UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Honorable Howard R. Tallman

In re:	)	
	)	**Case No. 06-13331 HRT**
SPRINGS HOSPITALITY, INC.,	)	
	)	**Chapter 11**
Debtor.	)	
	)	

ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY AND DISMISSING CHAPTER 11 CASE

This case comes before the Court on Colorado Springs Hospitality Services, LLC's, [the "Secured Creditor's"] *Motion to Dismiss Chapter 11 Bankruptcy Case* (docket #19) [the "Motion to Dismiss"]; and the Secured Creditor's *Motion for Relief from Automatic Stay* (docket #34) [the "Stay Relief Motion"].[1] Hearings on the various pending motions were held on June 27, 2006; July 7, 2006; July 19, 2006; and July 25, 2006. The Court will grant the Motion to Dismiss and the Stay Relief Motion.

I. BACKGROUND

The Debtor is the owner of a motel property. It operates a Super 8 Motel and Days Inn Motel on the property. It owns negligible personalty. The Debtor's shareholders consist of Robert and Heidi Thomas [the "Thomases"], Willis Wetzler and Jerome Heymans. The Thomases own 33⅓% of the Debtor's shares and Wetzler and Heymans own the remaining shares. The breakdown of ownership percentages between Wetzler and Heymans is the subject of some dispute.[2] The Debtor has no employees. Its property is operated under a management contract with Bruce Rhamani.[3]

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[1] The Court also heard evidence with respect to the Debtor's *Emergency Motion for Appointment of Chapter 11 Trustee and Motion for Forthwith Hearing* (docket #10), however, that motion was withdrawn by the Debtor at the hearing held on July 19, 2006. The parties agreed that the Court could consider evidence that it heard in connection with that motion in making its determination on the remaining two matters.

[2] The ownership percentages are variously reported as either 44.4% for Wetzler and 22.27% for Heymans or 33⅓% for each.

[3] The 1993 management contract entered into evidence is with Rhamani personally. However, the record also contains references to the Debtor's property being managed by Colorado Hospitality Services, Inc., which is a corporation owned and controlled by Rhamani.

The Thomases initiated this involuntary bankruptcy on June 6, 2006. The *Involuntary Petition* names each of the Thomases plus a corporate entity, which they control, as the three petitioning creditors. The *Involuntary Petition* was filed following a shareholder meeting at which the shareholders rejected a resolution that would have permitted the Debtor to file for chapter 11 protection voluntarily. Following the Thomases' filing of the *Involuntary Petition*, the Debtor's board of directors approved a resolution confessing the *Involuntary Petition* and Heidi Thomas, in her capacity as Vice President of the board of directors, filed the *Confession of Involuntary Petition and Request for Entry of Order of Relief*.

The *Involuntary Petition* was filed in order to forestall the Secured Creditor's foreclosure on the Debtor's property. Prior to March 21, 2006, the secured creditor was Merrill Lynch Credit Corporation. The current Secured Creditor, Colorado Springs Hospitality Services, LLC, ["CSHS"] acquired the note, deed of trust and other security interests on that date for $1.8 million. The current balance on the secured obligation is at least $2,648,769.94.[4] The Debtor has been in default on the secured obligation and has made no payments for at least 13 months. At the hearings on these matters, the Court heard conflicting testimony regarding the value of the Debtor's real property, which secures its obligation to the Secured Creditor. Those value estimates ranged from a low or $1.3 million (the value of the land) to a high of $2.58 million. The Court finds that the value of the Debtor's real property is no greater than the $1.8 million that the Secured Creditor paid Merrill Lynch for the secured note. Thus, the Debtor enjoys no equity in its real property.

The Secured Creditor, CSHS, is controlled by Bruce Rhamani. The Debtor has contracted with Rhamani since 1993 to manage its operations and it has operated at a loss for the past several years. The shareholders have declined to provide additional funds for the Debtor's operations and, prior to mid-2005, Rhamani funded the Debtor's deficit through loans from entities that he controlled [the "Rhamani Entities"]. The evidence showed that the Debtor was losing, on average, about $17,000.00 per month on its operations and that, over the past six to seven years, the Rhamani Entities have loaned approximately $715,000.00 to the Debtor. After Merrill Lynch threatened foreclosure in mid-2005, and it became clear to Rhamani that the Rhamani Entities could not recover the funds that they had loaned to the Debtor if the Debtor's property was lost to foreclosure, he discontinued funding the Debtor's operating losses.

Mr. Rahmani is subject to a shareholder derivative action initiated by Wetzler in El Paso County, Colorado, on or about May 26, 2006. That suit is brought on behalf of the Debtor and

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[4] This is the figure that was agreed to by the Thomas' counsel. The Secured Creditor presented testimony that the note balance was $2,883,820.97 as of July 15, 2006, when expenses incurred by the secured creditor to preserve the mortgaged property as permitted by the note and mortgage are taken into account.

Colorado Springs Lodging, Inc., ["CSL"] another motel corporation, in which Wetzler owns an interest and which owns a motel property that is managed by Rhamani. Rahmani is also the subject of a civil suit filed in El Paso County, Colorado, on or about June 20, 2006, by Robert and Heidi Thomas, on behalf of themselves and derivatively on behalf CSL. While not identical, the allegations made in the two lawsuits are substantially similar and some of the causes of action appearing in one or both of the complaints are: breach of contract, breach of fiduciary duty, negligence, conversion, civil theft, fraudulent transfer, fraudulent concealment and nondisclosure, aiding and abetting, civil conspiracy, violation of Colorado Organized Crime Control Act, etc. In addition, an adversary action has been filed in this bankruptcy case by the Debtor against Rahmani and his corporate entities which makes allegations which are substantially similar to allegations appearing in the El Paso County, lawsuits.

II. DISCUSSION

A. Motion to Dismiss Under 11 U.S.C. § 1112(b)[5]

> [T]he court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause. . . . For purposes of this subsection, the term 'cause' includes--
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> (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
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> (B) gross mismanagement of the estate;
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> (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
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> (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
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> (E) failure to comply with an order of the court;
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> (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
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> (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
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> (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

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[5] Unless otherwise indicated, all statutory citations are to Title 11 U.S.C. [the "Bankruptcy Code"]. This case was filed subsequent to enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (Apr. 20, 2005) ["BAPCPA"].

> (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
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> (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
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> (K) failure to pay any fees or charges required under chapter 123 of title 28;
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> (L) revocation of an order of confirmation under section 1144;
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> (M) inability to effectuate substantial consummation of a confirmed plan;
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> (N) material default by the debtor with respect to a confirmed plan;
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> (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
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> (P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1112(b).

1) Bad Faith

While bad faith is not an enumerated factor under § 1112(b), "[i]t is well established under the Bankruptcy Code, as it was under the Bankruptcy Act, that a Chapter 11 Petition must be filed in good faith, and if not, dismissal of the case is an appropriate remedy." *Pacific Rim Inv. L.L.P. v. Oriam, L.L.C. (In re Pacific Rim Inv. L.L.P)*, 243 B.R. 768, 771 (D. Colo. 2000) (citing *Udall v. FDIC (In re Nursery Land Dev., Inc.)*, 91 F.3d 1414 (10th Cir. 1996)). The Court has "inherent authority to prevent access to the courts which would constitute an abuse of the judicial process." *Id.* (citing *Jones v. Bank of Sante Fe (In re Courtesy Inns, Ltd.)*, 40 F.3d 1084, 1088 (10th Cir. 1994)). Furthermore, the list of factors that may constitute "cause" under § 1112(b) is non-exclusive. H.R.Rep. No. 95-595, at 406 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6362 ("[The] list [contained in § 1112(b)] is not exhaustive. The court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.").[6]

"At its most fundamental level, the good faith requirement ensures that the Bankruptcy Code's careful balancing of interests is not undermined by petitioners whose aims are antithetical to the basic purposes of bankruptcy." *NMSBPCSLDHB, L.P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.)*, 384 F.3d 108, 119 (3rd Cir. 2004). Chapter 11 cases vary widely and do not lend themselves to a cookie cutter approach to

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[6] The Court finds nothing in the BAPCPA amendments to § 1112(b) or its legislative history to indicate that those amendments in any way affected the non-exclusive nature of the list of "cause" factors that now appears in § 1112(b)(4).

analyzing the bad faith of a bankruptcy filing. As a consequence, bad faith, in the context of a chapter 11 filing as in most other bankruptcy contexts, is always determined on a case by case basis. *In re PPI Enterprises (U.S.), Inc.*, 324 F.3d 197, 211-12 (3rd Cir. 2003); *In re Trident Associates Ltd. Partnership*, 52 F.3d 127, 131 (6th Cir. 1995). Factors that various courts have found helpful in determining whether or not a chapter 11 case has been filed in good faith include: (1) the debtor has only one asset; (2) the debtor has few unsecured creditors whose claims are relatively small compared to the claims of the secured creditors; (3) the debtor has no employees; (4) the debtor's one asset is the subject of a foreclosure action as a result of arrearages or default on the debt; (5) the debtor's financial condition is, in essence, a two party dispute between the debtor and secured creditors which can be resolved in the pending state foreclosure action; (6) the timing of the debtor's filing evidences an intent to delay or frustrate the legitimate efforts of the debtor's secured creditors to enforce their rights; (7) the debtor cannot meet current expenses including the payment of personal property and real estate taxes; and (8) the debtor has little or no cash flow. *See, e.g., State Street Houses, Inc. v. New York State Urban Dev. Corp. (In re State Street Houses, Inc.)*, 356 F.3d 1345, 1346-47 (11th Cir. 2004); *C-TC 9th Ave. P'ship v. Norton Co. (In re C-TC 9th Ave. P'ship)*, 113 F.3d 1304, 1311 (2nd Cir. 1997); *Udall v. FDIC (In re Nursery Land Dev., Inc.)*, 91 F.3d 1414, 1416 (10th Cir. 1996).

The Court affirmatively finds that the Thomases filed this case in bad faith. Such bad faith constitutes cause for conversion or dismissal under § 1112(b). To merely recite the factors listed above is to describe the present case:

Number (1): The debtor has only one asset. The Debtor owns a single motel property asset.

Number (2): The debtor has few unsecured creditors whose claims are relatively small compared to the claims of the secured creditors. Although the Debtor's schedules show substantial unsecured obligations, each and every single unsecured debt listed on the Debtor's schedules is an insider debt. The Debtor's schedules list no vender or trade debt whatever.[7] The shareholders claim unsecured debt in the form of promissory notes. Notes appear to have been executed in 1994 to capitalize the Debtor for the purpose of purchasing the Debtor's motel property. Later, in 1996, shareholder notes were executed to give the Debtor operating capital. The Debtor's schedules list debts of approximately $525,000.00 to the Rhamani Entities, which

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[7] Robert and Heidi Thomas' electronic signatures appear on the schedules as the corporate officers who have reviewed and authorized the filing of the Debtor's schedules. At hearing, Heidi Thomas testified, in contradiction to the schedules, that the Debtor had trade debt of $15,000.00 at the time the *Involuntary Petition* was filed. Whatever the true amount of non-insider debt, it is insignificant compared to the debt claimed by the insiders.

represents funds used to make up for the Debtor's long running operating deficits.[8] Finally, the schedules list a single $200 debt to an entity controlled by the Thomases.

Number (3): The debtor has no employees. This Debtor has no employees.

Number (4): The debtor's one asset is the subject of a foreclosure action as a result of arrearages or default on the debt. This Debtor's single asset is the subject of a foreclosure proceeding due to the Debtor's default on its secured debt. The Thomases are candid in their admission that the *Involuntary Petition* was filed for the purpose of stalling the foreclosure action.

Number (5): The debtor's financial condition is, in essence, a two party dispute between the debtor and secured creditors which can be resolved in the pending state foreclosure action. This Debtor's situation is a bit more complicated than the usual two-party dispute between a debtor and its secured creditor. The real dispute is between the Debtor's shareholders and the Debtor's manager. There is not unanimity among the shareholders. Mr. Wetzler appears to be content to litigate the issues in state court. The Thomases seek to utilize both the state court and the bankruptcy court. Despite these complicating factors, this case is, at its core, a two-party dispute where the interested parties are insiders of the Debtor. The Debtor's manager is now its Secured Creditor. The Thomases complain about Rahmani's management of the Debtor and about the propriety of how he came to be the holder of the secured debt. Some of those matters may be raised as defenses to the foreclosure proceeding, but in any case, all of those issues are currently part of the existing state court legal proceedings brought by Mr. Wetzler. The bankruptcy case adds nothing to the resolution of those matters.

Number (6): The timing of the debtor's filing evidences an intent to delay or frustrate the legitimate efforts of the debtor's secured creditors to enforce their rights. There is no dispute that this case was filed in order to stop the Secured Creditor's foreclosure action. The Thomases may argue that the foreclosure is not legitimate because of the manner in which Rahmani's company became the holder of the secured debt. However, the only apparent difference between whether the secured creditor was still Merrill Lynch or Rahmani's company is that the foreclosure would have happened sooner if the secured debt was still in Merrill Lynch's hands. There is no question that bankruptcy cases are filed every day for the purpose of stopping foreclosure actions and that fact, in and of itself, is not indicative of bad faith. The same can be said for any of the bad faith factors. Neither this factor or any other is conclusive on the issue of bad faith; it is the presence of multiple factors that tips the balance.

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[8] Testimony at hearing established that approximately $715,000.00 was loaned to the Debtor by Rhamani and his corporate entities.

Number (7): The debtor cannot meet current expenses including the payment of personal property and real estate taxes. The evidence shows that this Debtor's operating revenues have been insufficient to fund its operations for several years. The only reason this Debtor was not overwhelmed with unpaid trade and tax debt long ago was that Rahmani funded those operating deficits through loans from the Rhamani Entities.

Number (8): The debtor has little or no cash flow. Although the debtor does generate revenues from its operations, as previously noted, those revenues are insufficient to cover its operational expenses.

This case is the poster-child for bad faith. One of the things that makes this case truly remarkable is the near total absence of any indicia of good faith surrounding its filing. The Thomases clearly used the vehicle of an *Involuntary Petition* as an end run around the fact that the shareholder group as a whole rejected their efforts to authorize the filing of a voluntary petition. The case merely opens up yet another forum for the insiders to litigate against Rhamani. The Court can find no potential for any benefit to any non-insider party from allowing this case to continue because it appears there simply are no non-insider parties in interest in the case.

According to the Thomases, the property can be sold and any debt owed to Rahmani or the Rhamani Entities may be subordinated under 11 U.S.C. § 510. Since equitable subordination is a bankruptcy specific remedy, they argue that the bankruptcy case is justified. This argument fails for two reasons. The logic of the Thomases argument is circular. Equitable subordination is a remedy that has no application outside of the bankruptcy context. It is bankruptcy specific because it relates solely to priorities among creditors who will participate in a bankruptcy distribution. There is nothing that a § 510 equitable subordination claim will accomplish for the Thomases what they cannot achieve more appropriately outside of the bankruptcy forum if they are successful in the prosecution of their claims in the state court.[9]

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[9] Another remedy that is employed in the bankruptcy context is that of recharacterizing debt to equity for bankruptcy distribution purposes. Where a corporate shareholder claims to be owed a debt by the corporation, recharacterization results in a reduction of the shareholder's distribution priority from that of a creditor to an equity holder. A cursory look at the recharacterization factors recited in *In re Hedged-Investments Associates, Inc.*, 380 F.3d 1292 (10th Cir. 2004), suggests that the Thomases may have as much to loose by keeping this Debtor in bankruptcy as they have to gain. Those factors are: (1) the names given to the certificates evidencing the indebtedness; (2) the presence or absence of a fixed maturity date; (3) the source of payments; (4) the right to enforce payment of principal and interest; (5) participation in management flowing as a result; (6) the status of the contribution in relation to regular corporate

(continued...)

Furthermore, as the Court noted, it finds that the value of the Debtor's real property is no greater than $1.8 million. That is the price at which Merrill Lynch was willing to sell the note secured by that property to the Secured Creditor and is the most recent evidence of an arms-length transaction involving the property that the Court has before it. If the Court were to make a finding of the property's value based solely upon the testimony adduced at hearing, it would find the value to be less than $1.8 million because none of that testimony supports a valuation even that high.

Both the Debtor and the Secured Creditor produced appraisal evidence and expert testimony. The Secured Creditor's expert, Mr. King, testified that the property was worth $1.3 million. That is the value of the underlying land and disregards the value of the buildings. Mr. King testified that much routine building maintenance had been deferred and that it would take at least $575,000.00 and as much as $790,000.00 to bring those buildings up to a standard that is acceptable to motel franchisers such that the Debtor's real estate is capable of generating positive income. Some of the points that he made were that the concrete walkways need replacement; the HVAC system cannot be controlled in individual rooms and is not acceptable to franchisers; the plumbing system leaks and requires extensive repairs; the elevators frequently fail and the Debtor cannot even enter into a maintenance contract for the elevators without spending $40,000.00 on upgrades. Mr. King also testified that it would take six to twelve months to market the property.

The Debtor's expert, Ms. Baker, made an estimate of value of $2.58 million. However, she did not do the same detailed analysis of the condition of the buildings that Mr. King did. Furthermore, on cross-examination, Ms. Baker testified that it is proper to disregard the value of the existing improvements on the real estate where there is no net income from the operation of those improvements. The evidence clearly established that the motel business of the Debtor has been operating at a loss for several years. Since the Debtor's property produces no net operating income, the testimony of the Debtor's expert more strongly supported the lower $1.3 million estimate of value than her own higher estimate.

Heidi Thomas testified as to discussions that she had with three potential buyers. The tenor of her testimony was that a sale of the Debtor's real property could be accomplished in short order and that there are a number of interested buyers. However, her testimony was not

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[9](...continued)
creditors; (7) the intent of the parties; (8) "thin" or adequate capitalization; (9) identity of interest between the creditor and stockholder; (10) source of interest payments; (11) the ability of the corporation to obtain loans from outside lending institutions; (12) the extent to which the advance was used to acquire capital assets; and (13) the failure of the debtor to repay on the due date or to seek a postponement. *Id*. at 1297-98.

supported by any documentary evidence such as contract offers or letters of intent. Such unsupported testimony is of little assistance to the Court. The one offer that had been reduced to writing back in January of 2006 was contingent upon rezoning the property to allow it to be used as a halfway house. That contingency had been rejected at that time by Rhamani acting on behalf of the Debtor.

The Debtor's equitable subordination argument depends upon the Debtor being able to demonstrate that the Secured Creditor engaged in fraudulent conduct in relation to its acquisition of the secured note from Merrill Lynch. *In re Poughkeepsie Hotel Associates Joint Venture*, 132 B.R. 287, 292 (Bankr. S.D. N.Y. 1991). But the evidence that the Court has before it indicates that the Debtor's real property is worth no more than the $1.8 million that the Secured Creditor paid for the note and, in all likelihood the property is worth less than that. The Court can find no fraud in a transaction where the Secured Creditor paid no less for the secured note than the value of the underlying real estate. To allow this case to remain in bankruptcy for the purpose of litigating the equitable subordination issue would be a futile gesture.

This case represents, at its core, a dispute between a faction of the Debtor's shareholders and the Debtor's manager. The differences among those parties are already the subject of state court litigation and that is where the parties must to be content to settle their differences.

The Thomases desire to keep this property under the jurisdiction of the bankruptcy court while they market it for sale. But they have no apparent plan for what to do with the property in the interim. They are very unhappy about Mr. Rahmani's management of the property, but rather than seeking to replace him and hire a new manager, they initially asked the Court to appoint a trustee to manage the property. The Court heard nothing from the Thomases or Debtor's counsel about how a trustee would be compensated where the Debtor's business operates at a loss. It does not appear that the Thomases have considered or made provisions for defraying the holding costs for the Debtor's property during the six months to a year that it would take to ultimately get the property sold. And if they or the Debtor had the wherewithal to do that in a bankruptcy case, they would be able to do it outside of bankruptcy.

2) Filing of Bankruptcy Case as Litigation Tactic

"The filing of a bankruptcy petition as a tactic to litigate non-bankruptcy issues or to resolve a dispute indicates bad faith." *Monsour Med. Ctr. v. Stein (In re Monsour Med. Ctr.)*, 154 B.R. 201, 208 (Bankr. W.D. Pa. 1993). In the *Monsour* case, part of the debtor's board of directors filed the bankruptcy in an attempt to "reverse setbacks" suffered in prior state court litigation. *Id*. That Court found that such a filing constituted bad faith and dismissed the case. *Id.* In the case of *In re Wally Findlay Galleries,* the court determined that the debtor's filing of its Chapter 11 petition was a litigation tactic because it was filed the same day as judgments entered against it in state court litigation. 36 B.R. 849, 851 (Bankr. S.D. N.Y. 1984). That Court concluded that the debtor filed its petition in order to avoid the consequences of the state court judgment, and dismissed the case. *Id*. The same Bankruptcy Court recently declared that the "introduction of the bankruptcy process at a premature stage creates a needless burden and expense to the detriment of the debtors, creditors and the bankruptcy courts" and that such a filing could be used as a litigation tactic to improperly influence ongoing state court litigation. *In re Schur Mgmt. Co.*, 323 B.R. 123, 130 (Bankr. S.D. N.Y. 2005).

The Thomases are seeking to litigate the same issues in the bankruptcy court that are already being litigated in the state court. The Wetzler lawsuit addresses those issues with respect to both the Debtor and CSL. The Thomases have chosen to only address the CSL issues in the action they filed in El Paso County and to pursue virtually identical allegations with respect to the Debtor in the bankruptcy adversary proceeding. The result, if it were to be allowed to continue, would be a multiplication of proceedings, wasting scarce judicial resources and opening up the possibility of disparate rulings from the various courts on similar issues.

It is not at all unusual for a debtor that is overwhelmed with litigation issues to seek bankruptcy protection as a means of addressing those problems in a single forum and in a structured proceeding. But that is not what the Thomases are doing in this case. The Thomases are not seeking to consolidate litigation; to the contrary, they are fragmenting it by addressing different issues in different courts. In a typical litigation-driven bankruptcy case, the bankruptcy allows the debtor to structure the litigation matters so that it may concentrate on keeping its business alive. This Debtor, in any business sense, is long deceased. Filing the bankruptcy case is not a tactic to keep the underlying business healthy while dealing with litigation issues, it is merely a way to fight over the same issues in another location.[10]

Finally, the Court notes the state of the Debtor's schedules. In the case of *In re Block K Assoc.*, 55 B.R. 630 (Bankr. D. Colo. 1985), the court considered "accuracies or inaccuracies of the Debtors assertions in its petition and schedules" to be indicative of bad faith in a chapter 11 filing. *Id*. at 633. The Court has previously noted that Heidi Thomas, who reviewed and authorized the filing of the schedules, testified that the Debtor had $15,000.00 of trade debt when the schedules indicated no trade debt. That is but one example of the inaccuracies contained in the Debtor's schedules. From the testimony that the Court heard, there was no impediment to the Thomases access to accurate information to be put in the schedules. It simply does not appear that they took seriously the Debtor's responsibility to accurately and completely report its assets, liabilities and other details of its financial condition. Accurate and complete schedules are a fundamental first step in a bankruptcy process that requires a good deal of work from a debtor in possession. It is just another indicator to the Court that the Thomases priority is

[10] In fact, in closing argument, the Thomases asserted that they believed the motel should be shut down pending their attempts to sell it to a prospective purchaser.

litigation and not reorganization that their adversary proceeding was filed in this Court on June 26, 2006, and the schedules were not filed until July 11, 2006, more than a month after the petition date. Even then, they were incomplete and inaccurate.

3) Two Party Disputes

"Generally, a court should not take jurisdiction over a two-party dispute, unless special circumstances exist." *Remex Elec. Ltd. v. Axl Indus., Inc. (In re Remex Elec. Ltd.)*, 127 B.R. 482, 484 (S.D. Fla. 1991). "The bankruptcy courts generally grant motions to abstain in two-party disputes where the petitioner can obtain adequate relief in a non-bankruptcy forum." *Id*. This Court has itself noted that two-party disputes should not be handled in bankruptcy courts and that such disputes are better left to state courts. *See Lucre Mgmt. Group LLC v. Schempp Real Estate LLC (In re Schempp Real Estate LLC)*, 303 B.R. 866, 877 (Bankr. D. Colo. 2003). In *Schempp*, the parties had been engaged in litigation for seven years and the Court determined that one of the litigants was simply using the Bankruptcy Court as a litigation tactic in that long running dispute, thereby abstaining from hearing that action.

The fact that invoking the bankruptcy process in the context of a two-party dispute is an independent basis for bankruptcy court abstention and is also a factor in the bad faith analysis serves to underline the impropriety present in this case. The case represents nothing more than a fight among insiders over the management and ultimate failure of the Debtor's business. The causes of action are quintessential state law causes of action.

5) Dismissal is in the Best Interests of Creditors and the Estate

In this case, the Debtor has no equity in its assets. As a consequence, independent cause exists for granting relief from the automatic stay. A chapter 7 trustee would have no property to administer and a conversion of this case to a case under chapter 7 would be a futile gesture and no possible benefit to creditors or the estate. Therefore, the Court will dismiss the case rather than order its conversion to a case under chapter 7.

<u>B. The Stay Relief Motion Under § 362(d)</u>

1) Cause Exists for Relief from the Automatic stay Under § 362(d)(1)

This bankruptcy case was filed in bad faith. A bad faith filing of a bankruptcy proceeding constitutes cause of relief from the automatic stay under § 362(d)(1). *In re Pacific Rim Investments, LLP*, 243 B.R. 768, 771 (D. Colo. 2000); *In re Gunnison Center Apartments, LP*, 320 B.R. 391, 401-402 (Bankr. D. Colo. 2005). Therefore, the Secured Creditor has established cause for relief from stay under § 362(d)(1).

In addition to cause based on the Debtor's bad faith filing, the Court finds that the Debtor has not offered, and is incapable of providing, adequate protection to the Secured Creditor. There is no "equity cushion" to provide adequate protection. Moreover, the Debtor was unable to make payments on its secured obligation for 13 months prior to the *Involuntary Petition* and the Debtor produced no evidence that it now has the ability to generate the revenues necessary to provide adequate protection payments.

2) The Secured Creditor is Entitled to Relief from Stay under § 362(d)(2)

Under § 362(d)(2), the Court must grant a motion for relief from stay if the movant shows that the Debtor has no equity in the property at issue and that the property is not necessary for an effective reorganization. In this case, the Secured Creditor has established that the debt owed to the Secured Creditor is greater than the most optimistic estimate of the value of the property that secures that debt. Consequently, the Secured Creditor has satisfied its burden to demonstrate that the Debtor has no equity in its property. The Court also finds that the property is not necessary for an effective reorganization. As the Court previously discussed, this Debtor has been losing money for several years. Not even the Thomases have suggested that there was any possibility of reorganizing the Debtor into a profitable enterprise. Therefore, since there is no reorganization in prospect, *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76, 108 S. Ct. 626, 632-33 (1988), the Court finds that the property is not necessary for a successful reorganization. The elements required for granting relief from stay under § 362(d)(2) are satisfied and the Secured Creditor is entitled to relief on those grounds as well as for cause under § 362(d)(1).

The Thomases have raised the issue of equitable subordination in relation to the Stay Relief Motion. Equitable subordination is a defense to a motion for relief from the automatic stay. In appropriate circumstances, bankruptcy courts will deny a motion for relief from stay for the purpose of litigating the subordination issue. *In re Poughkeepsie Hotel Associates Joint Venture*, 132 B.R. 287, 291-92 (Bankr. S.D. N.Y. 1991). This is proper because the subordination issue goes to the question of the Debtor's equity in its property and the moving creditor's status as a secured creditor. But, as the Court has previously discussed, the Thomases have not demonstrated that they have a valid equitable subordination claim in this case.

Because it is undisputed that Rahmani's company paid $1.8 million for the secured note, a successful equitable subordination action could succeed in reducing the secured debt to a figure no lower than $1.8 million. But the Court has found that the value of the Debtor's real property asset is no greater than $1.8 million. Consequently, even granting the validity of the Thomases equitable subordination claim, the Debtor has no equity in its property.

In accordance with the foregoing discussion, it is

ORDERED that Colorado Springs Hospitality Services, LLC's, *Motion for Relief from Automatic Stay* (docket #34) is GRANTED. It is further

ORDERED that Colorado Springs Hospitality Services, LLC's, *Motion to Dismiss Chapter 11 Bankruptcy Case* (docket #19) is GRANTED.

Dated this __22nd__ day of August, 2006.

BY THE COURT:

_____/s/ Howard Tallman________
Howard R. Tallman, Judge
United States Bankruptcy Court