

**UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF KENTUCKY**

IN RE:)
)
JAMES M. RYNERSON, M.D., P.S.C.) CASE NO. 03-11844(1)(11)
)
)
_____ Debtor)

MEMORANDUM-OPINION

This matter is before the Court on the Motion to Convert Case to Chapter 7 or in the Alternative to Dismiss Chapter 11 Case of T. J. Samson Community Hospital (“Hospital”). The Court considered the written submissions of the Hospital and the Debtor James M. Rynerson, M.D., P.S.C. (“Debtor”) and the comments of counsel at the hearing held May 25, 2006. For the following reasons, the Motion is denied.

FACTS

Debtor filed his Voluntary Petition seeking relief under Chapter 11 of the United States Bankruptcy Code on August 22, 2003. The Debtor’s Third Amended Plan of Reorganization was filed on October 8, 2004. The Hospital voted in favor of the Plan. By Order entered November 8, 2004, the Plan was confirmed.

The Hospital moved to reopen the case on July 29, 2005. On August 2, 2005, the Hospital filed a Motion to Compel the Debtor to make required payments to the Hospital as set forth in the Plan. The Court issued an Order on November 17, 2005 granting the Hospital’s motion.

On April 7, 2006, the Hospital filed a Motion to Convert or in the Alternative to Dismiss this Case. The Hospital contends that Debtor has been unable to effectuate substantial consummation

of the confirmed Plan and has materially defaulted on its obligations of the confirmed Plan pursuant to 11 U.S.C. §1112(4)(m) and (n).

Debtor filed its written objection to the Hospital's motion on May 18, 2006. Debtor disputes the Hospital's contentions regarding its compliance with the terms of the Plan. Debtor also contends that substantial consummation of the confirmed Plan has already occurred.

Following a hearing on the Hospital's motion, both parties were directed by the Court to file supplemental briefs in support of their respective positions on the Hospital's motion.

LEGAL ANALYSIS

The Court does not find conversion or dismissal of this case is warranted. Conversion or dismissal is only permitted where it is in the best interests of the creditors of the estate and cause is established. See 11 U.S.C. §1112(b)(I). Those grounds are not met in this case.

The Hospital and other creditors will not be in any better position should this case be converted or dismissed. Debtor correctly notes that in all likelihood creditors would be greatly prejudiced by dismissal or conversion because additional creditors would be included in a subsequent filing. This would require a different division of assets with smaller recoveries for the current creditors.

It is also clear that conversion or dismissal would not allow the Hospital to relitigate claims already determined in this case. Confirmation of the Plan is a final judgment that is entitled to *res judicata* effect. In re Chattanooga Wholesale Antiques, Inc., 930 F.2d 458, 462 (6th Cir. 1991). The Hospital is barred from raising arguments and claims that could or should have been raised during the confirmation process.

The Order of Confirmation had the dual effect of discharging the creditor's pre-confirmation debt and replacing it with the claims set forth in the Plan. In re Troutman Enterprise, 253 B.R. 8, 11 (B.A.P. 6th Cir. 2000). The Plan is a new binding contract between the reorganized Debtor and the creditors. In re Xofox Indus. Ltd., 241 B.R. 541, 542 (Bankr. E.D. Mich. 1999). This means that the creditor may enforce the Plan terms in any court of competent jurisdiction. Id. ("Therefore [u]nless the matter at issue is within the exclusive jurisdiction of the Bankruptcy Court, the mere reservation of jurisdiction in the case by the Bankruptcy Court post-confirmation does not foreclose the right of a party to seek his remedy upon default under the plan in a state court having jurisdiction over the subject matter of the dispute. . . and no relief need be obtained from the Bankruptcy Court prior to the commencement of the state court action.")

The creditors may also seek dismissal or conversion in the event of (1) inability to effect substantial consummation of the Plan; (2) material default or (3) termination of a plan pursuant to a condition provided for in it. 11 U.S.C. §1112(4)(m), (n) and (o). The Court does not find any of these conditions present in the case at bar. Payments have been made to creditors under the Plan in accordance with its terms. The Court finds that substantial consummation has occurred. There has been no material default nor has there been termination of the Plan pursuant to a condition in the Plan. Therefore, the Hospital's request for conversion or dismissal of this case must be denied.

The Court also agrees with Debtor that the Hospital's allegations amount to a simple breach of contract claim. Such claims can be effectively resolved by a state court, which has concurrent jurisdiction with this court over such claims. This is the appropriate avenue for resolution of the Hospital's claims. Accordingly, the Hospital's request for conversion or dismissal of this case is denied.

CONCLUSION

For all of the above reasons, the Motion to Convert Case to Chapter 7 or in the Alternative to Dismiss Chapter 11 Case of T. J. Samson Community Hospital is **DENIED**. An Order incorporating the findings herein accompanies this Memorandum-Opinion.

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ORDER

Pursuant to the Memorandum-Opinion incorporated herein by reference and entered this date,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Convert Case to Chapter 7 or in the Alternative to Dismiss Chapter 11 Case of T. J. Samson Community Hospital, be and hereby is, **DENIED**.