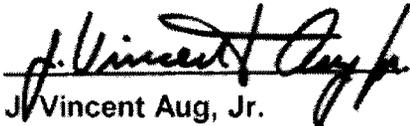


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: April 17, 2009


J. Vincent Aug, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re
Smallwood Brothers
Transportation Services, LLC

Case No. 07-15335

Debtor In Possession

Chapter 11 (Judge Aug)

ORDER DENYING DEBTOR'S MOTION TO EXTEND
TIME UPON WHICH TO FILE AN AMENDED CHAPTER 11 PLAN
AND DISMISSING CASE

This matter is before the Court on the Debtor in Possession's Motion to Extend Time to File an Amended Chapter 11 Plan. (Doc. 72).

The Debtor's bankruptcy petition was filed on November 1, 2007, indicating this Debtor is a small business debtor as defined in 11 U.S.C. §101(51D). As such, the Debtor's plan and disclosure statement must be filed no later than 300 days after the date of the order for relief. 11 U.S.C. §1121(e)(2). In this case, the Debtor's plan and disclosure statement were due to be filed by August 27, 2008.

On November 4, 2008, the Debtor filed its Disclosure Statement and Plan of Reorganization. The disclosure statement and plan were incomplete because they contained

multiple "blanks" that needed to be filled in and the twelve-month cash flow projection was not attached. Amendments to the disclosure statement and plan were filed on November 20, 2008 to attach the cash flow projection. However, the "blanks" still remained in the disclosure statement and plan.

The Court set the confirmation hearing for December 30, 2008. Due to a conflict with the Court's schedule, the confirmation hearing was rescheduled for January 15, 2009. The Ohio Bureau of Worker's Compensation and the Internal Revenue Service filed objections to the Debtor's plan. The Debtor filed a Motion to Continue the January confirmation hearing for sixty days in order to address the plan objections, because payments from customers would not resume until the end of January 2009, and because Form 1065 returns for 2006 through 2008 needed to be filed. The Court granted the motion, and the confirmation hearing was rescheduled for March 19, 2009.

On March 18, 2009, the Debtor filed a Notice to Withdraw Plan, which cancelled the confirmation hearing scheduled for the next day. The Debtor also filed the instant motion to extend the time to file an amended Chapter 11 plan, indicating the plan was withdrawn because the Debtor was unable to meet the projections set forth in the plan. The Debtor states it fell victim to the declining automobile industry and economy, and believes that the 2nd and 3rd quarters of this year will provide enough cash flow to exceed earlier projections and restructure.

The deadline imposed by 11 U.S.C. §1121(e)(2) for a small business debtor to file a plan may be extended only if the Debtor can demonstrate by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time and the order extending time is signed before the existing deadline has expired. 11 U.S.C. §1121(e)(3). A debtor seeking the extension of time under 11 U.S.C. §1121(e)(3) must provide evidence from which the court can determine whether it will confirm a plan within a reasonable amount of time. *In re AMAP Sales and Collision Inc.*, No. 08-71853, 2009 WL 778773 (Bankr. E.D.N.Y. Mar. 25, 2009).

The deadline for the Debtor to file a plan was August 27, 2008, therefore this motion has not been brought timely pursuant to 11 U.S.C. §1121(e)(3). In addition, 11 U.S.C. §1121(e)(3) requires that the debtor demonstrate by a preponderance of the evidence that it is more likely than not that court will confirm a plan within a reasonable time. The Debtor is requesting an extension of time to file their plan based on the hopeful turnaround of the automobile industry and economy, and increased projected earnings for the 2nd and 3rd quarters of the upcoming year. The Debtor has not provided the Court with any evidence that would allow the Court to determine that it would confirm a plan within a reasonable amount of time. As a result, the Debtor's Motion to Extend Time to File an Amended Chapter 11 Plan is denied.

The court has the authority to dismiss a Chapter 11 case *sua sponte* under 11 U.S.C. §105(a) and §1112(b). See *In re A-1 Specialty Gasolines, Inc.*, 238 B.R. 876 (Bankr. S.D. Fla. 1999); *In re Starmark Clinics, LP*, 388 B.R. 729 (Bankr. S.D. Texas 2008). Absent unusual circumstances that would establish that conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert or dismiss a case, whichever is in the best interests of the creditor and the estate, if there is cause. 11 U.S.C. §1112(b)(1). Section

1112(b)(4) provides a non-exhaustive list of causes for dismissal, which includes unexcused failure to timely file required documents and failure to file disclosure statement and plan within the required time. 11 U.S.C §§1112(b)(4)(F), (J). In addition, the Court has broad discretion to dismiss a Chapter 11 case under 11 U.S.C. §1112(b). *See In re AMC Mortg. Co., Inc.*, 213 F.3d 917 (6th Cir. 2000).

As outlined above, the Debtor did not file their plan and disclosure statement until well after the deadline imposed by 11 U.S.C. §1121(e)(2). The disclosure statement and plan filed with the Court were not complete. These were later withdrawn on the eve of confirmation because the Debtor was unable to meet its projections. It appears that the Debtor is experiencing financial difficulty because of the current economic environment and the declining automobile industry. It is uncertain whether the Debtor will be able to pull together a Chapter 11 plan in order to reorganize its debt. Given the length that this bankruptcy has been pending, coupled with the Debtor's current financial problems and failure to file a plan timely, this case will be dismissed.

Accordingly, the Debtor's Motion to Extend Time is hereby DENIED. The Debtor's bankruptcy is DISMISSED; provided the Debtor has 20 days from entry date of this Order to convert their case to a case under Chapter 7.

IT IS SO ORDERED.

Copies to:

Debtor in Possession
Alfred Wm. Schneble, III, Esq.
U.S. Trustee