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U.S. BANKRUPTCY COURT

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re:

Case Number:

BADLANDS RECREATION, INC.

EF11-84-02031

Debtor.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER DISMISSING PROCEEDINGS¹

Kathryn A. and Paul J. Kroska, by Attorney James A. Drill, having filed Motions for relief from stay; and a hearing having been held; and the Movant appearing by Attorney Thomas R. Schumacher; and Debtors Margaret G. and Bernard E. Kinney and Badlands Recreation, Inc., appearing by Attorney Daniel M. Byrnes; and briefs having been filed; the Court, being fully advised in the premises, FINDS THAT:

1. On October 12, 1984, Debtors Bernard E. and Margaret G. Kinney and Badlands Recreation, Inc., filed for relief under Chapter 11 of the Bankruptcy Code. Badlands is a closely held corporation; Mr. Kinney is its president; Ms. Kinney is its vice-president.

¹ An identical decision and Order is entered this day in In re Kinney, EF11-84-02032 (Bank.W.D.Wis.)

2. The Kinneys operate a dairy farm. Their bankruptcy schedules reveal property of \$719,346.46 and debts of \$196,315.77. The Kinneys' scheduled property consists of real estate (valued at \$606,000), tangible personal property (valued at \$106,100) and their interest in certain cooperatives (valued at \$7,246.46). The Kinneys' scheduled debts consist of two secured loans (totalling \$60,315.77) and a judgment for \$136,000.²

3. Badlands operates a "snow tubing" area on property adjacent to the Kinney farm. Its bankruptcy schedules reveal property of \$55,781 and debts of \$166,000. The Badlands' scheduled property consists of real estate (valued at \$50,000), tangible personal property (valued at \$5,200), interests in certain cooperatives (valued at \$400) and \$181 cash. The Badlands' scheduled debts consist of a secured obligation to the Kinneys (\$30,000) and a judgment for \$136,000.³

4. Paul J. and Kathryn A. Kroska obtained the \$136,000 judgment against the Debtors for personal injuries received while snow tubing at the Badlands area. The Debtors' petitions for

² After all briefs had been filed and this matter submitted to the Court, the Debtors filed amended schedules adding a potential liability arising out of a Minnesota lawsuit.

³ See Footnote 2.

relief were filed after a date had been set for an execution sale but before the sale could take place.

5. The Kinneys are currently prosecuting a malpractice action against the attorney who defended them in the Kroska personal injury action.

6. The Debtors deny that the sole purpose of their petitions for relief was to delay the Kroska execution sale. However, the record reveals that at the time of filing the only significant element of any reorganization plan was to pay the Kroska judgment out of any funds recovered in the malpractice action or from a leisurely sale of assets.

Discussion

7. This matter is before the Court on the Kroskas' motion for relief from stay; however, both parties have briefed the issue of the good faith of the Debtors' reorganization petitions. See In re Telemark Management Co., Inc., 41 B.R. 501, 506 (Bankr. W.D.Wis. 1984) (given procedural and substantive history of proceeding, court would convert or dismiss sua sponte, if necessary).

8. "It is generally recognized that 'good faith' is a threshold prerequisite to securing Chapter 11 relief, . . . and that the lack of such good faith constitutes 'cause', sufficient for dismissal under 11 U.S.C. § 1112(b)." In re Madison Hotel Associates, 749 F.2d 410, 426, 12 B.C.D. 616, 630 (7th Cir. 1984).

9. A debtor proceeds in good faith when its "actions are consistent with Congress' intent that a business organization experiencing cash flow problems be allowed to file a Chapter 11 petition for reorganization, extend the period of its debts, and return to the status of a viable entity while paying creditors in full." Id.

10. Are the Debtors "experiencing cash flow problems" within the meaning of Madison Hotels? This Court believes that they are not.

11. With a combined net worth of \$548,811.69, the Debtors are indisputably solvent and fully capable of borrowing to meet their current obligations. This is not a case of a beleaguered debtor seeking breathing room to reorganize, return to viability and pay debts that would otherwise go unpaid. Rather, it is a case of viable Debtors attempting to hinder a single creditor and delay paying a just debt.

CONCLUSION OF LAW

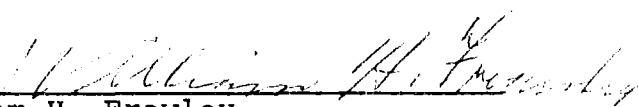
There is cause to dismiss these bankruptcy proceedings. In re Mildevco, Inc., 40 B.R. 191, 193 (Bankr.S.D.Fla. 1984) ("Where a debtor's reorganization effort involves essentially a two-party dispute which can be resolved outside the bankruptcy court's jurisdiction, and the purpose of the filing is to frustrate a creditor's sale, it has been held that the petition was not in good faith.").

ORDER

IT IS ORDERED THAT In re Badlands Recreation, Inc.,
EF11-84-02031 (Bankr.W.D.Wis.), and In re Kinney, EF11-84-02032
(Bankr.W.D.Wis.) be, and the same hereby are, DISMISSED.

Dated: March 7, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney James A. Drill
Attorney Thomas R. Schumacher
Attorney Daniel M. Byrnes *ca*