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

In the Matter of

MANAWA IMPLEMENT AND SERVICE, INC.,	Case No. 86-1021-W Chapter 11

Debtor.

ORDER — MOTION TO DISMISS

On March 9, 1988, a hearing was held on Debtor's motion to dismiss. The following attorneys appeared on behalf of their respective clients: C. R. Hannan for Debtor; Douglas E. Quinn for INNK Land and Cattle Company; Jack E. Ruesch for Council Bluffs Savings Bank; Donald L. Swanson for State Bank and Trust; and Randy R. Ewing for the John Deere Company. At the conclusion of said hearing, the Court took the matter 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). The Court, upon review of the pleadings, arguments of counsel, and briefs, now enters its findings and conclusions pursuant to F.R. Bankr. R. 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 October 13, 1987, Debtor filed a motion to dismiss its Chapter 11 case. In said motion, Debtor argued its case should be dismissed pursuant to 11 U.S.C. §1112(b) for the following reasons: (1) substantial accommodations have been made with all creditors; (2) the corporation is now profitable; and (3) the corporation is current in all of its obligations.

3. No creditor filed an objection to Debtor's motion.

4. During the hearing, Mr. Stan Anderson, Assistant Vice President of State Bank and Trust, testified that all payments pursuant to the stipulation had been made and Debtor was progressing satisfactorily in its reorganization effort.

5. Debtor has completed a successful reorganization and an agreement has been reached with all creditors except John Deere, which has not signed a stipulation but has in fact performed under the agreement. Further, John Deere did not file an objection to Debtor's motion and did not object to said motion at the hearing.

DISCUSSION

Bankruptcy Code § 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 the creditors and the estate, for cause, including ....

11 U.S.C. §1112(b). In interpreting this section, 5 Collier on Bankruptcy, ¶1112.03,1112—3 (15th Ed. 1988) states:

> If the Debtor and the creditors agree that the case should be dismissed or converted to Chapter 7, the Debtor, as a party in interest, may request dismissal or transfer under §1112(b). Section 1112(b) would require that notice of the motion be given to creditors and equity security holders in the case of a corporation, or general unlimited partners in the case of a partnership. If no objection to the motion is filed. no hearing should be reguired and the court should order the case dismissed or converted forthwith. [emphasis added]
>
> If a motion to convert or dismiss a case is opposed, the moving party has the burden of proof on the issue of "cause." Section 1112(b) does not define what is meant by term "cause" although the subsection contains [ten] non—exclusive grounds which constitute "cause."

In the case at bar, Debtor and its creditors agree the case should be dismissed. No objection to Debtor's motion to dismiss was filed. The hearing on this motion was included with the other hearings on motion for substantive consolidation and motions to convert. However, it appears there was no need to hold the hearing on the motion to dismiss because no objection to Debtor's motion was filed. See id. Therefore, Debtor is entitled to have its case dismissed.

Even assuming arguendo that an objection to Debtor's motion was filed (which was not), the Court would still reach the same result of granting Debtor's motion to dismiss

because section 1112(b) grants the Court the power to dismiss "for cause" if in the best interest of creditors. What constitutes cause is a matter of judicial discretion to be determined on a case by case basis. In re Sheehan, 58 B.R. 296, 299 (Bankr. D.S.D. 1986). In the case at bar, cause exists to dismiss because Debtor has made substantial accommodations with all creditors and is now on its way back to financial success. Further, it is in the best interest of creditors to dismiss the case and let Debtor move forward in order to begin paying back its debts. Therefore, Debtor is entitled to have its case dismissed.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that since no objection to Debtor's motion to dismiss was filed, Debtor is entitled to have its case dismissed.

FURTHER, even if an objection to Debtor's motion to dismiss was filed, cause exists to dismiss, and dismissal is in the best interest of creditors.

IT IS ACCORDINGLY ORDERED that Debtor's motion to dismiss is granted.

Dated this 11th day of July, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE