

**IT IS SO ORDERED.**

**Dated: 11:04 AM February 25 2009**



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

IN RE	)	CASE NO. 08-53352
	)	
PRINCE OF PEACE BAPTIST CHURCH	)	CHAPTER 11
	)	
DEBTOR	)	JUDGE MARILYN SHEA-STONUM
	)	
	)	<b>ORDER RE: MOTION TO DISMISS</b>
	)	<b>[DOCKET # 40]</b>

This matter is before the Court on the Motion of creditor, Walter Humphrey (“Humphrey”), to Dismiss the above captioned bankruptcy case pursuant to 11 U.S.C. § 1112(b)(1) (the “Motion”) [docket # 40], the Objection of Prince of Peace Baptist Church (“Debtor”) to the Motion [docket #56], and Humphrey’s Reply in Support of Motion to Dismiss Chapter 11 Proceedings Pursuant to 11 U.S.C. § 1112(b)(1) (the “Reply”) [docket # 60]. An evidentiary hearing was held on February 10, 2009. Appearing at the hearing were John Rutter, counsel for Humphrey and David Mucklow, counsel for the Debtor. Counsel stipulated to the admissibility of certain exhibits. The Debtor called Russell C. Neal, Sr. as a witness.

## **I. Jurisdiction**

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). Based upon the statements of counsel and the evidence presented during the hearing, the Court makes the following findings of fact and conclusions of law.

## **II. Findings of Fact<sup>1</sup>**

1. Debtor is a charitable religious organization located at 844 Garth Avenue Akron, Ohio 44320. Debtor was founded in the late 1950s and was headed by the late Reverend John M. Burrell from its founding until his death in July 2005. Debtor offered the pastor position to Humphrey in September 2005. The offer included a salary of \$85,000 per year and a place to live in Akron. Humphrey accepted the offer. The agreement apparently was not reduced to writing. At the time that Humphrey accepted the pastor position with Debtor, he had been pastor of Moriah Baptist Church in Oakland, California. He did not resign that position.

2. Humphrey's extended absences from Akron as he attempted to continue his activities in Oakland, California appears to have given rise to significant dissatisfaction among many of Debtor's parishioners. Since September 2005 Debtor's congregation lost many members, dropping from a membership roster of approximately 400 active members to a membership, at the lowest point, of under 70 active members; membership reportedly is now rising again.

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<sup>1</sup>These findings are made only for the purpose of addressing the motion now before the Court. As noted, the movant did not carry his burden. These findings are based upon a record that is not fully developed with respect to issues that may develop later in this case.

3. In June 2006, Debtor's then members voted to dismiss Humphrey. Some action pertaining to this dismissal was apparently commenced in the Summit County Court of Common Pleas (the "Summit County Court"), although the details of that proceeding have not been made a part of the record in this Court. The Summit County court reportedly ordered Debtor's congregation to take a second vote on whether or not to continue to employ Humphrey as their pastor. In September 2006, Debtor's members again voted to remove Humphrey.

4. On May 29, 2007, Humphrey filed an action in the U.S. District Court, Northern District of California (the "California Federal Court") against Debtor. Humphrey asserted claims against the Debtor for breach of contract, breach of covenant of good faith and fair dealing, wrongful termination and various violations of the California Labor Code (the "California Litigation"). Humphrey's prayer for monetary relief in the California Litigation exceeded \$230,000. Debtor hired California counsel and responded to Humphrey's suit. Debtor's motion to transfer the case to the Northern District of Ohio was denied. The California Federal Court entered its final pre-trial order on September 11, 2008, and set the matter for jury trial on September 22, 2008. On September 17, 2008, Debtor filed for Chapter 11 bankruptcy protection in Akron. Through the operation of the automatic stay, 11 U.S.C. § 362(a), the California Litigation was stayed.

5. Debtor's leadership structure consists of a Board of Trustees and a group of twelve deacons. Russell C. Neal Sr. ("Neal") is the Chairman of Trustees and testified on behalf of the Debtor at the February 10, 2009, hearing. Debtor carries out its religious and charitable work largely through the support of volunteers.

6. Debtor's main source of revenue comes from donations made to Debtor by Debtor's

members. Debtor also receives rental income from a daycare facility and a residence, both of which it leases. Debtor listed two creditors in its bankruptcy schedules. Humphrey is the only unsecured creditor listed with a claim in the amount of \$157,533.15 that Debtor characterizes as disputed. As noted above, in the California Litigation, Humphrey's monetary prayer for relief is over \$234,000. Debtor's only secured creditor is First Merit Bank, which holds the only mortgage on Debtor's property located at 844 Garth Avenue, Akron, Ohio.

7. At the October 29, 2008 meeting of creditors, in response to a question from the United States Trustee's Office, Neal said that Debtor filed for bankruptcy because Debtor wanted to "settle this thing [the California Litigation] without paying Reverend Humphrey any more money." Movant's Exhibit # 4 at page 33, lines 21-22. At the February 10, 2009, hearing Neal listed several reasons for Debtor's bankruptcy filing. Neal testified that due to Debtor's reduced membership numbers and the resulting loss in revenue, Debtor was unable to pay the travel costs associated with sending witnesses to California for the trial scheduled in the California Litigation. Neal also testified that at the time Debtor filed for bankruptcy, its building, located on Garth Avenue, needed roof repairs that would have cost Debtor nearly \$20,000. Debtor's insurance company initially informed Debtor that Debtor's policy would not cover the roof damage. After the bankruptcy filing, wind damage was discovered, and Debtor's insurance company agreed to cover a majority of the damage. At the time of the filing, Debtor also owed its attorney in California for services provided in the California Litigation, although that claim has not been listed in Debtor's schedules, an oversight that should be remedied promptly. Since Debtor's filing, its membership rolls have grown from a range of 70 to 73 members to a range of 100 to 110 members.

### **III. Discussion**

#### **A. 11 U.S.C. 1112(b)(1)**

Pursuant to 11 U.S.C. § 1112(b)(1),

[O]n request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the 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 interest of the creditors and the estate, if the movant establishes cause.

11 U.S.C. § 1112 (b)(4) lists sixteen instances where a debtor's actions would constitute cause for purposes of conversion or dismissal. The list in § 1112(b)(4) is not an exclusive list and the Court may consider other actions that would be cause for dismissal or conversion, including circumstances that constitute bad faith filing. *In re Trident Associates Limited Partnership*, 52 F.3d 127, 130 (6th Cir. 1995); *In re Laguna Associates Limited Partnership*, 30 F.3d 734, 737-38 (6th Cir. 1994); *In re Charfoos*, 979 F.2d 390, 392 (6th Cir. 1992). The movant had the burden to prove that cause exists. *In re New Batt Rental Corp.* 205 B.R. 104, 106-07 (Bankr. N.D. Ohio 1997). If the movant establishes cause, absent unusual circumstances, the Court must dismiss or convert. § 1112 (b)(1).

#### **B. Determination of a Bad Faith Filing**

In order to determine whether or not a debtor has acted in bad faith, a court must look to the totality of the circumstances surrounding the filing. Good faith, "is an amorphous notion, largely defined by factual inquiry." *Trident*, 30 F.3d at 131. The Sixth Circuit has outlined the

following eight non-exclusive factors that may indicate bad faith:

- (1) the debtor has one asset
- (2) the pre-petition conduct of the debtor has been improper
- (3) there are only a few unsecured creditors
- (4) the debtor's property has been posted for foreclosure, and the debtor has been unsuccessful in defending against the foreclosure in state court;
- (5) the debtor and one creditor have proceeded to a standstill in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford;
- (6) the filing of the petition effectively allows the debtor to evade court orders
- (7) the debtor has no ongoing business or employees; and
- (8) the lack of possibility of reorganization.

*Id.* No single factor is dispositive and the above list is not exhaustive of all of the relevant factors that may be present in a case of bad faith. *Id.*; *Laguna*, 30 F.3d at 738. The Sixth Circuit has also taken a cautious approach to dismissal due to bad faith and has noted that dismissal “should be confined carefully and is generally utilized only in those egregious cases that entail concealed or misrepresented assets and/or sources of income, lavish lifestyle, and intention to avoid a large single debt based on conduct akin to fraud, misconduct or gross negligence.” *Charfoos*, 979 F.2d at 393 (quoting *In re Zick*, 931 F.2d 1124, 1129 (6th Cir. 1991)).

### **C. Application of the Bad Faith Standard to Debtor**

It appears that, at most, only two of the above factors are present in this record. Arguably Debtor has only one asset, the church facility, including the daycare space and the leased house, and Debtor initially scheduled only one unsecured creditor. Movant failed to demonstrate that any of the remaining factors are present in this case.

Debtor is a charitable religious organization. The eight factors were developed in the context of cases filed by for-profit debtors. *See Trident*, 30 F.3d at 127. The fact that Debtor has one asset, the church building and parking lots located at Garth Avenue, does not point toward a

bad faith bankruptcy filing in this case. One origin of the one-asset factor is the “new-debtor syndrome,” i.e., a one-asset entity has been created or revitalized on the eve of foreclosure to isolate the insolvent property and its creditors.” *Laguna*, 30 F.3d at 738 (quoting *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1073 (5th Cir. 1986)). The facts of this case bear no resemblance to that pattern, and Humphrey’s counsel made no effort to demonstrate otherwise.

Looking at the totality of the circumstances surrounding Debtor’s filing, the Court finds that the Debtor filed for bankruptcy in good faith. The unsecured claims against the Debtor do appear to be the result of the California Litigation. Neal’s testimony both at the initial meeting of creditors and at the February 10, 2009, hearing was forthright in acknowledging the desire of the Debtor’s congregation to resolve its controversy with Humphrey and thus end its draining effect on the Debtor’s revenues, whether from its modest rental income or from the collection plate. Debtor could not pay the mounting costs of the California Litigation. Debtor believed that it would have to pay for a new church roof.

Debtor’s membership rolls had dropped significantly and its revenues had also dropped significantly. Given the litigation expenses and the decrease in revenue, Debtor’s ability to perform its core function of ministering to its congregation and providing charitable services was severely hampered. Most significantly, given the reversal of loss of church membership since the filing, Debtor appears to be an excellent candidate for a successful chapter 11 reorganization. Debtor is a relatively small, primarily volunteer organization. One claim such as Humphrey’s is certainly enough to place Debtor in a position of financial hardship which would warrant seeking bankruptcy protection.

Humphrey argued that Debtor’s sole motivation for filing was to obtain leverage over

Humphrey and to litigate Humphrey's suit in Ohio. Motion to Dismiss, p. 7 [docket #40].

Humphrey also argued that Debtor's filing was in bad faith because Debtor did not have a need to reorganize. Motion to Dismiss, p. 7 [docket #40]. Humphrey cited no Sixth Circuit case law to support the proposition that, for an entity whose operations are emphatically local, invoking the automatic stay with respect to out-of-state litigation equates in and of itself to a bad faith filing. Debtor's evidence showed that it had experienced a decrease of more than 80 percent of its membership from the time that Humphrey agreed to become their pastor until its chapter 11 filing. Its membership is once again on the rise. On such facts as are of record in this case, the Court finds that the Debtor filed bankruptcy to protect its very existence as a place of peaceful worship and gathering.

The other reasons Debtor cited for seeking to reorganize under chapter 11, including the needed roof repairs and the loss of revenue, demonstrate that Debtor faced significant financial challenges at the time of filing and had need to reorganize. In this case, Debtor had a legitimate reorganization purpose for filing for bankruptcy at the time it did and Humphrey did not present any evidence that would suggest that Debtor is unable to reorganize. Humphrey has not met his burden to prove that cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b)(1).

#### **IV. Conclusion**

Based upon the foregoing, Walter Humphrey's Motion to Dismiss Pursuant to 11 U.S.C. § 1112(b)(1) is **HEREBY DENIED**.

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cc: via electronic mail

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