

IN THE UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

MANAWA IMPLEMENT and
SERVICE, INC.,
Debtor.

Case No. 86-1021-W
Chapter 11

PAYLYN AG., INC.,

Debtor.

Case No. 86-3345-W
Chapter 12

ORDER - MOTIONS TO CONVERT PROCEEDINGS TO CHAPTER 7

On March 9, 1988, a hearing was held on motions to convert proceedings to Chapter 7. The following attorneys appeared on behalf of their respective clients: C. R. Hannan for the Chapter 11 Debtor, Manawa Implement and Service, Inc. (hereinafter "Manawa"), and for the Chapter 12 Debtor, Raylyn Ag., Inc. (hereinafter "Raylyn Ag"); Douglas E. Quinn for INNK Land & Cattle Company (hereinafter "INNK"); Donald L. Swanson for State Bank and Trust (hereinafter "State Bank"); Jack E. Ruesch for Council Bluffs Savings Bank (hereinafter "Bank"); and Randy R. Ewing for the John Deere Company. At the conclusion of said hearing, the Court took the matters under advisement and ordered the parties to submit briefs by April 11, 1988. The Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). The Court, upon review of the pleadings,

arguments of counsel, and briefs, now enters its findings and conclusions pursuant to F.R. Bankr. P. 7052.

FINDINGS OF FACT

1. The findings of fact from this Court's July 8, 1988, Order on motion for substantive consolidation are incorporated herein.

2. On July 27, 1987, INNK filed a motion to convert the Chapter 11 Manawa proceedings to Chapter 7. On September 2, 1987, Manawa filed a resistance to said motion. On September 14, 1987, State Bank also filed a resistance to said motion.

3. INNK has neither filed a claim in the Manawa case nor is it listed as a creditor in Manawa's schedules.

4. On July 27, 1987, INNK filed a motion to convert the Chapter 12 Raylyn Ag proceedings to Chapter 7. On September 2, 1987, Raylyn Ag filed a resistance to said motion.

DISCUSSION

In addressing the motions to convert, the Court must deal with each debtor separately because the authority for conversion of Manawa as a Chapter 11 debtor is found at Bankruptcy Code §1112, while the authority for conversion of Raylyn Ag as a Chapter 12 debtor is found at §1208.

Conversion of Manawa in Chapter 11

Section 1112 provides in relevant part:

(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including....

11 U.S.C. §1112(b) (emphasis added).

A "party in interest" under section 1112(b) is defined in section 1109(b) as "the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee." 11 U.S.C. §1109(b).

In the case at bar, INNK filed the motion to convert Manawa to Chapter 7. However, INNK is not a "party in interest" under section 1112(b) because it does not fit within any of the categories under section 1109 (b). INNK is not listed as a creditor of Manawa and has not filed a claim in the case. Thus, INNK does not have standing to bring the motion. Further, Congress did not give the Court the power under section 1112(b) to convert sua sponte. See Collier on Bankruptcy, ¶1112.03, at 1112-30, 31 (15th Ed. 1988). The Court recognizes that section 105(a) provides in relevant part:

No provision of this title providing for the raising of an issue by a party in

interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent any abuse of process.

11 U.S.C. §105(a) (emphasis added). However, the Court does not believe a sua sponte conversion of Manawa to Chapter 7 is necessary or appropriate to enforce or implement any Court orders or rules, and there is no abuse of process to be prevented by the conversion. Therefore, since no "party in interest" has requested the conversion, and since the Court will not convert sua sponte, INNK's motion to convert Manawa to Chapter 7 must be denied.

Conversion of Raylyn Ag in Chapter 12

Section 1208 provides in relevant part:

On request of a party in interest and after notice and a hearing, the Court may dismiss a case under this chapter or convert a case under this chapter to a case under Chapter 7 of this title upon a showing that the debtor has committed fraud in connection with the case.

11 U.S.C. §1208(d) (emphasis added). INNK is listed as an unsecured creditor with a claim of "unknown" on Raylyn Ag's schedule A-3. Therefore, INNK does have standing to request the Court to convert Raylyn Ag to Chapter 7.

Even though INNK has standing to request the Court to convert, the Court must deny INNK's motion because INNK has not met the statutory requirement for conversion. Section 1208(d) requires an affirmative showing of fraud in connection with the case. In the case at bar, INNK has made

no showing of fraud in connection with the case. The actions INNK complained of occurred more than three years prior to the date that Raylyn Ag filed its Chapter 12 petition.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that INNK is not a party in interest in Manawa's Chapter 11 case and thus does not have standing to bring the motion to convert Manawa to a Chapter 7.

FURTHER, the Court concludes a sua sponte conversion is not necessary or appropriate to enforce or implement any Court orders or rules, or to avoid any abuse of process.

FURTHER, the Court concludes INNK has not made any showing of fraud in connection with Raylyn Ag's Chapter 12 case.

IT IS ACCORDINGLY ORDERED that INNK's motion to convert Manawa's Chapter 11 proceedings to Chapter 7 is denied.

IT IS FURTHER ORDERED that INNK's motion to convert Raylyn Ag's Chapter 12 proceedings to Chapter 7 is denied.

Dated this 11th day of July, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE