

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In Re:	Chapter 11
CHELLINO CRANE, INC., et al., ¹	Case No. 17-14200
	(Jointly Administered)
Debtors.	Hon. Janet S. Baer

**UNITED STATES TRUSTEE’S RESPONSE TO SECURED CREDITORS’
MOTION TO DISMISS OR CONVERT THE CHAPTER 11 CASES TO
CASES UNDER CHAPTER 7 PURSUANT TO 11 U.S.C. § 1112**

Patrick S. Layng, the United States Trustee for the Northern District of Illinois (the “U.S. Trustee”), by and through his attorney, Roman L. Sukley, for his Response to *Secured Creditors’ Motion to Dismiss or Convert the Chapter 11 Cases to Cases Under Chapter 7 Pursuant to 11 U.S.C. § 1112* (“Motion”) [Doc. 594] states as follows:

JURISDICTION

1. This is a core proceeding concerning the administration of the estate pursuant to 28 U.S.C. § 157(b)(2)(A) which this Court may hear and determine pursuant to IOP 15(A) and LR 40.3.1 of the United States District Court for the Northern District of Illinois.
2. Venue of these cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The U.S. Trustee has standing to file the Motion under 11 U.S.C. § 307 and 28 U.S.C. § 586(a)(3).

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Chellino Crane, Inc. (6804); Sam J. Chellino Crane Rental, Inc. (0830); G & B Equipment, LLC (0688); Chellino/Industrial Park Family Limited Partnership (1246); and Chellino Industrial Management, Inc. (0691).

FACTUAL SUMMARY

4. The facts of these cases are adequately set forth in the Motion and the U.S. Trustee will not repeat them here.

5. Cause exists to convert these cases to Chapter 7 or to dismiss these cases because the Debtors' estates suffer from substantial or continuing losses to or diminution of the estates and the Debtors are unlikely to rehabilitate, which constitutes cause under 11 U.S.C. § 1112(b)(4)(A);

ARGUMENT

CAUSE EXISTS TO DISMISS OR CONVERT THESE CASES

6. In relevant part, Section 1112(b) of the Bankruptcy Code provides that on the request of a party in interest, and after notice and a hearing, the court shall convert the case to Chapter 7 or dismiss the case, whichever is in the best interests of creditors of the estate, so long as the movant establishes "cause." *See* 11 U.S.C. § 1112(b)(1).

7. Section 1112(b)(4) sets forth a list of sixteen grounds that constitute "cause" for conversion or dismissal. *See* 11 U.S.C. § 1112(b)(4)(A)-(P). This list is not exhaustive, and a case may be dismissed or converted for causes other than those specifically identified in section 1112(b)(4). *See In re Tekena USA, LLC*, 419 B.R. 341, 346 (Bankr. N.D. Ill. 2009); *In Matter of Strug-Division, LLC*, 375 B.R. 445, 448 (Bankr. N.D. Ill. 2007).

i. Cause Exists to Dismiss or Convert Because Debtors' Estates Suffer from Substantial or Continuing Losses to or Diminution of the Estates and Debtors Lack a Reasonable Likelihood of Rehabilitation

8. The Court may dismiss a case for "cause" if the Court finds that there is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A); *In re LG Motors, Inc.*, 422 B.R. 110,

116 (Bankr. N.D. Ill. 2009). There are two elements to consider under Section 1112(b)(4)(A): (i) a “substantial or continuing loss to or diminution of the estate,” and (ii) the “absence of a reasonable likelihood of rehabilitation.” *See* 11 U.S.C. § 1112(b)(4)(A). Both elements are present here.

a. Substantial or Continuing Losses to or Diminution of Estates

9. Courts have held that a “[n]egative cash flow and an inability to pay current expenses as they come due can satisfy the continuing loss or diminution of the estate standard for purposes of § 1112(b).” *Nester v. Gateway Access Sols., Inc. (In re Gateway Access Sols., Inc.)*, 374 B.R. 556, 564 (Bankr. M.D. Pa. 2007); *see also In re Schriock Constr.*, 167 B.R. 569, 575 (Bankr. D.N.D. 1994) (“This element can be satisfied by demonstrating that the debtor incurred continuing losses or maintained a negative cash flow position after the entry of the order for relief.”) “Negative cash flow means that the estate’s current liabilities are increasing more rapidly than cash is available to pay as due.” 7 *Collier on Bankruptcy* ¶ 1112.04[6][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.)

10. In the present cases, continuing losses and diminution of the estates exist because the administrative expenses continue to accrue and the Debtors have no ability to pay the estates’ liabilities. These facts are sufficient to justify a finding of continuing losses to the estates or diminution of the estates.

b. Absence of Reasonable Likelihood of Rehabilitation

11. “Courts usually require the debtor do more than manifest unsubstantiated hopes for a successful reorganization.” *In re Canal Place Ltd. P’ship*, 921 F.2d 569, 577 (5th Cir. 1991). Courts have also found that a debtor lacks a reasonable likelihood of rehabilitation where its only source of income is speculative. *See In re Original IFPC Shareholders, Inc.*, 317 B.R.

738, 743–44 (Bankr. N.D. Ill. 2004). Moreover, rehabilitation has been defined as whether the debtor will be able to reestablish its business—“the standard under section 1112(b)(4)(A) is not the technical one of whether the debtor can confirm a plan, but, rather, whether the debtor’s business prospects justify continuance of the reorganization effort.” *In re Costa Bonita Beach Resort Inc.*, 479 B.R. 14, 43 (Bankr. D.P.R. 2012) (quoting 7 *Collier on Bankruptcy* ¶ 1112.04[6][a][ii]).

12. The Court should convert or dismiss these cases because the Debtors have no realistic prospects for reorganization. The estates have no reasonable likelihood of rehabilitation, and thus satisfies the second prong of 11 U.S.C. §1112(b)(4)(A).

CONCLUSION

13. Based on the foregoing, the U.S. Trustee submits that cause exists under Section 1112(b) to dismiss or convert these cases to Chapter 7.

WHEREFORE, the U.S. Trustee respectfully requests this Court enter an order dismissing these cases, or alternatively, converting these cases to cases under Chapter 7 of the Bankruptcy Code, and for such other relief as this Court deems just.

RESPECTFULLY SUBMITTED:

PATRICK S. LAYNG
UNITED STATES TRUSTEE

Dated: November 30, 2017

By: /s/ Roman L. Sukley
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CERTIFICATE OF SERVICE

I, Roman L. Sukley, an attorney, state that on November 30, 2017 pursuant to Local Rule 9013-1(D), the **UNITED STATES TRUSTEE'S RESPONSE TO SECURED CREDITORS' MOTION TO DISMISS OR CONVERT THE CHAPTER 11 CASES TO CASES UNDER CHAPTER 7 PURSUANT TO 11 U.S.C. § 1112** was filed and served on all parties identified as Registrants on the service list below through the Court's Electronic Notice for Registrants.

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