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05/31/2006

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

IN RE:	§	
	§	
TUAN VAN TRAN	§	Case No. 06-10080
xxx-xx-4263	§	(Chapter 11)
4342 Pine Blossom Trl., Houston, TX 77059	§	
	§	
PLATINUM SEAFOOD SVCS. INC.	§	Case No. 06-10081
xx-xxx7896	§	(Chapter 11)
4342 Pine Blossom Trl., Houston, TX 77059	§	
	§	**Jointly Administered**
Debtors	§	**Under Case No. 06-10080**

MEMORANDUM ORDER
GRANTING MOTION OF METROBANK, N.A. FOR RELIEF
FROM THE AUTOMATIC STAY AGAINST THE VESSELS
MISS SHEENA, MISS AUDREY, AND MASTER RICHARD

On May 16, 2006, the Court, at the request of the parties, converted a preliminary hearing to a final hearing to consider the "Motion of MetroBank, N.A. for Relief from Automatic Stay Against the Vessels Miss Sheena, Miss Audrey, and Master Richard" (the "Motion") filed by MetroBank, N.A. ("MetroBank") on May 2, 2006. The Court finds that appropriate notice of the Motion and the hearing was given according to the Federal and Local Rules of Bankruptcy Procedure. Basil Umari appeared at the hearing on behalf of MetroBank. Frank Maida appeared at the hearing on behalf of the Debtor-in-Possession, Platinum Seafood Services, Inc. (the "Debtor"). At the conclusion of the hearing, the Court took the matter under advisement.

MetroBank asserts that it is entitled to relief from the automatic stay to allow it to

seize and foreclose its interest in three vessels and their equipment and accessories (the "Property") owned by the Debtor.[1] Under 11 U.S.C. §362(d)(2), relief from the stay of an act against property shall be granted if the debtor has no equity in the property and the property is not necessary to an effective reorganization. While MetroBank bears the burden of proof on the issue of equity in the collateral, the Debtor bears the burden of proof on all other issues. 11 U.S.C. §362(g). Since it is uncontested that there is no equity in the collateral, the only question for the Court under a §362(d)(2) analysis is whether the collateral is necessary to an effective reorganization. While the continued ownership and operation of the three boats is obviously necessary for a shrimping operation of this type to continue to produce sufficient income to fund a future plan of reorganization, that logical necessity alone is insufficient to carry the burden of proof under §362(d)(2). To meet its burden, the Debtor must additionally demonstrate by a preponderance of the evidence that there is a "[r]easonable possibility of a successful reorganization within a reasonable time." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 376, 108 S.Ct. 626, 633, 98 L.Ed.2d 740 (1988).

The Debtor has failed to meet its burden of proof in this case. Rather than address the likelihood of a successful reorganization, the Debtor's tack at the hearing was to

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[1] Movant brings this motion under both §362(d)(1) and (2). Finding the existence of adequate grounds for relief from stay under §362(d)(2), a §362(d)(1) analysis is unnecessary.

suggest that it is capable of making adequate protection payments for the upcoming months and, that in light of such payments, it should be given an opportunity to proceed through the Chapter 11 confirmation process. But tendering adequate protection payments for access to the confirmation process, and demonstrating by a preponderance of the evidence a reasonable possibility of achieving an effective reorganization within a reasonable time, are not the same.

The Debtor's burden in this case was to present some feasible means by which it *could* possibly overcome the obstacles to the confirmation of a plan in this case — obstacles which are significant in what could be described as a two-party dispute between MetroBank and the Debtor. The implications of a possible §1111(b) election by MetroBank upon plan feasibility, as well as problems arising from an anticipated necessity to invoke cramdown under §1129(b), such as the necessity of a non-gerrymandered accepting impaired class and compliance with the absolute priority rule of §1129(b)(2)(B), were wholly ignored by the Debtor at the hearing. While the Debtor may complain about the necessity of revealing potential future tactics for obtaining confirmation in this context, that is the scenario which is often presented when stay relief under §362(d)(2) is contested in a two–party Chapter 11 case. The Debtor's evidence on this critical prong of the §362(d)(2) analysis was clearly insufficient to show a reasonable

possibility of a successful reorganization within a reasonable time.

To the contrary, the financial evidence admitted at the hearing suggests that reorganization by the Debtor will be nearly impossible. The Debtor itself projects an ability to pay $144,000 per year, or $12,000 per month, toward the satisfaction of the claim of MetroBank. However, even applying an unrealistically conservative interest rate of 8% (the current prime rate), it would take the Debtor nearly 12 years to pay off $1,100,000 (the asserted present value of the Property), and $12,000 per month would be wholly insufficient to service the entirety of MetroBank's $3,600,000 claim.[2] Even if the Debtor were miraculously able to more than double its proposed payment to MetroBank to $25,000 per month (which is twice the entire net revenue currently enjoyed by the Debtor), such monthly payments would have to continue *over 40 years* to repay a $3,600,000 claim, even if, again, the debt is amortized at 8% interest.

At the conclusion of the hearing, the Court asked the Debtor whether it was simply trying to delay the inevitable. The evidence, which does not support a reasonable possibility of reorganization, answers that inquiry in the affirmative. As the Fifth Circuit has stated, "[t]he mere indispensability of the property to the debtor's survival and the debtor's hopes of reorganization are insufficient to justify continuation of the stay when

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[2] $1,100,000.00 would be the most relevant number if the Debtor only needed to pay the secured portion of MetroBank's claim. However, if MetroBank were to make an §1111(b) election, the Debtor's proposed plan would have to account for the entire $3,600,000.00 claim.

reorganization is not reasonably possible." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs. (In re Timbers of Inwood Forest Assocs.)*, 808 F.2d 36, 370-71 (5th Cir. 1987), *aff'd*, 484 U.S. 365 (1988). While this Court is generally reluctant to "pull the plug" at an early stage of a debtor's reorganization attempt, "the greater injustice [would be] to allow [the automatic stay to continue to] shelter the Debtors from the inevitable." *In re Anderson Oaks (Phase I), L.P.*, 77 B.R. 108, 111 (Bankr. W.D. Tex. 1987). Thus, based upon the Court's consideration of the pleadings, the evidence submitted by the parties, and the argument of counsel, the Court finds that just cause exists for entry of the following order.

IT IS THEREFORE ORDERED that the Motion of MetroBank, N.A. for Relief from Automatic Stay Against the Vessels Miss Sheena, Miss Audrey, and Master Richard filed by MetroBank, N.A. on May 2, 2006 is hereby **GRANTED** and the automatic stay is hereby **TERMINATED** so as to allow MetroBank to exercise any and all legal remedies which it may possess in order to obtain possession of three referenced vessels constituting its collateral, and to enforce its security interests and liens against the referenced vessels.

Signed on 05/31/2006

THE HONORABLE BILL PARKER
CHIEF UNITED STATES BANKRUPTCY JUDGE