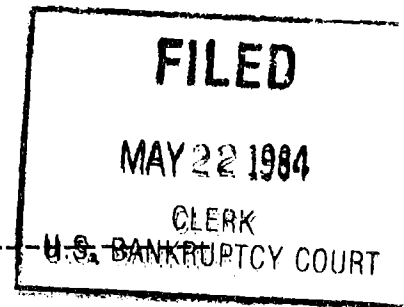


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

GERALD M. DRENDEL,

LM11-83-00633

Debtor

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND
ORDER GRANTING MOTION FOR CONVERSION

First Federal Savings and Loan Association of LaCrosse, by Attorney David B. Russell of Hale, Skemp, Hanson & Skemp, having moved to dismiss or convert this proceeding; and hearings having been held; and First Federal appearing by counsel; and Debtor Gerald M. Drendel appearing in person and by Attorneys James J. Bannen and James W. Bannen of Bannen & Bannen; and First Federal having moved in open court for summary judgment; and the parties agreeing to submit the matter on the record and file herein as amplified by a partial transcript of the 11 U.S.C. sec. 341 creditors' meeting; the Court having considered the arguments of counsel and the complete record and file herein, and being fully advised in the premises, FINDS THAT:

1. Debtor Gerald M. Drendel filed for relief under Chapter 11 of the Bankruptcy Code on April 22, 1983.
2. On May 25, 1983, at the 11 U.S.C. sec. 341 creditors'

meeting, the following occurred:

Attorney Russell: My name is David Russell from the firm of Hale, Skemp, Hanson & Skemp. I represent First Federal. Mr. Drendel, am I correct that the reason for filing this Chapter 11 bankruptcy was to forestall the foreclosure proceedings that First Federal has going against you? Is that the main reason for it?

Mr. Drendel: Well, to be able to sell the properties, to give me some time, yes.

. . .

Attorney Russell: Okay. But I'm correct, am I not, that it is your intention to sell the properties, not to put yourself in a position to keep running the Blue Tiger or to keep running the 400 Club. You are attempting to sell the properties?

Mr. Drendel: We definitely are going to sell them, yes. We have to sell them.

Attorney Russell: And what this bankruptcy action gets for you is time to negotiate the sales of those properties, is that right?

Mr. Drendel: Yes.

. . .

Attorney Bannen¹ . . . the cross-examination seemed to bring it out as merely to forestall the foreclosure actions. That was only one aspect of it. It was to continue the operations of the business, to continue his farming operation, and to allow him to continue in business. And a part of that plan is the liquidations of part of the business so that he can continue. . . probably we'll have to have the hearing adjourned to allow me to develop that.

¹ Debtor's attorney.

3. On June 29, 1983, at the adjourned meeting, the following occurred:

Attorney Bannen: Now in a--at some time by questioning by First Federal's attorney, it may have appeared that the primary purpose of this plan was really to sell the real estate. Now in going into the plan and developing the plan that we were talking about, it was to continue the operations of the business of the 400 Club and Blue Tiger with a hope of selling either one or both of those as a going business. Is that correct?

Mr. Drendel: Yes.

Attorney Bannen: So that you want the protection afforded this court to allow you to continue operating those particular businesses.

Mr. Drendel: Yes.

Attorney Bannen: As well as to assist you in time to sell off at least two of the properties.

Mr. Drendel: Yes.

Attorney Bannen: And you hope with the sale of two of the properties your entire indebtedness, including unsecured creditors, would be paid.

Mr. Drendel: Yes.

4. On September 2, 1983, the Debtor filed a "Plan of Liquidation" which called² for the sequential sale of two of the Debtor's three businesses (100 Block of South Third Street³ and 400 South Third Street⁴) until all creditors' claims had been satisfied. In the event that the aforementioned properties had not been sold "within a reasonable amount of time", the third Debtor business

² The past tense is used because an unsigned amended plan has been filed.

³ Including the Blue Tiger.

⁴ Including the 400 Club.

(a farm) would have been listed for sale. The Debtor would retain his residence.

5. On October 11, 1983, the Debtor filed an unsigned Financial Disclosure Statement which provided, in pertinent part (emphasis added):

II. THE PLAN

The Plan is proposed with the specific goals of maximizing recovery of all creditors, secured and unsecured, elimination of unprofitable ventures which cause overall value of the estate to decline, and preservation of profitable portions of the estate so that future payments can be made. Accomplishment of these goals is to be achieved in the shortest time reasonably possible.

A major factor affecting the shape of the plan is the fact that current forced liquidation of assets would yield much less than fair value. Shortfalls to secured and judgment creditors would result and they would then become partially unsecured. Moreover, unsecured creditors would then receive no payments. The Debtor believes that orderly sale of some real estate units will provide greatest benefit to the greatest number of creditors, and that retention of profitable properties will make possible further payments. Retained properties, it is believed, will also improve in value over time, so that greater value will be realized on any later sale, and greater security will accrue to the estate in the meantime. Sales and future earnings are pledged to the plan, thus reducing overall indebtedness over time and permitting greater payments over time by way of extension.

6. None of the Debtor's businesses have been sold.

7. At the time of filing the Chapter 11 petition on April 22, 1983, the properties were in foreclosure, with Sheriff's sales of two of the properties scheduled for April 26, 1983 (4 days after filing the Chapter 11), and the other two properties scheduled in May and June, 1983.

8. The "Amended Plan of Liquidation" as captioned by Debtor, dated August 26, 1983, shows the properties were listed for sale prior to that date.

9. The time of redemption in the foreclosure proceedings of six months or a year had almost expired at the time of filing herein and Debtor was trying to sell said properties.

10. Debtor had no intention of re-organizing but intended liquidation by sales as stated at the 341 hearing on May 25, 1983, and as referred to in said August 26, 1983, plan.

Discussion

11. There is no doubt of this Court's power to act when its jurisdiction has been abused: "The new Bankruptcy Code confers upon bankruptcy courts the traditional equitable power to dismiss

petitions filed in bad faith. Among the types of cases that can be dismissed for bad faith are those in which the debtor's conduct demonstrates that its sole purpose is to hinder or delay its creditors." In re Madison Hotel Associates, 29 B.R. 1003, 1010 (W.D.Wis. 1983) (citations omitted). See 11 U.S.C. secs. 105, 1112. See also In re Johns-Manville Corp., 36 B.R. 727, 737-738 (Bankr.S.D.N.Y. 1984) (cases collected).

12. Sections 1123(a)(5)(D) and 1123(b)(4) of the Code permit a Chapter 11 liquidation plan only after rehabilitation has proved futile. In re Nikron, Inc., 27 B.R. 773, 778 (Bankr. E.D.Mich. 1983). Chapter 11 is not, ab initio, a substitute for Chapter 7 proceedings.

13. Accordingly, while this Court is willing to afford the benefit of the doubt to the sincere debtor, cf. In re Coastal Cable T.V., Inc., 709 F.2d 762, 764 (1st Cir. 1983) (requiring only an arguable relation between a Chapter 11 plan and the reorganization purpose of Code), when it is clear the debtor's filing was "based upon an abiding faith in miracles" or "pure speculation" creditors may not be deprived of the benefit of their bargain. See In re BBT, 11 B.R. 224, 235 (Bankr.D.Nev. 1981) (lifting automatic stay).

14. More than a year has passed since Gerald M. Drendel filed for relief. None of the businesses have been sold. ^{Even} /assuming that he held an honest and sincere belief that reorganization was possible at the time of filing, it is now clear to this

Court that his belief was not reasonable. "Where a petition is filed to subvert the legitimate rights of creditors in the absence of any reasonable expectations that the debtor can successfully reorganize, there is no basis for access to Chapter 11. . . This is such a case." In re Thirtieth Place, Inc., 30 B.R. 503, 506 (Bankr. 9th Cir. 1983).

CONCLUSION OF LAW

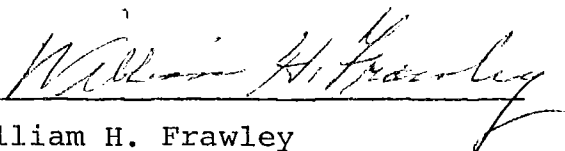
There is cause to convert this proceeding to Chapter 7 of the Bankruptcy Code.

ORDER

IT IS ORDERED THAT the Motion of First Federal Savings and Loan Association of LaCrosse to convert this proceeding to Chapter 7 of the Bankruptcy Code be, and the same hereby is, GRANTED, without costs.

Dated: May 22, 1984.

BY THE COURT:



William H. Frawley
Bankruptcy Judge