

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 11
JOSEPH G. BIGARD, d/b/a)
Bigard Manufacturing and) No. BK 86-31001
Bigard Oil Production,)
)
Debtor(s).)

O R D E R

This matter is before the Court on a motion to convert filed by First National Bank in Newton ("movant"). Movant asks that the case be converted from a proceeding under Chapter 11 to Chapter 7 of the Bankruptcy Code.

This case was filed on September 25, 1986 as an involuntary Chapter 7. On November 24, 1986, the case was converted at debtor's request to Chapter 11. Debtor did not file his Chapter 11 Disclosure Statement and Plan until January 4, 1988. The Plan calls for the sale of assets which are necessary to debtor's business to Commercial Properties, Inc., with any remaining assets to either be liquidated or surrendered to secured creditors.

Movant argues that the liquidation and recovery of preferential transfers should be conducted under the guidance of an independent trustee because debtor allegedly caused preferential transfers and fraudulent conveyances to occur shortly before the bankruptcy petition was filed. Movant also notes that debtor has not

consistently filed monthly operating reports and that there have been significant delays in the case.

In response, debtor disputes movant's allegation concerning the preferential transfers and fraudulent conveyances. He argues that a liquidation plan under Chapter 11 is proper where, as in this case, there is a liquidation of an ongoing business.

Under §1112(b), the Court may convert a case under Chapter 11 to Chapter 7, or may dismiss the case for cause.

The Court must balance equities and consider the interests of creditors and the estate in determining whether conversion is appropriate The court has wide discretion in determining whether or not to convert a case.

In re Jartran, 71 B.R. 938, 943 (Bankr. N.D. Ill. 1987) (citations omitted). The Court may consider other factors besides those listed in §1112(b)(1)-(6) to find "cause" to convert a case. Matter of W.J. Rewoldt Co., 22 B.R. 459, 461 (Bankr. E.D. Mich. 1982).

The present case was filed over a year before debtor filed his plan, and, although the case was originally converted to a reorganization case at debtor's request, the plan he ended up filing was for liquidation, not reorganization.

Several courts have held that liquidation is not the proper function of reorganization proceedings, but the function of Chapter 7 proceedings. Matter of Natrl Plants & Lands Management Co., 68 B.R.

394, 396 (Bankr. S.D. N.Y. 1986); Matter of Fitzgerald Group, 38 B.R. 16, 18 (Bankr. S.D. N.Y. 1983); Matter of W.J. Rewoldt Co., supra, 22 B.R. at 462. While there are some situations in which a Chapter 11 liquidation of an ongoing business is preferable to a Chapter 7 liquidation in order to prevent diminution of the bankruptcy estate, this does not appear to be a problem in the present case.

There is no evidence or allegation that the value of the assets of debtor's business would be harmed if they were liquidated by a Chapter 7 trustee rather than as a part of the liquidation of an ongoing business. Finally, it should be noted that no creditors have objected to the conversion.

Therefore, the Court finds that it would be in the best interest of the creditors and the bankruptcy estate if this case is converted to Chapter 7.

IT IS ORDERED that the motion to convert filed by the First National Bank in Newton is GRANTED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: April 26, 1988