

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)
)
JANICE WOLK GRENADIER) Case No. 00-11592-SSM
) Chapter 7
Debtor)

MEMORANDUM OPINION AND ORDER

Before the court is the motion filed by the debtor on February 7, 2002, for reconsideration of the court's ruling denying her oral motion to continue the February 5, 2002, hearing at which the court approved the chapter 7 trustee's proposed sale of a commercial office building owned by the debtor.

Background and Discussion

The debtor, Janice Wolk Grenadier, filed a voluntary chapter 13 petition in this court on April 10, 2000. This was her third chapter 13 filing since 1998. A plan had been confirmed in her first case but was never consummated. Her second case was dismissed without confirmation of a plan. The present case was converted to chapter 11 on July 17, 2000, on the debtor's motion, but she was unable to obtain confirmation of a plan, and her case was converted to chapter 7 on April 25, 2001. Ann E. Schmitt was appointed as the chapter 7 trustee and promptly began efforts to market a commercial office building at 532 North Washington Street owned by the debtor. *See* § 704(1), Bankruptcy Code (imposing duty on trustee to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of

parties in interest.”). The trustee’s hope was that the building would bring enough to pay all creditors in full so that it would not be necessary to sell the debtor’s residence. The debtor has not cooperated with the trustee in these efforts. *See* § 521(3), Bankruptcy Code (requiring debtor to “cooperate with the trustee as necessary to enable the trustee to perform the trustee’s duties under this title”). Quite apart from such lack of cooperation, the trustee’s marketing efforts did not achieve contract offers as high as the trustee had hoped for or that the debtor thinks the property is worth. Because the deeds of trust against the property were in default and the secured creditors had moved for relief from the automatic stay, the trustee also did not have an unlimited time to market the properties. In any event, the trustee obtained a \$425,000.00 all-cash offer, and a hearing to approve the sale was noticed for February 5, 2002.

Prior to the February 5th hearing, the debtor had previously twice moved for a voluntary dismissal of her case on the ground that she had obtained a loan commitment that would enable her to pay her creditors outside of bankruptcy. A chapter 13 debtor may voluntarily dismiss his or her case “at any time” so long as the case has not been converted to chapter 13 from some other chapter. § 1307(b), Bankruptcy Code. However, a chapter 11 or chapter 7 case may only be dismissed for “cause” and only if such dismissal is in the best interest of creditors. § 1112(a) and § 707(a), Bankruptcy Code. Thus, once the debtor voluntarily converted her case to chapter 11, she gave up the absolute right she had in chapter 13 to a voluntary dismissal. Although a debtor’s willingness and desire to deal with his or her creditors outside of bankruptcy may in some circumstances constitute appropriate “cause” for dismissal of a chapter 11 or chapter 7 case, voluntary dismissal will not be granted if it would

result in prejudice to creditors. *In re Komyathy*, 142 B.R. 755 (Bankr. E.D. Va. 1992) (chapter 7 debtor's motion for voluntary dismissal based on her receipt of an inheritance sufficient to pay all creditors denied where chapter 7 trustee could ensure all creditors were paid and unsecured creditors would not have same guarantee of payment if case were dismissed). Based on the debtor's inability to confirm a plan of reorganization while in chapter 11 or successfully pay creditors in her two prior chapter 13 cases, and also based on the debtor's general failure in the present case to attend timely to the requirements imposed on debtors, the court concluded that prompt payment of creditor claims was more likely in the context of a chapter 7 administration than if the case were dismissed. Accordingly, both motions to dismiss were denied.

At the hearing on February 5th to approve the contract of sale, the debtor requested a continuance so that she could consult an attorney to determine her legal rights and possibly retain him to seek reconversion of this case to chapter 11. In this connection, the court observes that the debtor has been represented, in the course of her three cases, by *four* very competent attorneys, one of whom now sits as a judge of this court. In the present case, she was represented by an exceptionally experienced and able practitioner, Roy B. Zimmerman, who until his recent untimely death was widely considered the dean of the bankruptcy bar. Ultimately, however, Mr. Zimmerman was granted leave to withdraw as the debtor's attorney on June 21, 2001, based on her failure to cooperate with him. This was after her case had been converted to chapter 7 and a trustee appointed. Accordingly, the debtor has had more than six months to obtain successor counsel if she felt that she could not adequately represent her own interests.

A motion for continuance of a scheduled hearing is addressed to the sound discretion of the court. *United States v. Colon*, 975 F.2d 128, 130 (4th Cir. 1992). On the one hand, it is clearly in the interest of justice to afford affected parties an adequate opportunity to prepare for hearings that may significantly impair their interests. *Id.* at 130 (“While timely resolutions of disputes are important, there cannot be an ‘unreasoning and arbitrary ‘insistence on expeditiousness in the face of a justifiable request for delay.’”). At the same time, a continuance is not justified if the party has been given an adequate opportunity to prepare, and the continuance will significantly delay the proceedings or will inconvenience or prejudice other parties. The debtor has had six months to obtain replacement counsel. Creditors have been held at bay for nearly two years in the present case alone (and four years if the two prior filings are counted). Every additional day of delay in approving the trustee’s sale of the property simply adds to the substantial delay that has already been imposed on creditors.

Having concluded, therefore, that a continuance was not justified, the court denied the motion for continuance and proceeded to accept overbids that were tendered in open court to the \$425,000.00 purchase offer the trustee had received. The highest bid received was \$455,000.00, all-cash, no financing contingency, with settlement in 30 days. The court also approved a back-up offer of \$450,000.00 if the high bidder defaulted.

It may very well be, as the debtor asserts in her motion to reconsider, that the proceeds of sale will not be sufficient to pay all filed claims in full, particularly as the sale will result in fairly substantial capital gains taxes that must be paid by the estate. However, the court is satisfied that the trustee has engaged in a responsible marketing effort and has obtained the best price available given the time constraints. Certainly, the debtor has done nothing to assist

the trustee in coming up with a better price for the property. Rather, the debtor has solicited a contract offer to purchase the side lot for \$200,000.00, and she proposes to pay off the existing deeds of trust by a new loan that would be secured by the commercial building and by a subordinate lien position on her residence. She calculates that the refinance proceeds, coupled with the proceeds from the lot sale, would satisfy most if not all of her creditors, thus making the sale of her residence unnecessary.

Suffice it to note that the court simply has no confidence that the debtor's strategy would result in the prompt payment of creditor claims. The debtor's current proposal, in fact, is not significantly different from the plan she unsuccessfully proposed while in chapter 11. As noted, she had nine months while in chapter 11 to obtain confirmation of a plan. That did not happen, and creditors still remain unpaid. Additionally, the debtor was often tardy in filing the monthly financial reports required of chapter 11 debtors-in-possession. Following the conversion of her case to chapter 7, she failed to file certain reports the court had directed her to file and – after several opportunities to comply were ignored – was ultimately held in contempt and ordered to pay monetary sanctions of \$6,500.00. Given that dismal record, further delay to enable the debtor to consult with still another attorney and to possibly seek reconversion of her case to chapter 11 is simply not justified.

ORDER

For the foregoing reasons, it is

ORDERED:

1. The motion for reconsideration is denied.

2. The clerk will mail a copy of this order to the parties listed below.

Date: February 11, 2002

Alexandria, Virginia

/s/ Stephen S. Mitchell

Stephen S. Mitchell

United States Bankruptcy Judge

Copies to:

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