

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CASE NO. 09-62256-JB
: :
CAMELOT CLUB CONDOMINIUM : :
ASSOCIATION, INC., : :
: : CHAPTER 11
Debtor. : :

ORDER

Debtor is a condominium association for a 338-unit condominium property located in College Park, Georgia. The impetus for filing this Chapter 11 case was the termination of water service to the debtor by the City of Atlanta Department of Watershed Management (the "City"). After an emergency hearing, the Court entered an Order the day after the case was filed directing the City to restore water services at the condominium property. Debtor's major problem during this case has been a disputed proof of claim in the amount of \$502,279.35 filed by the City for unpaid water service and sewer charges (the "Claim"). In the two and a half years that this case has been open, debtor has not been in a position to propose a feasible plan of reorganization. After many hearings, an unsuccessful mediation with the City with respect to the disputed prepetition water bills, the failure of the homeowners to approve an increase in assessments to fund a Chapter 11 plan, and a pleading filed by debtor stating that presently no feasible plan of reorganization can be proposed, the Court concludes that there is no legal or factual basis upon which to keep this debtor in a Chapter 11 proceeding under the federal bankruptcy laws. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Given the two-and-a-half-year history of this case and the considerable time and effort expended by many individuals in trying to reach a workable solution to the dispute between the debtor and the City, it is appropriate to recount the procedural history of this case. In the first few months following the restoration of water services to debtor's premises, the United States Trustee filed two motions to dismiss this case and has continuously maintained that there is no reasonable likelihood of reorganization. The United States Trustee filed the first motion to dismiss on February 12, 2009 and argued at a hearing held on April 1, 2009 that a Chapter 11 case was not feasible given debtor's insufficient monthly revenues. Counsel for the United States Trustee stated at that hearing that what the debtor needs is not a bankruptcy solution, but rather a political solution with the City. The United States Trustee filed a second motion to dismiss, but chose not to pursue that motion because the debtor and the City agreed to attempt to mediate debtor's objection to the City's Claim. In response to the compelling arguments in both motions to dismiss, debtor's counsel repeatedly asked to keep the case open until debtor could resolve the Claim with the City.

At the request of the parties, the Court directed mediation on debtor's objection to the City's Claim by an Order entered on November 24, 2009. Although debtor's counsel had indicated at a hearing held in this case in May of 2010 that the mediation was proceeding and she was optimistic that a Chapter 11 plan or out-of-court workout with the City and other creditors would be proposed by the end of the summer

of 2010, the Court heard nothing further from the parties. At a telephonic status conference initiated by the Court on October 12, 2010, counsel advised the Court that the parties appeared to be at a standstill. Counsel each described the difficulties they had at proving the prepetition amounts due and said that they were not yet clear on the dollar amount the City would accept and over what period of time the City would permit the debtor to pay any agreed upon amount. It appeared that neither party was prepared to litigate the debtor's objection to the City's Claim. The Court directed counsel for the City to confer with the city attorneys and the Commissioner to determine what amount they could prove or what terms they could be willing to accept and to file a status report within thirty (30) days of the telephonic conference. The Court gave debtor until January 1, 2011 to file a proper plan of reorganization, if and only if a plan were appropriate and feasible.

The City filed a report on November 12, 2010 stating that the City had submitted a proposal to the debtor concerning its Claim and payment terms. The report indicated that the City was awaiting a response from the debtor's board and that counsel for the City would report to the Court on or before December 10, 2010 if no other pleadings were filed by the parties concerning their dispute. The Court heard nothing further from the parties, and debtor did not file a Chapter 11 plan by January 1, 2011.

Because the case had been pending for over two (2) years and no confirmable plan had been proposed, the Court entered an Order directing debtor to show

cause why the case should not be dismissed at a hearing to be held on March 9, 2011. Debtor filed a response to the Order to Show Cause, attaching a draft plan of reorganization, a draft disclosure statement, and a draft order resolving the City's Claim. However, these documents emphasized that the debtor and the City had not reached any definite agreement regarding the objection to the City's Claim and, significantly, the documents failed to disclose whether debtor would be able to generate sufficient revenue to fund any plan or pay the City's Claim.

At the March 9, 2011 show cause hearing, debtor's counsel admitted that in order for debtor to be able to fund a plan, its homeowners would need to approve an increase in assessments at their annual homeowners' meeting, which counsel represented would be held on April 30, 2011. The City and debtor's counsel announced the terms of a proposed agreement, which would be presented to the homeowners at the April 30, 2011 meeting. Essentially, under their agreement, the City's Claim would be in the amount of \$350,000.00 to be paid in monthly installments of \$5,000.00 for seventy (70) months, provided that debtor was able to confirm a plan of reorganization. When the Court questioned the feasibility of a plan that would incorporate these terms, counsel explained that this agreement would require the homeowners to approve an increase in association dues.¹ Debtor requested additional time to file a Chapter 11 plan and

¹ According to the debtor's operating reports filed during this Chapter 11 case, in twenty (20) of the twenty-five (25) months for which debtor filed what appeared to be complete data, debtor collected association dues in an amount less (many times, significantly less) than the amount of association dues provided for in the monthly budget. In addition, debtor would not have had

disclosure statement following the homeowners' meeting, and the Court instructed debtor to file a plan, if feasible, by May 20, 2011.

On April 12, 2011, debtor filed a motion to extend time to file a plan. The motion indicated that debtor had been preparing for its April 30, 2011 homeowners' meeting and had planned on mailing notices to homeowners no later than April 1, 2011, but that its plan was interrupted when a fire apparently arising from a domestic dispute occurred on March 18, 2011. The fire completely destroyed one of debtor's fifteen (15) buildings. Because of the disruption caused by the fire, debtor's board was not able to send out sufficient notice to homeowners for an annual meeting to be held on April 30, 2011. Therefore, debtor requested that the deadlines discussed at the March 9, 2011 hearing be extended to allow debtor to hold its annual meeting on May 21, 2011 and to have a plan filed, if feasible, no later than June 10, 2011. The Court granted this request.

On June 9, 2011 – one day prior to the extended deadline for debtor to file a feasible plan – debtor filed a status report and request for additional time to file a plan. This report discussed several significant events that affected the viability of debtor's Chapter 11 case. First, debtor reported that another fire occurred on debtor's premises during the last week of April and, tragically, a mother and her young daughter died of smoke inhalation. As a result of this second fire, debtor's insurance carrier notified debtor that it would not renew coverage and only extended coverage from May 29, 2011

sufficient income to cover operating expenses plus a \$5,000.00 monthly payment to the City in twenty-one (21) of the twenty-five (25) months.

to June 28, 2011. The report further stated that debtor was able to procure replacement insurance coverage, but that debtor's insurance premium would increase from about \$8,500.00 per month to just under \$15,000.00 per month. Second, debtor reported that the annual homeowners' meeting was held on May 21, 2011 and that the homeowners did not approve an increase in association dues of \$50.00 per month. Third, debtor stated that, due to the increased insurance premium, debtor would be unable to fund payments to the City under the terms announced at the March 9, 2011 hearing. Significantly, debtor indicated that it was investigating whether it was eligible for financing through a Small Business Administration ("SBA") program. If it were able to obtain an SBA loan, debtor stated that it would be able to pay off the City's Claim, fund some projects such as installing meters that would allow for separate billing for each unit, and increase dues by an amount much smaller than \$50.00 per month.

The Court held a hearing on July 27, 2011 on debtor's request for additional time to file a Chapter 11 plan. The request for more time was based on the representation that debtor needed time to investigate its eligibility for an SBA loan. However, debtor's counsel filed a pleading three (3) days before the hearing, stating that debtor had determined that it is not eligible for any SBA loans. Without the SBA financing and without the homeowners' approval of an increase in association dues, debtor stated that no feasible plan of reorganization can be proposed. Given the history of this case and after reviewing the recent pleadings filed, the Court advised the parties at the hearing that,

unfortunately, it had no choice but to dismiss the case.

The Court advised the debtor from the outset of this case and at multiple hearings that a condominium association makes an unlikely candidate for a successful Chapter 11 reorganization, because it generally has no mechanism for generating revenue other than the collection of association dues. Like many condominium associations in times of financial crisis, this debtor has a number of members who are not paying or have not paid their monthly dues. A delinquency in dues payments usually requires increased assessments from paying members to cover association expenses and debt. However, this debtor has not been able to pass any increase in assessments or any special assessment to fund a Chapter 11 plan. In fact, debtor's pleading filed on July 24, 2011 states that at the annual homeowners' meeting held on May 21, 2011, the homeowners were asked to approve an increase in assessments that would generate between \$6,000.00 and \$7,000.00 of additional revenue per month, but that homeowners "vehemently rejected any additional assessments to fund a plan, for any reason" and "made it clear that no additional funding would be approved, regardless of how or what the plan proposed".

When unit members cannot or refuse to pay dues, the condominium association can try to exercise its rights under state law. However, debtor's July 24, 2011 pleading states that debtor lacks the funds to pursue delinquent homeowners unless and until the issues with the City can be managed. Furthermore, debtor states that although its board has approached attorneys, it has been unable to find a lawyer who will agree to

provide collection services while debtor is in bankruptcy. Debtor's pleading states this "catch-22 situation" was explained to the homeowners at the May 21, 2011 meeting, but the increase in assessments was nevertheless rejected.

The Court cannot keep a Chapter 11 case open indefinitely. Here, despite a great deal of time and effort on the part of debtor's attorney, debtor's board, and several unit holders, debtor has not been able to obtain a vote for an increase in assessments, hire attorneys to pursue delinquent homeowners, obtain financing through the SBA, or successfully complete any other means of obtaining revenues sufficient to propose a Chapter 11 plan to pay off the City's Claim or other filed claims. The problems identified by debtor's counsel that led to the bankruptcy filing and prevented the debtor condominium association from proposing any feasible plan are not problems that can be solved in this bankruptcy proceeding. Perhaps the main benefit of a Chapter 11 filing here was to require the City to restore water services in January of 2009 and to have time to develop a plan to pay creditors. However, two and a half years later with no feasible plan of reorganization and no hope of one being filed, this case must be and is hereby dismissed. *See* 11 U.S.C. § 1112(b)(4)(A).

The Court strongly encourages the parties to continue communicating with one another to reach a workable solution. Fortunately, the debtor is current on all postpetition payments to the City, and all indications are that this debtor can continue to pay its water bill going forward. Outside of bankruptcy, the City and creditors may

pursue whatever state law rights they may have against the debtor, and the debtor may pursue collection remedies against homeowners who are delinquent in their association dues. But the Court urges the debtor and its board to pursue discussions with homeowners to increase the amount and collection of assessments. The Court urges the City to consider the fact that it may have great difficulty in establishing and enforcing its Claim against the 338 individual unit holders, all with different mortgage lenders. The debtor condominium association may not have assets against which the City can enforce its Claim, and shutting off the water service would harm innocent unit holders who have paid their dues every month. The Court encourages the City to recognize the benefit of having a paying customer with a solid two-and-a-half-year record of monthly payments, to explore the possibility of installing meters that would allow for separate billing for each unit, to refrain from shutting off water services to the debtor, and to meet with the debtor's representatives to work toward a resolution of any past due claim in an amount this debtor condominium association can reasonably pay.

IT IS SO ORDERED, this 9th day of August, 2011.



JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order was mailed to the following:

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