

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:	)	
	)	<b>JUDGE RICHARD L. SPEER</b>
Weldon F. Stump & Co.	)	
	)	Case No. 05-32505
Debtor(s)	)	
	)	

**DECISION AND ORDER**

This cause comes before the Court after a Trial on the Petitioning Creditors' Involuntary Chapter 7 Petition. At the Trial, all the Parties present with an interest in this matter were afforded the opportunity to present evidence and make any arguments that they wished the Court to consider in reaching its decision. Upon the conclusion of the Trial, the Court delayed rendering a decision on the matter until it had the opportunity to thoroughly review the evidence presented and consider the arguments presented by the Parties.

The Court has now had this opportunity, and finds that, notwithstanding the questionable evidentiary value of the evidence surrounding two of the petitioning creditors, Henry Gurtweiler Inc. and CWS Advisors Ltd., that the cumulative weight of the evidence presented at the Trial supports a finding that relief should be entered against the alleged Debtor. In accordance with Bankruptcy Rules 7052 and Rules 9014, the following shall constitute this Court's findings of fact and conclusions of law:

The Debtor was engaged in the business of selling used industrial machinery. Much of the Debtor's machinery was owned jointly with other equipment dealers, with the largest co-owner being Yoder Machinery Sales.

In March of 2004, a state-court receiver was appointed, and ordered to dispose of the Debtor's property as promptly as was practicably possible. Upon appointment of the state-court receiver, the Debtor's ability to pay outstanding debts was subject to approval of the court.

At the time of the appointment of the state-court receiver, the Debtor had over \$1,000,000.00 in outstanding accounts payable, most of which involved trade

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debt. Of this amount, over \$700,000.00 was aged over 90 days. (Ex. 1). These amounts were still due and owing at the time the involuntary petition was commenced against the Debtor.

In addition to trade debt, the Debtor, at both the time of the appointment of the state-court receiver and the filing of the involuntary petition, was delinquent on its employee-retirement plan, its obligation to Huntington Nat'l Bank, and at least one tax obligation.

In substance, the above obligations and delinquencies were verified by the Debtor's comptroller.

Seven creditors have petitioned this Court for relief against the Debtor: *Henry Gurtweiler Inc.*, owed, \$5,000.00 (Ex. 2); *C.W.S. Advisors Ltd.*, owed \$1,500.00 (Ex. 3); *Leshner Printers Inc.*, owed \$24,014.01 (Ex. No. 4); *Huntington Nat'l Bank*, owed in excess of \$2,000,000.00; *Leadar Roll, Inc.*, owed \$5,000.00 (Ex. 1); *Ross-Shire Enterprises, Inc. d.b.a. Associated Temporaries*, owed \$510.51 (Ex. 7); and *Precision Business Solutions, Inc.*, owed \$17,921.40 (Ex. 6).

Based upon these findings, it is the conclusion of this Court that the Debtor has not adequately controverted the prima facie case made by the petitioning creditors that:

within the meaning of 11 U.S.C. § 303(b)(1), at least three entities hold a claim against the Debtor, *Weldon F. Stump and Co., Inc.*, which are neither contingent as to liability nor the subject of a bona fide dispute; and that the aggregate amount of such claims is greater than \$11,625.00. (Exs. 1-7). 111 B.R. 250, *In re Rimell*, 111 B.R. 250, 258 (Bankr. E.D.Mo. 1991) (alleged debtor bears the burden of proving that a bona fide dispute exists).

And at the time of the commencement of the involuntary petition, the Debtor was, in terms of both the proportion of creditors and the dollar value thereof, generally not paying its bona fide debts as they became due within the meaning of 11 U.S.C. § 303(h). *Concrete Pumping Service v. King Construction Co. (In re Concrete Pumping Service)*, 943 F.2d 627, 630 (6<sup>th</sup> Cir.1991).

*Accord In re B.D. Intern. Discount Corp.*, 701 F.2d 1071, 1074 (2<sup>nd</sup> Cir.1983) (financial statements prepared by alleged debtor's accountant may be considered damaging admission).

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The above assessments, in addition to applying at the commencement of the case, also apply equally when the state court-receiver was appointed. Thus, based upon this finding, the Court, in weighing the following two considerations together, must also reject the Debtor's equitable argument which holds that consideration should be afforded to the fact that it was prevented from paying its debts by order enter in the Debtor's receivership:

First, because the Debtor was not at the time of the appointment of the state-court receiver generally paying its debts as they became due under the standard of § 303(h), the Debtor was in no way prejudiced by the delay in the commencement of the instant matter.

Second, from a legal standpoint, while it is true that a determination under § 303(h) is generally to be made as of the petition date, *In re Norris*, 183 B.R. 437, 456-57 (Bankr. W.D.La.1995), it is also the rule that the reason why debts are not being paid for purposes of § 303(h) is irrelevant. *In re R.N. Salem Corp.*, 29 B.R. 424, 430 (Bankr. S.D.Ohio 1983). Similarly, § 303(h) does not require that a demand by the creditor for payment be made, *In re Spigener*, 59 B.R. 35, 39 (Bankr. W.D.La. 1986); nor does the voluntary deferral by creditors, including insiders, preclude the nonpayment of such debts from being considered in ascertaining whether the standard of § 303(h) has been met. *Buffkin v. Goodson (In re Goodson)*, 12 B.R. 882-83 (Bankr. S.D.Fla.1981).

In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, based upon the findings and conclusions set forth herein, and in accordance with Bankruptcy Rule 1013, it is hereby

**ORDERED** that the involuntary petition filed against, Weldon F. Stump & Co., be, and is hereby, **ALLOWED**.

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It is **FURTHER ORDERED** that relief under Chapter 7 of the United States Bankruptcy Code be, and is hereby, granted against Weldon F. Stump & Co.

It is **FURTHER ORDERED** that the interim trustee, appointed by the United States Trustee pursuant to this Court's prior order under 11 U.S.C. § 303(g), continue unabated and until otherwise ordered.

It is **FURTHER ORDERED** that Weldon F. Stump & Co., pursuant to Bankruptcy Rule 1007 and 11 U.S.C. § 521, file a complete set of the following documents:

- A. All Schedules including a list of the Debtor's current budget and expenses;
- B. a Statement of Financial Affairs;
- C. a Statement of Intention Under Chapter 7;
- D. the Attorney Fee Disclosure required pursuant to Bankruptcy Rule 2016(b).

The above documents must be filed within fifteen (15) days from the entry of this Order except for the Statement of Intention which shall be filed within thirty (30) days from the entry of this Order.

Dated:

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Richard L. Speer  
United States  
Bankruptcy Judge