

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)
)
THE BENTLEY FUNDING GROUP, LLC.) Case No. 00-13386-SSM
) Chapter 11 (Involuntary)
Debtor)

MEMORANDUM OPINION AND ORDER

Before the court is a motion by SK&R Group, L.L.C. (“SK&R”) to reopen this closed chapter 11 case for the purpose of interpreting and clarifying an order that approved the sale of the debtor’s real estate. The underlying controversy involves a cash escrow that was posted prior to the bankruptcy filing to secure an erosion control agreement but which was not explicitly addressed in the sale order. A hearing on the motion was held in open court on May 27, 2003. SK&R and the reorganized debtor were present by counsel. For the reasons stated, the motion to reopen will be denied.

Background

The Bentley Funding Group, LLC, (“Bentley” or “the debtor”) is a Virginia limited liability company that was formed in 1998 to develop approximately 173 acres of land in a mixed-use development known as “River Oaks” located in the Woodbridge area of Prince William County, Virginia. The purchase of the River Oaks property had been financed by a loan secured by a first-lien deed of trust. When the note went into default, it was purchased by SK&R, which then scheduled a foreclosure sale. Three of the debtor’s members, together with two corporations they controlled, then filed an involuntary chapter 11 petition

against the debtor on August 11, 2000, and an order for relief was entered on September 6, 2000.

No trustee was appointed, and Bentley remained a debtor in possession throughout the chapter 11 case. Approximately four months into the case, Bentley filed a motion to approve a sale of all but 22 acres of the River Oaks property to SK&R in full satisfaction of the sums due under the deed of trust. As part of the purchase, SK&R also paid \$300,000 to the debtor and agreed to pay the claims of the general contractor, another contractor which had filed a mechanic's lien, the debtor's bonding company, and Prince William County. That sale was approved by this court on January 30, 2001. The contract of sale which was attached to and approved by the order recited that the debtor agreed to sell, and SK&R agreed to purchase,

Parts 1, 3, 4, 5 and 6 of the Prince William Property..., together with all improvements thereon and appurtenances thereunto belonging, and *together with all approvals, permits, development rights, consents and renewals thereof* relating thereto (the "Property")[]

(Emphasis added.) The intent of the contract as set forth in the order was as follows:

The terms of the Contract provide that the Debtor will convey to SK&R or its designee approximately 141 acres of the River Oaks Property (such 141 acres, the "Property") free and clear of all liens, interests, and encumbrances, it being the intent of the parties that SK&R receive title to all of the Debtor's interest in the River Oaks Property except the nearly 23 acres that is zoned B-1 for commercial use, all as more particularly described in the Contract.

The order further provided that "SK&R will undertake to complete the Debtor's remaining commitment to complete certain bonded public infrastructure improvements and will indemnify the debtor and its principals against the cost necessary to fulfill such

commitment.” The order expressly provided that the transfer “will not affect the rights of the Board of County Supervisors of Prince William County, Virginia ... against the Debtor or Debtor’s surety under [the existing] bonds[.]”

On May 31, 2001, this court entered an order confirming an amended plan of reorganization that had been filed by the debtor on March 6, 2001.¹ SK&R’s secured claim was placed in Class 3(a), while the secured claims SK&R had agreed to pay as part of the purchase price for the property were placed in Classes 3(b) through 3(e). The plan did not provide for any further payment or distribution to SK&R and stated that SK&R’s claims “were satisfied through cancellation of indebtedness in accordance with the terms of the SK&R Contract.” The remaining claims and interests, other than administrative claims, dealt with by the plan were general unsecured claims (Class 4), “insider” unsecured claims (Class 5) and equity interests (Class 6). Class 4 claims were to be paid in full at confirmation. The Class 5 claims were to be recharacterized as equity contributions, and the Class 6 equity interests would simply retain their existing rights. SK&R voted in favor of the plan, and no appeal was taken from the confirmation order.

On November 27, 2001, Bentley filed a report that the plan had been substantially consummated and requested entry of a final decree. By order of March 29, 2002, the court granted the motion for a final decree and directed that the case be closed. The clerk closed the case on June 27, 2002. The present motion by SK&R to reopen the case was filed on April 28, 2003.

¹ SK&R had filed its own plan but withdrew it after the settlement agreement with the debtor was approved.

The motion alleges that prior to the chapter 11 filing, Bentley had deposited \$328,170.25 in escrow with Prince William County to secure a Siltation and Erosion Control Agreement for the River Oaks project. The escrow was not specifically listed on the debtor's schedules and was not specifically addressed in the confirmed plan. After development of the River Oaks project was complete, Prince William County was prepared to release the escrowed funds to Bentley when SK&R intervened and asserted a claim to them. Prince William County then filed a bill of interpleader in the Circuit Court of Prince William County in July 2002. At the present time, there are three parties asserting a claim to the escrowed funds: the debtor, SK&R, and Peter Denger, one of the debtor's members. The present motion asks that the chapter 11 case be reopened so that this court can "interpret and clarify" the order approving the sales contract. In the event this court determines that Bentley rather than SK&R is the rightful owner of the escrowed funds, the motion further requests that "administration ... be reopened to administer the asset for the benefit of creditors and/or equity security holders."

Discussion

A.

A closed bankruptcy case may be reopened "to administer assets, to accord relief to the debtor, or for other cause." § 350(b), Bankruptcy Code. The decision whether to reopen a closed case is discretionary with the bankruptcy court. *Hawkins v. Landmark Fin. Co.*, 727 F.2d 324, 326 (4th Cir. 1984) (affirming bankruptcy court's refusal to reopen closed case).

B.

SK&R argues that this case needs to be reopened so that this court can interpret and clarify the sale order, and, in particular, determine whether the reference in the approved sales contract to conveyance of “all approvals, permits, development rights, consents and renewals thereof” relating to Parts 1, 3, 4, 5, and 6 of the Prince William Property encompassed cash escrows that might have been posted as a condition of, or in connection with, such approvals and permits.

A compelling argument can certainly be made that the court from which an order issues is almost always the preferred forum in which to resolve a dispute arising out of that order. At the same time, this particular order was not crafted by the court and was not the product of rulings made by the court. Rather, the order – like the contract it approved – was negotiated and drafted by the very parties who now disagree as to its meaning. This court’s only role was to ensure that the terms of the sale did not prejudice or impair the rights of *other* creditors or the equity security holders and that the terms were otherwise consistent with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. That being the case, it is far from clear why the Circuit Court of Prince William County – where issue has already been joined among the contending parties – is not in just as good a position as this court to resolve what is, at bottom, a garden-variety question of contract interpretation that raises no special bankruptcy concerns.

This is true even though SK&R was not a third-party purchaser but was a creditor that was agreeing to release its claim against the debtor in exchange for the property.

SK&R’s counsel conceded at oral argument that SK&R was unaware of the existence of the

cash escrow at the time it entered into the contract with the debtor and voted in favor of the debtor's plan. SK&R can hardly argue, therefore, that it expressly relied on receiving the escrow in exchange for waiving its claim.

Nevertheless, if the contract language, fairly construed, includes the escrow, then SK&R is entitled to it. But, as noted, there is no reason that the contract language cannot be just as well construed by the state court where the dispute is currently pending. Where there has been no order closing a chapter 11 case, and a dispute arises as to the interpretation of the plan and its application to a prepetition debt, it is undoubtedly appropriate for the bankruptcy court to exercise post-confirmation jurisdiction over the controversy. *In re Jenkins*, 184 B.R. 488, 492 (Bankr.E.D.Va. 1995). Here, however, the case has been closed for some time, and no issues are raised which implicate specific rights protected by the Bankruptcy Code. Furthermore, a confirmed chapter 11 plan of reorganization is in the nature of a novation, and the creditor who does not receive the payments promised under the plan is not required to seek relief in the bankruptcy court but may pursue its normal remedies with respect to the restructured debt. *Id.* at 494. Since there is no reason to suppose that the Circuit Court of Prince William County cannot efficiently and fairly adjudicate the controversy over ownership of the escrowed funds, considerations of judicial economy weigh in favor of leaving the controversy in that court..

C.

SK&R asserts, however, that reopening is appropriate because, if the funds are ultimately determined to belong to the debtor rather than to SK&R or Mr. Denger, there is a need to administer them as an asset of the bankruptcy estate. The court has to agree with the

debtor, however, that there could be no meaningful “administration” of the escrowed funds because all claims have been paid or otherwise satisfied. Assets are administered in bankruptcy in order to pay creditors. After the creditors have received all to which they are entitled, any remaining assets simply revert back to the debtor.² In this case, the sale of the River Oaks property to SK&R effectively cancelled SK&R’s claim, and the confirmed plan so provided. The remaining secured claims were paid or agreed to be paid by SK&R as part of the purchase price. Unsecured creditors (except insiders) were paid in full, while insiders had their unsecured claims converted to equity, and the equity holders retained their interests.

Confirmation of a chapter 11 plan binds the debtor, creditors, and equity security holders. § 1141(a), Bankruptcy Code. Even if an argument could be made that the failure to schedule the escrow as an asset of the bankruptcy estate constituted a fraud upon SK&R – which might otherwise not have agreed to the settlement of its claim – the fact remains that confirmation of a chapter 11 plan may be revoked even on the grounds of fraud only within 180 days after entry of the confirmation order. § 1144, Bankruptcy Code; Fed.R.Bankr.P. 9024. The confirmation order in this case was entered on May 31, 2001, a full 332 days prior to the filing of the motion to reopen. Since reopening the case at this late date would

² In chapter 11 cases, this principle is reflected in § 1141(b), Bankruptcy Code, which provides that confirmation has the effect, unless otherwise provided in the plan, of vesting all assets of the bankruptcy estate in the debtor. In some instances, however, courts have evoked the principle of judicial estoppel to prevent a reorganized debtor from asserting, after confirmation, claims against creditors or third parties that were not listed in the schedules or in the disclosure statement to the plan. However, that is a separate issue. Whether judicial estoppel should apply with respect to the present controversy is appropriately determined by the court in which the claim is asserted.

not allow the confirmation order to be set aside, and since all claims and interests have been fully paid or otherwise provided for by the confirmed plan, creditors and equity security holders would not be entitled to a distribution of the escrowed funds.

ORDER

For the foregoing reasons, it is

ORDERED:

1. The motion to reopen is denied.
2. The clerk will mail a copy of this order, or give electronic notice of its

entry, to the parties listed below.

Date: June 9, 2003

Alexandria, Virginia

/s/ Stephen S. Mitchell
Stephen S. Mitchell
United States Bankruptcy Judge

Copies to:

Thomas Moore Lawson, Esquire
Lawson and Silek, P.L.C.
P.O. Box 2740
Winchester, VA 22604
Counsel for SK&R Group, LLC

Kevin M. O'Donnell, Esquire
Henry, Henry, O'Donnell & Dahnke, P.C.
4103 Chain Bridge Road, Suite 100
Fairfax, VA 22030
Counsel for The Bentley Funding Group, Inc.

Office of the United States Trustee
115 South Union Street, Suite 210
Alexandria, VA 22314