptcy case is dismissed. Chapman v. Currie Motors, Inc., 65 F.3d 78, 82 (7th Cir. 1995).

[W]hen the bankruptcy proceeding is dismissed, the adversary claim (when based solely on state law) is like the cartoon character who remains momentarily suspended over a void, spinning his legs furiously, when the ground has been (quite literally) cut out from under him.

Id.at 81. In In re Walton, 80 B.R. 870, 874 (Bankr. N.D. Ohio 1987), the court stated: "Debtors' complaint can be brought in another forum. This court need not retain this case and the related adversary on its docket when debtors' intention is not to achieve reorganization."

The Court concludes that dismissal of Debtor's Chapter 11 case is appropriate at this time. Counsels' arguments against dismissal focus on the desire to keep the adversary proceeding in place to avoid starting over in another forum or to avoid piecemeal actions in more than one forum. While the Court concludes there is no reason to preserve the Chapter 11 case, counsels' arguments regarding the adversary proceeding remain troublesome. The Court will set a status conference in the adversary proceeding to address whether it should continue toward final resolution in the bankruptcy court.

WHEREFORE, the U.S. Trustee's Motion to Dismiss is GRANTED.

FURTHER, this Chapter 11 case is now DISMISSED.

FURTHER, UAP's adversary proceeding, No. 99-9098-C filed June 21, 1999, is not dismissed at this time. The Court will set a status conference in Adv. No. 99-9098-C to determine whether the Court should retain jurisdiction of that proceeding.

SO ORDERED this 16th day of May, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge