

In the United States Bankruptcy Court

for the Southern District of Iowa

CURT N. DANIELS

Debtor(s).

Bankruptcy No. 06-01659

Chapter 11

RULING RE: MOTION TO CONVERT

On January 4, 2007, the court issued a medial order on the motion to convert this case to chapter 7 filed by Hunters Retreat, L.L.C., WSH Properties, L.L.C., and Navajo Associates, L.L.C. (collectively "movants"). Based on the evidence and legal arguments of the parties, the court found cause for dismissal or conversion. However, the court gave debtor Curt Daniels an opportunity to cure deficiencies in his filings and in the performance of his duties as debtor-in-possession.

On January 30 and 31, Daniels filed documents with the court, and he asserted "partial compliance" (docket nos. 56 and 58). On January 30, the United States trustee filed objection to Daniels's assertion of compliance, stating that Daniels's monthly operating reports did not meet the requirements of the U.S. trustee (doc. no. 57). On February 2, movants filed objections to Daniels's statement of compliance (doc. no. 65). On February 7, Daniels re-filed the monthly reports for the period of August through December 2006 (doc. no. 70).

Hearing on compliance was held February 8, 2007 in Des Moines. This hearing also constituted the conclusion of the hearing on movants' motion to convert. Michael P. Mallaney appeared as attorney for Daniels. Mr. Daniels also was present. Matthew T. Cronin appeared as attorney for movants. James L. Snyder appeared as attorney for Habbo G. Fokkena, the United States trustee.

The court has jurisdiction of this case under 28 U.S.C. § 1334(a) and 28 U.S.C. § 157(a), and the District Court's order of reference. The undersigned has been appointed by the Eighth Circuit Court of Appeals to preside over bankruptcy cases and proceedings in the Southern District of Iowa. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

The court's prior ruling provided that cure by Daniels must include establishment of a debtor-in-possession bank account. Also he was to obtain malpractice insurance for his law practice. He was also required to amend his answer to requirement number one on his statement of affairs in order to show all income from Indian Creek Corporation. His response was to show all payments to him from Indian Creek Corporation by date, amount and purpose of payments (Ruling, doc. no. 49). The requirement to amend, if interpreted broadly, would have included the period from January 1, 2006 to the date of filing and the two preceding calendar years. At the least it should have included the period January 1, 2006 to the date of filing. Finally, Daniels was required to file all delinquent monthly reports. No reports had been filed by the time of the hearing in December.

Daniels has obtained malpractice insurance for his law practice. He also has filed a document indicating that a debtor-in-possession bank account was obtained in the name of "Curt Daniels, P.C.," his professional corporation. Movants and the U.S. trustee object that as Daniels himself is debtor, this account was not set up under the accurate name. They are correct. Daniels asserts that he did not realize the error until it was brought up by movants and the U.S. trustee, but I find his excuse unavailing.

In attempting to amend his Statement of Affairs as to income from Indian Creek Corporation, Daniels has filed an affidavit attaching photocopies of canceled checks from his "legal practice account" (doc. no. 58). He says the checks written by him are self-explanatory, and where they are not, he has included a description of ten checks written on the account that indicate payments to him or for him. He states that expenses for the law practice and for Indian Creek were

paid out of the same account for "simplicity's" sake. What is not simple is Daniels's explanation of income received by him from Indian Creek. His exhibit B to the affidavit shows income to Indian Creek of \$52,159.25, transfers by Indian Creek to the "legal practice account" of \$31,077.63, and other deposits to the "legal practice account" of approximately \$78,552.19. The exhibit provides little explanation of Indian Creek's payments to Daniels. The affidavit and exhibits raise as many questions as they perhaps answer. The amendment to the Statement of Affairs is insufficient.

Last is the effort by Daniels to file the necessary monthly reports. The United States trustee and movants contend that they also are insufficient. I agree. In many instances they are facially inaccurate and seem to have been filed by Daniels merely to assert that he had cured. Cash balances at the beginning of each month are the same despite monthly deficit spending. Cash expenses show money spent only on behalf of Indian Creek. On the Summary of Financial Status, the total cash receipts and total disbursements under section 3 do not match the statements of cash receipts and disbursements found later in the reports. The reports are insufficient.

Daniels has failed to cure his delinquencies and deficiencies as set out in the court's prior decision. The court is again faced with decision of whether the case should be dismissed, converted to chapter 7, or left to proceed in chapter 11.

Based on scheduled claims, proofs of claims, especially the claims of movants, and the requirements for confirmation (11 U.S.C. § 1129), I doubt that debtor could obtain confirmation of a chapter 11 plan, certainly not in a reasonable time period. Daniels's counsel concedes that it would be unlikely that a plan could be confirmed without payment in full of all claims--meaning that there could be no impaired classes. Before such a plan could be confirmed, Daniels would have to succeed in setting aside the sheriff's sale of his stock in Indian Creek. If successful in that regard, Indian Creek would have to refinance the debt against its land or sell enough of it to pay off all Indian Creek debt. Counsel for Daniels concedes that confirmation of a plan is unlikely given the disagreements between Daniels and movants. I agree. Further proceedings in chapter 11 are futile. Daniels would consent to dismissal, but movants are not so easily satisfied. They want conversion.

Movants say they are frustrated in their pursuit of their claims against Daniels by his seeming ability to go in and out of bankruptcy proceedings. They want him confined in this court so that they can resolve all of their claims without further delays.

The United States trustee argues for dismissal. He contends that there is little likelihood of the recovery, liquidation, and distribution of any assets to unsecured creditors. Hunters, at present, owns the stock of Indian Creek. WSH, as an assignee of Heritage Bank, has the first mortgage against Indian Creek's farmland. Navajo, as assignee of Constance Daniels, has the second mortgage against the farmland. Movants are Daniels's largest creditors, and they are concerned that they won't be paid in full by the land. There appear to be no other significant assets. All of movants' claims either can be or must be adjudicated in state court. WSH's foreclosure action is still pending. The state court may yet address the validity of the sheriff's sale of Daniels's Indian Creek Stock. The parties face state court re-trial of WSH's conversion claim. Issues over whether Daniels's homestead is exempt may also be addressed by the state court. Even if the bankruptcy court has jurisdiction of some of these claims, the state court is nonetheless an appropriate forum to resolve the disputes between the parties. Movants' counsel has argued that Daniels has inappropriately sought to bring a two-party dispute into bankruptcy. Nonetheless, movants want to keep it here, not for the benefit of all creditors or the estate, but to narrow the playing field while the two parties fight. This is not in the best interest of all creditors or the estate. I believe this is so notwithstanding my earlier finding that there may be equity in the farmland owned by Indian Creek.

I find that Daniels has wilfully failed to abide by court orders. It is in the best interest of creditors and the estate that this chapter 11 case be dismissed.

IT IS ORDERED that for cause shown this chapter 11 case is dismissed. Judgment shall enter accordingly.

DATED AND ENTERED February 12, 2007

William L. Edmonds
U.S. Bankruptcy Judge