



The relief described hereinbelow is SO ORDERED.

Signed March 03, 2007.

A handwritten signature in black ink that reads "Robert D. Berger". The signature is written in a cursive style and is positioned above a horizontal line.

ROBERT D. BERGER
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

**IBD, INC.,
Debtor.**

Case No. 05-23680-RDB

ORDER DISMISSING INVOLUNTARY PETITION

The Petitioning Creditors¹ commenced this proceeding on August 10, 2005, by filing an involuntary Chapter 7 petition against IBD, Inc. (“IBD”). After a January 25, 2007, trial,² the Court finds the petition should be dismissed pursuant to 11 U.S.C. §305. This matter constitutes a core proceeding³ over which this Court has jurisdiction.⁴

¹ The original petitioning creditors were T. Scott Jenkins, Todd Kangas, and Oracle Corporation. By order of the Court, Oracle Corporation withdrew upon the joinder of Tallgrass Technologies LLC, Allied Insurance Company, and Best Graphics, Inc. (Doc. # 37). Joel Morris joined the petition shortly before trial. Collectively, these individuals and entities are the “Petitioning Creditors.”

² The Petitioning Creditors appear by counsel Joel B. Laner. The debtor appears by counsel Donald E. Bucher.

³ 28 U.S.C. § 157(b)(2)(A).

⁴ 28 U.S.C. § 1334.

Background

IBD was formed in 2000 for the purpose of developing software to serve the web-hosting needs of agricultural companies. Shareholders contributed significant capital to develop the business, but by September 2001, IBD had ceased operations. The lead Petitioning Creditor is T. Scott Jenkins, IBD's former CEO and a shareholder. Jenkins and IBD parted ways in October 2001 under bad terms. Jenkins and IBD's chairman of the board, Norman Burke, ceased having an amicable business relationship when Jenkins accused Burke of mishandling IBD's assets. Burke later determined Jenkins was operating a new company called Enterprise Business Solutions, LLC ("EBS"), which Burke considered to be a mere continuation of IBD. In 2002, IBD sued Jenkins and EBS in state court for converting IBD property and, as to Jenkins, for breaching his fiduciary duty. The Petitioning Creditors filed the involuntary petition shortly before the matter went to trial. In 2006, a state court jury entered judgment against Jenkins in favor of IBD in an amount in excess of \$1 million. The jury also entered judgment against EBS for an additional \$257,000 for conversion. The state court judgments are under appeal. These judgments are IBD's only assets, and IBD's continued existence is based solely on collecting these judgments. Burke is pursuing and paying for the state court case on behalf of IBD. The focus of this dispute appears to be predominately between Jenkins and Burke, although some other trade creditors and former employees have joined the involuntary petition.

The Petitioning Creditors' claims are as follows. T. Scott Jenkins asserts a \$46,000 claim based on his 2001 capital contribution to IBD. Todd Kangas asserts a claim of at least \$10,000 for unpaid wages from 2001. Oracle Corporation asserted a \$5,247.76 claim for trade debt and licenses, but Oracle later withdrew from the petition. Tallgrass Technologies, LLC, asserts a \$17,034 claim for services rendered in 2001. Allied Insurance Company asserts a \$2,079 claim

based on a 2001 insurance premium deficit. Best Graphics asserted a claim for \$8,909.93 for goods sold and services delivered in 2001, but Best Graphics failed to appear at trial to prosecute its claim. Joel Morris, a former employee of IBD and a current partner in EBS, asserts a \$50,000 claim based on another IBD shareholder's capital contribution to IBD. Morris purchased the claim for \$7,500 on October 19, 2006, more than a year after the involuntary petition was filed. Morris joined the petition on November 13, 2006.

Conclusions of Law

The Court may decline to exercise jurisdiction and may dismiss a case if the interests of creditors and the debtor would be better served.⁵ Whether to abstain may be raised *sua sponte* by the Court.⁶ The factors to be considered include: (1) the motivation of the parties seeking bankruptcy jurisdiction; (2) whether another forum is available or whether there is already a state court proceeding pending; (3) the economy and efficiency of administration; and (4) the prejudice to the parties.⁷ An involuntary bankruptcy petition is improper to resolve what is essentially a two-party dispute.⁸

This case does not belong in bankruptcy court. IBD and Jenkins are already embroiled in a state court action initiated in 2002 which has progressed to the appeal stage. IBD has not operated any business for over five years. The Petitioning Creditors have not shown any threat of depleting assets or unequal treatment of similarly situated creditors. IBD has no assets to administer except the state court judgments under appeal. The Petitioning Creditors have

⁵ 11 U.S.C. §305.

⁶ *In re ELRS Loss Mitigation, LLC*, 325 B.R. 604, 634 (Bankr. N.D. Okla. 2005).

⁷ *Id.*; *In re JR. Food Mart of Arkansas, Inc.*, 241 B.R. 423, 426-27 (Bankr. E.D. Ark. 1999).

⁸ *Id.*

adequate state court collection remedies available to them. When the original Petitioning Creditors filed the involuntary petition in August 2005, only Jenkins had asserted his claim in the form of a compulsory counterclaim in the state court case. Neither Kangas nor Oracle had sought any collection remedies available to them outside filing the involuntary petition. Tallgrass, Allied Insurance, and Best Graphics did not seek collection remedies except for joining an already pending involuntary petition. Oracle and Best Graphics have since withdrawn or failed to prosecute their claims. Morris purchased his claim against IBD for the purpose of joining the petition. The evidence shows Jenkins filed the involuntary petition to affect the state court litigation,⁹ and the other Petitioning Creditors joined in lieu of filing the appropriate collection actions. Jenkins' claims of fraudulent transfers from IBD to Burke could have and should have been raised in the state court action. The evidence before this Court did not prove such claims even exist or that a Chapter 7 trustee would be in a better position to pursue them. In fact, the evidence indicated a Chapter 7 trustee would simply supplant Burke in the state court litigation, which could arguably benefit Jenkins, but could not benefit the rest of the creditors because the trustee would incur the state court litigation expense as an administrative cost to the estate. The creditors are in a better position now with Burke funding the litigation.

This bankruptcy case is not in the best interests of the creditors or the debtor. The alleged debtor long ago ceased operations, and its assets are limited to an almost completed lawsuit. There is little to administer but litigation, which creates administrative costs unduly burdensome to an estate. The Petitioning Creditors have adequate remedies at state law. The chance the creditors would realize a greater recovery in a liquidating bankruptcy is not borne out by the facts. The Court concludes the involuntary petition was filed because Jenkins wanted to

⁹ See, e.g., *In re Manhattan Industries, Inc.*, 224 B.R. 195, 201 (Bankr. M.D. Fla. 1997).

halt the state court litigation with the hope of settling IBD's substantial claims against him, most likely via an appointed Chapter 7 trustee.

Conclusion

IT IS HEREBY ORDERED that this bankruptcy case is dismissed pursuant to 11 U.S.C. §305.

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ROBERT D. BERGER
U.S. BANKRUPTCY JUDGE
DISTRICT OF KANSAS