

**FILED**

FEB 5 1985

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

CLERK, U.S.  
BANKRUPTCY COURT  
CASE NO. \_\_\_\_\_

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In re: Case Number:  
MARVIN GORDEN, LM11-83-00173  
Debtor.

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FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND  
ORDER DENYING MOTION ALLEGING WRONGDOING

Donna Gorden, by Attorney Beverly A. Fleishman, having filed a motion to dismiss; and a hearing having been held; and the Movant appearing by counsel; and the Debtor appearing by Attorney Galen W. Pittman; and Production Credit Association of Sparta appearing by Attorney Michael J. McAlpine; and briefs having been filed; the Court, being fully advised in the premises, FINDS THAT:

1. On August 31, 1984, this Court (Martin, J.) set September 20, 1984, as the last day for filing written objections to the confirmation of Debtor Marvin Gorden's proposed plan of reorganization and set September 26, 1984, as the day of the hearing on confirmation of said plan (the first and only such date set).

2. On October 29, 1984, this Court entered its Findings of Fact, Conclusions of Law and Orders denying Donna Gorden's objection to the Debtor's plan and requiring that the Debtor submit a confirmation order.

3. On October 31, 1984, Ms. Gorden filed an undated<sup>1</sup> motion to dismiss the above captioned proceedings "on grounds that the Debtor intentionally attempted to circumvent the laws of the Bankruptcy Court thereby hindering, delaying, and/or defrauding his creditors" in the execution and concealment of the will of one Edna Forde.

4. On November 1, 1984, this Court entered an Order confirming the Debtor's plan.

#### Discussion

5. Conversion or Dismissal. Under 11 U.S.C. sec. 1112(b), this Court may convert or dismiss a Chapter 11 proceeding "for cause".

6. The confirmation of a plan of reorganization does not deprive this Court of jurisdiction to hear a section 1112(b) motion. See 11 U.S.C. sec. 1112(b)(8) (material default by debtor with respect to a confirmed plan is cause to convert or dismiss).

7. When there is sufficient evidence that a debtor is unwilling or unable to achieve a successful financial reorganization, there is "cause" to convert or dismiss. See 1112(b) (nine examples of "cause", e.g., inability to effectuate a plan), In re Madison Hotels, 749 F.2d 410, (7th Cir. 1984) (bad faith filing is "cause"), In re Van Brunt, EF11-82-02014 (Bankr.W.D.Wis. Nov. 14, 1984) (lack of prosecution is "cause").

8. This is not such a case.

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<sup>1</sup> An accompanying affidavit was signed on October 23, 1984.

9. Denial of Discharge. Under 11 U.S.C. sec. 1141(d)(3)(C) this Court must deny discharge to a debtor who has engaged in wrongdoing in connection with the bankruptcy proceeding.

10. A complaint objecting to discharge must be filed on or before the first date set for the hearing on confirmation. Fed.R.Bankr.P. 4004(a).

11. Accordingly, even if Ms. Gorden's motion were to be construed as an objection to discharge, it would be untimely. Compare Paragraph 1, supra, with Paragraph 3, supra.

12. Ms. Gorden's motion having been made prior to the confirmation of the plan, it can not be construed as a motion to revoke confirmation, 11 U.S.C. sec. 1144, or discharge, see 11 U.S.C. sec. 727(d).

#### CONCLUSIONS OF LAW

1. The allegations in Ms. Gorden's motion, even if true, would not be "cause" to dismiss these proceedings.

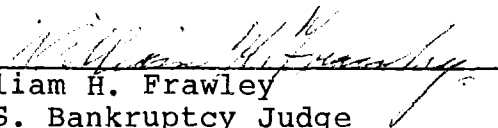
2. Ms. Gorden's motion, if construed as an objection to discharge, is barred under Fed.R.Bankr.P. 4004(a).

ORDER

IT IS ORDERED THAT the motion filed in this proceeding by Donna Gorden on October 31, 1984, be, and the same hereby is, DENIED, without costs.

Dated: February 5, 1985.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney Beverly A. Fleishman  
Attorney Galen W. Pittman  
Attorney Michael J. McAlpine *ca*