

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
* CASE NUMBER 04-41352
RANDALL JOSEPH HAKE and *
* MARY ANN HAKE, *
* CHAPTER 11
*
Debtors. * HONORABLE KAY WOODS
*

ORDER HOLDING IN ABEYANCE MOTION OF THE UNITED
STATES TRUSTEE TO CONVERT OR DISMISS CASE

Debtors Randall J. Hake and Mary Ann Hake ("Debtors") filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code on March 25, 2004. On September 6, 2005, Saul Eisen, United States Trustee for Region 9 (the "Trustee"), filed Motion of the United States Trustee to Convert Case to Chapter 7, or, in the Alternative, Dismiss the Case ("UST Motion"). Debtors filed Memorandum in Opposition to Motion of U.S. Trustee to Convert or Dismiss Case on October 3, 2005. Hearing on the UST Motion has been continued from time to time. On January 25, 2006, the Court held a hearing on the UST Motion.

At the hearing, counsel for the Trustee argued that the case should be converted to a case under Chapter 7, but abandoned the alternative relief of dismissal of the case. The Trustee argued that the Debtors have interests in business, but do not conduct any business themselves. The UST Motion is based on the assertion that delay in confirming a plan of reorganization is harming the creditors of the estate. The Trustee acknowledged, however, that the Debtors had filed Amended Joint Plan of Reorganization (the "Amended Plan") and Amended Joint Disclosure Statement that resolved the Trustee's issues regarding disclosure. The Trustee expressed reservations that

the Debtors might not be able to propose a feasible plan, but did not argue that the Amended Plan was not feasible.

Counsel for Debtors argued that much of the delay was not caused by the Debtors and that some of the delay was caused by the aggressive posture of Buckeye Retirement Company L.L.C., Ltd., the largest creditor of Debtors. Counsel for Debtors further argued that feasibility is ultimately an issue for confirmation and should be decided at that time. Additionally, Debtors assert that they have a right to attempt to have a plan confirmed.

Immediately following the hearing on the UST Motion, the Court held a hearing on the adequacy of Debtors' Amended Joint Disclosure Statement. Having found that the Amended Joint Disclosure Statement, as represented on the record that it will be further amended, does provide adequate information in accordance with 11 U.S.C. § 1125, this Court will hold in abeyance any ruling on the UST Motion. Although the Trustee expressed reservations about the feasibility of Debtors' Amended Plan, the issue of feasibility is not yet ripe. This Court believes that it is in the best interests of the Debtors, their creditors and the estate for the reorganization process to go forward and for the Court, at a confirmation hearing, to determine if any proposed plan can be confirmed.

As a consequence, this Court will delay ruling on the UST Motion and hold it in abeyance, subject to the Trustee renewing a request for the Court to rule on the motion.

IT IS SO ORDERED.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE