UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

EARL CARROLL and LAURA CARROLL,	Case No. DG 13-08930
	Chapter 12
Debtors.	Hon. Scott W. Dales

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MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

I. INTRODUCTION

Earl and Laura Carroll (the "Debtors") operate a deer farm in Ravenna, Michigan, and are no strangers to the bankruptcy process. Ms. Carroll filed a chapter 7 petition in November, 2010, which the court dismissed on stipulation without a discharge about a year later. Then, in November, 2012, she filed another petition, this time under chapter 12, which the court dismissed on Ms. Carroll's motion about nine months later. More recently, on November 21, 2013, the Debtors filed a joint petition for relief under chapter 12. Suffice it to say that Mr. and Mrs. Carroll have benefitted from bankruptcy court protection, off and on, since November 2010, but have been unable either to obtain a discharge or plan confirmation despite several attempts and the assistance of three separate law firms. Five months into their current case, and without a confirmable plan in prospect, chapter 12 trustee Laura J. Genovich (the "Trustee") seeks dismissal of the present case.

II. JURISDICTION

The United States District Court for the Western District of Michigan has jurisdiction over the Debtors' chapter 12 case pursuant to 28 U.S.C. § 1334(a). Pursuant to LCivR 83.2(a)

and 28 U.S.C. § 157(a), the District Court has referred the case and related proceedings to the United States Bankruptcy Court. The question of whether to dismiss a bankruptcy case is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), which the United States Bankruptcy Court has ample authority to resolve, even after the United States Supreme Court's decision in *Stern v. Marshall*, __ U.S. __, 131 S. Ct. 2594 (2011).

III. BACKGROUND

On November 21, 2013, the Debtors jointly commenced a chapter 12 case in which they filed a plan in compliance with the 90 day period prescribed by statute. *See* 11 U.S.C. § 1221. The court conducted the confirmation hearing on April 2, 2014, within the time prescribed by 11 U.S.C. § 1224.[1]

After hearing argument from counsel and a report from the Trustee, the court determined that no material factual dispute existed concerning plan confirmation, principally because the Debtors conceded their inability to disentangle their finances from their limited liability company, Whitehouse Whitetails LLC (the "LLC"), which is the source of their livelihood. The Debtors' relationship with the LLC, and accurate financial information relating to the LLC, was crucial to any decision on confirmation because it would obviously affect the court's view of feasibility and the chapter 7 liquidation test. At the confirmation hearing, the court inquired whether it made sense to adjourn the hearing, but Debtors' counsel offered no reason to do so. Accordingly, the court entered an order denying confirmation on April 4, 2014.

On April 25, 2014, the Trustee filed a motion to dismiss pursuant to § 1208 (the "Motion," DN 48), asserting that cause exists principally because the court denied confirmation and because the continued pendency of the case is prejudicial to creditors. In support of the

[1] In this Memorandum of Decision and Order, except as otherwise expressly noted, all statutory citations refer to Title 11, United States Code.

Motion, the Trustee also expressed her doubts about feasibility and eligibility. In their answer to the Motion and again at the dismissal hearing, the Debtors reported that they have filed suit against their lender (the "Bank") in order to reform the mortgage that they claim encumbers more acreage than they intended to pledge. *See Carroll v. Bank of America*, Adv. No. 13-80334 (the "Adversary Proceeding").[2] Therefore, they argue, filing another plan "will not be possible until resolution of the Adversary Proceeding pending against Bank of America, to determine the real property that is collateral for the mortgage, and the amount of the secured. [sic] Claim." *See* Response at ¶ 6. Having carefully considered the Motion, the Debtors' response, and the parties' post-hearing briefs, the court will grant the Motion and dismiss the Debtors' case.

IV. ANALYSIS

Section 1208 provides that, after notice and hearing, the court may dismiss a chapter 12 case "for cause" including, *inter alia*, "unreasonable delay . . . by the debtor that is prejudicial to creditors" and "denial of confirmation of a plan under section 1225 of this title and denial of a request made for additional time for filing another plan or a modification of a plan . . ." 11 U.S.C. § 1208(c)(1) (prejudicial delay) and (c)(5) (denial of confirmation). Here, the court denied confirmation. *See* Order Denying Confirmation of Chapter 12 Plan entered April 4, 2014 (DN 44). Although Debtors' counsel requested an adjournment to file an amended plan, the court was unwilling to extend the deadline for concluding the confirmation hearing, and the deadline passed without any confirmable plan on file. *Compare* Transcript at p. 15:15-23 (requesting adjournment to file amended plan) *with Id.*, at p. 18:7-15 (denying adjournment request and confirmation).

[2] Although immaterial to the court's decision today, there is some confusion among counsel as to whether the Bank is the Bank of America, or the Bank of New York. *See* Transcript of Confirmation Hearing held April 2, 2014 (herein after "Transcript," DN 57) at p. 7:19 – 9:7.

When the court announced its decision to deny confirmation and the Debtors' request for adjournment, it suggested that Debtors' counsel would have to file a new plan, and "do so promptly." *Id.* p. 18:13. This certainly put the Debtors on notice that any plan amendment should be filed post haste and that the court was concerned about additional delay. Indeed, by statute, chapter 12 cases are supposed to move swiftly to confirmation. *See* 11 U.S.C. § 1221 (requiring chapter 12 debtor to file plan within 90 days after order for relief) and § 1224 (requiring the court, except for cause, to conclude confirmation hearing not later than 45 days after the plan is filed); *see, generally, In re Novak*, 103 B.R. 403 (Bankr. E.D.N.Y. 1989) (discussing reasons for tight time-frames in chapter 12). Nevertheless, even after the court's denial of confirmation, the Debtors have not filed an amended plan or formally requested permission to do so beyond the statutory period.

The court's insistence on a prompt amendment foreshadowed the principal reason for its decision to dismiss the case: prejudicial delay. As noted above, throughout much of the period between November 11, 2010 and the present, with occasional but short-lived interruptions, the Debtors have used the automatic stay to shield their real estate and themselves from creditor action. From the court's review of the dockets in each of the Debtors' cases, it appears that creditors have received no meaningful distribution over the last several years. In addition to substantial unpaid tax claims, the Bank of New York Mellon's proof of claim shows unpaid interest in the amount of $59,946.80, accrued from just before Ms. Carroll's first petition date up to the Debtors' most recent filing. *See* Claim No. 8-1.[3]

The court understands the Debtors' argument that their reorganization may depend upon the outcome of the Adversary Proceeding, but is not convinced that this precludes drafting a plan

[3] In their pleadings filed in the Adversary Proceeding, the Debtors do not challenge the amount or calculation of the Bank's claim, but rather the value and extent of the collateral.

that addresses the contingency. What is clear, however, is that requiring creditors to continue waiting for any plan distribution pending the outcome of what promises to be hotly-contested litigation with the Bank is unfairly prejudicial, particularly given the strong statutory signals that chapter 12 proceedings are to move quickly, and the fact that the automatic stay has delayed creditor action for several years, albeit in three separate cases. The creditors have endured enough delay already.

Finally, the Debtors' claim for relief in the Adversary Proceeding is in the nature of a state law reformation or quiet title action, dependent in no way on the powers available only in the bankruptcy court. Dismissal, therefore, will not deprive the Debtors of a forum to resolve their dispute with the Bank. The court, therefore, will also dismiss the Adversary Proceeding as the Debtors and the Bank contemplated in their recent stipulation staying that proceeding.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Motion (DN 48) is GRANTED and this chapter 12 case is dismissed;

2. All further stay of proceedings is hereby terminated as to the Debtors, property of the Debtors, and property of the estate; and

3. The Trustee shall file her final report and account as usual upon dismissal.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum of Decision and Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Earl Carroll and Laura Carroll, Kurt A. O'Keefe, Esq., Laura J. Genovich, Esq., chapter 7 Trustee, the United States Trustee, and all parties appearing on the Debtors' mailing matrix.

IT IS SO ORDERED.

Dated July 14, 2014

Scott W. Dales
United States Bankruptcy Judge