

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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|---------------------------|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| Navigant Development LLC, |) | Case No. 24 B 01367 |
| |) | |
| Debtor. |) | Judge Jacqueline P. Cox |

**Order on Motion to Dismiss or in the
Alternative for Relief from the Automatic Stay (Dkt. No. 19)**

Debtor Navigant Development LLC first sought bankruptcy relief under chapter 11 of the Bankruptcy Code on September 15, 2021 at 9:44 a.m. A foreclosure sale of a creditor’s collateral was set to proceed that morning at 10:30 a.m. *See* Bankruptcy Case No. 21-10645. That case was dismissed on February 22, 2022 when the Debtor managed to refinance its main debt, which consists of a mortgage loan on 1419 N. Wells St., Chicago, IL; EMG Transfer Agent LLC became its main creditor.¹ That debt was later transferred to the Movant herein, Elizon DB Transfer Agent LLC (“Elizon” or the “Movant”).

Following a default under the refinanced debt, the creditor scheduled a UCC sale to take place on December 7, 2023 of the Debtor’s ownership interest in 1419 Partners, LLC (“Partners”). On December 6, 2023, the day before the UCC sale, the Debtor filed its second chapter 11 bankruptcy case, case number 23-16391. That case was dismissed pursuant to 11 U.S.C. § 1112(b)(1) on January 9, 2024 on the motion of the U.S. Trustee for failure to file schedules and a statement of financial affairs.

Debtor Navigant Development LLC filed this case, its third petition for relief under chapter

¹ As part of this exit financing agreement in case number 21-10645, the Debtor and its wholly owned subsidiary transferred all of its property, including 1419 N. Wells St., Chicago, IL, to 1419 Partners LLC (“Partners”). *See* Bankr. Case No. 24-01367, Motion to Dismiss, Docket 19, p. 3; Response, Docket 23, ¶ 2.

11 of the Bankruptcy Code, on January 31, 2024, one day before it was set to face a February 1, 2024 UCC sale of its 100% ownership interest (pledged collateral) in Partners. Partners owns the real estate in issue. The creditor also has a mortgage foreclosure case pending in state court.

Cause to Dismiss

The Movant seeks to dismiss the case with 180-day bar to refiling under 11 U.S.C. § 1112(b) or, in the alternative, to modify the automatic stay under 11 U.S.C. § 362(d)(1). *See* Motion to Dismiss, Docket 19.

Section 1112(b)(1) of the Bankruptcy Code provides that where there is cause, a bankruptcy court “shall” dismiss or convert a chapter 11 case to chapter 7, “whichever is in the best interests of creditors and the estate.” 11 U.S.C. § 1112(b)(1). Section 1112(b)(4) provides a non-exhaustive list of examples of cause. Bankruptcy Courts have discretion to decide whether to dismiss a chapter 11 case under § 1112(b).

A debtor’s failure to file a bankruptcy petition in good faith may constitute cause for dismissal under § 1112(b). *In re First Premier Funding, LLC*, 654 B.R. 142, 153 (Bankr. N.D. Ill. 2023).

Courts may consider various factors, the “*Tekena* factors” to determine whether a debtor has acted in good faith:

1. The debtor has few or no unsecured creditors.
2. There has been a previous bankruptcy petition by the debtor or a related entity.
3. The pre-petition conduct of the debtor has been improper.
4. The petition effectively allowed the debtor to evade court orders.
5. There are few debts to non-moving creditors.

6. The petition was filed on the eve of foreclosure.
7. The foreclosed property is the sole or major asset of the debtor.
8. The debtor has no ongoing business or employees.
9. There is no possibility of reorganization.
10. The debtor's income is not sufficient to operate.
11. There was no pressure from non-moving creditors.
12. Reorganization essentially involves the resolution of a two-party dispute.
13. A corporate debtor was formed and received title to its major assets immediately before the petition and
14. The debtor filed solely to create the automatic stay.

Id.; see also *In re Tekena USA, LLC*, 419 B.R. 341, 346 (Bankr. N.D. Ill. 2009) (citations omitted).

The Debtor, Navigant Development LLC, qualifies for dismissal based on several of the above factors. It has few unsecured creditors. The court was told at the April 23, 2024 hearing on the matter that secured creditor Elizon is owed approximately \$10,000,000. According to Schedules E and F, the Debtor has approximately \$202,192 unsecured debt. Schedules E & F, Docket 3. The Debtor has few unsecured creditors and few unsecured debts compared to what it owes its secured creditor. There are also few debts to non-moving creditors.

The Debtor is surely acting in bad faith considering its two previous bankruptcy cases.

Two of its three bankruptcy cases were filed on the eve of a UCC sale of collateral. The property the creditor is trying to execute on is the Debtor's major asset, its ownership of Partners.

According to the testimony of Mr. Tomaska, the Debtor's principal, the Debtor has no employees. This is another factor suggesting a lack of good faith in filing.

The likelihood of reorganization is very limited. The court was told that only part of the premises in issue has tenants. The court was also told that the Debtor has two letters of intent to enter leases for the available space; however, nothing in this regard was produced to this court or Elizon, even after the court passed the case to allow the information to be emailed. The court was also told that the property could be sold. Again, however, no such evidence was produced. There was also an unsubstantiated suggestion that a refinancing of its debt was being sought.

The court is convinced that this bankruptcy case was filed to obtain the automatic stay of 11 U.S.C. § 362(a), which all debtors have a right to. However, it is evident that the Debtor, Navigant Development LLC, is delaying and frustrating its creditors' enforcement rights without serious potential to reorganize.

A court may not convert or dismiss a chapter 11 case if it finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate. The Debtor would have to establish that there is a reasonable likelihood that a plan will be confirmed within the time frames established in §§ 1121(e) and 1129(e). If such sections do not apply a debtor has to show that such can be done within a reasonable period of time. 11 U.S.C. § 1112(b)(2). The Debtor has not shown that it is likely to get a plan confirmed in a reasonable period of time. It keeps filing for bankruptcy relief just to obtain the automatic stay, while it is not actually pursuing bankruptcy purposes and objectives. The court notes that it was told at the April 23, 2024 hearing that if this case gets dismissed the Partners entity will file for bankruptcy relief.

In terms of timing, the court notes that a chapter 11 case can be dismissed at any time. "Creditors need not wait until the debtor proposes a plan or until the debtor's exclusive right to file

a plan has expired.” *In re Woodbrook Assocs.*, 19 F.3d 312, 317 (7th Cir. 1994) (citation omitted).

The Debtor values its interest in the real estate at \$18,000,000. Schedule D: Creditors Who Have Claims Secured by Property, Docket 3. The Debtor reports that Elizon’s debt is \$10,400,000.00. Elizon posits that it is owed \$12, 819,911.53. Motion to Dismiss, Docket 19, p. 4. If either party is correct, there is a large equity cushion, as the value of the collateral exceeds the amount of the debt it secures. It is odd that no one seeks to convert this case to chapter 7 to have the asset liquidated by a trusted neutral, a chapter 7 trustee.

Conclusion

This bankruptcy case is dismissed and the Debtor is barred from filing another bankruptcy case for 180 days, on or before October 25, 2024.

Date: April 29, 2024

ENTERED:

Jacqueline P. Cox
J. Cox

Jacqueline P. Cox
United States Bankruptcy Judge