IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

In re: Walton Street Properties, LLC, Debtor **No. 5:11-bk-70291**
Ch. 11

ORDER

Before the Court is a *Motion to Dismiss Chapter 11 Bankruptcy* filed by Signature Bank on May 3, 2011. The Court held a hearing on the motion on June 8, 2011. The debtor, Walton Street Properties, LLC, appeared at the hearing and objected to Signature Bank's motion. At the conclusion of the hearing, the Court took the motion under advisement. For the reasons stated below, the motion is granted upon the condition that the Court finds that conversion is not in the best interests of the creditors and the estate under 11 U.S.C. § 1112(b). The Court will hold a hearing to determine whether the case should be converted rather than dismissed on July 20, 2011, at 1:30 p.m., in the United States Bankruptcy Court, Fayetteville, Arkansas.[1]

Background

Walton Street Properties, LLC [WSP] is an entity that has a leasehold interest in a three-floor, 10,000 square-foot building [WSP Building] that is located in Bentonville, Arkansas. The leasehold interest in the WSP Building is WSP's primary asset. Wanda Munson, president of Spirit Mountain Group, Inc., and, in her capacity as president, managing member of WSP, testified at the June 8 hearing. Munson testified that WSP acquired the leasehold interest in the WSP Building with the intention of having a

[1] Because Signature Bank did not move for conversion of the case, that remedy has not been noticed and neither Walton Street Properties, LLC [WSP] nor its creditors have had an opportunity to respond. There is authority providing that the Court may sua sponte convert a chapter 11 case if it is in best interests of the creditors and the estate; however, the Court must still provide notice and an opportunity to object. 11 U.S.C. § 105(a), § 1112(b)(1). The Court notes that WSP's schedules list the leasehold interest as having a value of $2,400,000.00, while the schedules state that Signature Bank's secured interest only amounts to $1,600,000.00. Additionally, in its Summary of Schedules, WSP states that its assets exceed its liabilities. For these reasons, converting the case to a case under chapter 7 may be in the best interests of the estate of WSP and its creditors.

separate entity, Northwest Health and Lifestyle Centre, Inc. [Northwest Health], occupy the entire WSP Building and operate an alternative health clinic with a full-time doctor, chiropractor, and physical therapist on staff. Munson also testified that she is a "member" of Northwest Health, although she recognized Northwest Health is a corporation.

On April 27, 2007, WSP and Signature Bank executed a *Leasehold Mortgage (With Security Agreement and Assignment of Rents and Leases)* in which WSP mortgaged its leasehold interest in the WSP Building. On the same date, a corresponding and separate *Assignment of Leases and Rents* was executed in relation to the mortgage, as well as a promissory note for the principal loan amount of $1,600,000.00. The mortgage and assignment were recorded in the Benton County Clerk's office May 16, 2007, and these documents are in evidence. The corresponding promissory note is not in evidence. Also in 2007, WSP remodeled the WSP Building.

The WSP Building opened in January 2008. However, WSP's business plan for Northwest Health did not come to fruition. Bo Bittle, a Signature Bank loan officer, testified that WSP "became delinquent" in the payment of its note to Signature Bank in March 2010. Bittle testified that he attempted multiple times to contact WSP after WSP became delinquent but had no success. On January 26, 2011, WSP filed its chapter 11 bankruptcy petition. On May 3, 2011, Signature Bank filed the motion currently before the Court requesting that the Court dismiss WSP's bankruptcy case for cause under 11 U.S.C. § 1112(b). Signature Bank alleged, either in its motion or at hearing, that "cause" exists to dismiss the case because (1) WSP is in bad faith; (2) WSP has grossly mismanaged the estate; and (3) WSP has no reasonable likelihood of rehabilitation. In the alternative, Signature Bank requested in its motion that this Court appoint a trustee under § 1104(a).

At the conclusion of Signature Bank's case at the June 8 hearing, WSP moved for judgment as a matter of law on the allegations of bad faith and gross mismanagement.

Signature Bank conceded the issue of bad faith, and the Court granted judgment in favor of WSP on that issue but denied the motion as to gross mismanagement. Therefore, the remaining issues before the Court concerning the request to dismiss are (1) whether WSP grossly mismanaged the estate such that the case should be dismissed, and (2) whether there exists a likelihood of rehabilitation. The Court will address Signature Bank's alternative argument that a trustee should be appointed at the conclusion of its discussion of gross mismanagement.

Gross Mismanagement Under § 1112(b)(4)(B)

Under § 1112(b)(4)(B), "cause" includes "gross mismanagement of the estate." 11 U.S.C. § 1112(b)(4)(B). Likewise, under § 1104, the court shall order the appointment of a trustee for "cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case." 11 U.S.C. § 1104.

Signature Bank argues that certain actions taken by Munson regarding renting space in and charging rent for the WSP building constitutes gross mismanagement. Munson testified that WSP has three tenants in the WSP Building, that each tenant occupies one entire floor of the WSP Building, and that each floor is about 3300 square feet. The first floor tenant is Northwest Health, and it has been a tenant in the WSP Building "since the beginning." As stated above, Northwest Health was designed to have a full-time doctor, chiropractor, and physical therapist on staff. Munson testified that there has been a full-time chiropractor on staff but that doctors have only been at Northwest Health on a three or six month basis. Munson testified that prior to WSP filing bankruptcy, Northwest Health did not pay monthly rent directly for a predetermined amount; instead, Northwest Health paid utilities and "other things like that." Since WSP filed its bankruptcy petition on January 26, 2011, Northwest Health has paid rent three times—in March, April, and May 2011.[2] Munson testified that they are "setting a regular payment" for Northwest

[2] June rent was not due as of the date of trial.

Health. Northwest Health is also presently in bankruptcy.

The second floor tenant is the Wilkerson Law Firm. Its rent is $3025.00 per month, and it became a tenant May 15, 2011, almost four months after WSP filed its bankruptcy petition. Prior to that, Munson testified that the second floor was "occupied as administrative offices for [Northwest Health], a consult room for Doctor McDonna, who was a member of our group, Maxie Carpenter's office was there, and Michael Munson was supplied an office there since he was appointed as administrator for [Northwest Health]." Michael Munson is Wanda Munson's son. Wanda Munson testified that her son paid rent, though the rent was "split up between him and Maxie, and it was like $1600.00 a month." No other second floor tenants, prior to Wilkerson Law Firm becoming the second floor tenant, paid rent. The third floor tenant is a marketing company, it is currently paying $3000.00 in monthly rent,[3] and it has been a tenant "since the beginning" of the WSP Building.

Signature Bank argues that because Munson has not collected rent from Northwest Health regularly and because she has allowed previous second floor tenants to occupy the building rent free, her actions constitute "gross mismanagement." However, the Court finds that the evidence elicited at trial does not prove *gross* mismanagement of the estate. Section 1112(b)(4)(B) focuses "'on the management of the estate and not on the debtor'" *In re Briggs-Cockerham*, L.L.C., 2010 WL 4866874, at *4 (Bankr. N.D. Tex.) (quoting 7 Collier on Bankruptcy ¶ 1112.04[6][b] (16th ed. rev.)); *see also In re First Assured Warranty Corp.*, 383 B.R. 502, 544 (Bankr. D. Colo. 2008) (stating that "'gross mismanagement of the estate,' arguably renders any prepetition mismanagement irrelevant."). Munson's actions of failing to collect rent from Northwest Health prior to bankruptcy constitutes a degree of mismanagement, but not gross mismanagement. The "gross mismanagement" standard implies "that every bankruptcy reorganization involves some degree of mismanagement." *In re Jessen*, 82 B.R. 490, 494 (Bankr. S.D. Iowa

[3] Its rent was initially $3300.00 but was reduced when it renewed the lease.

1988). WSP is current in its lease payments to its lessor, and the lease has more than thirty years remaining. WSP is insured, and the loss payee is Signature Bank. Also, personal property taxes are current. Since the filing of the bankruptcy, Northwest Health has started paying rent, albeit not close to the amount paid by the other two tenants and only for three of the four or five months that rent had become due as of the date of trial. Also, since the filing of the bankruptcy, WSP has renovated the second floor and rented the entire floor to a new tenant that pays much more in rent than the previous second floor tenants. While Munson testified that real estate or "building taxes" are not current, the Court does not know for how long the taxes have been past due or what amount is owed.[4] Therefore, Signature Bank's motion to dismiss under § 1112(b)(4)(B) is denied.

Likewise, Signature Bank's request in its motion that the Court appoint a trustee under § 1104 is also denied. There was no evidence of fraud, dishonesty, incompetence, or other cause, and any mismanagement of the affairs of WSP before and after the bankruptcy filing did not rise to the level required for gross mismanagement.

Likelihood of Rehabilitation Under § 1112(b)(4)(A)

Under § 1112(b)(1), after notice and a hearing, the Court shall dismiss or convert a case for "cause," whichever is in the best interests of creditors and the estate, unless the Court determines that the appointment of a trustee under § 1104 is in the creditors' and estate's best interests. 11 U.S.C. § 1112(b)(1). Section 1112(b)(4) lists several factors that constitute cause; however, the list is not exhaustive, and the Court "may consider other factors and equitable considerations in order to reach an appropriate result in the individual case." *In re Schriock Constr., Inc.*, 167 B.R. 569, 575 (Bankr. D. N.D. 1994) (citing H.R. Rep. No. 595, at 405–06 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6361–62). A finding that a single ground for cause under § 1112(b) has been met is sufficient for the Court to dismiss or convert the case. *In re Reagan*, 403 B.R. 614, 621

[4] WSP's schedules do not reflect that any taxes are owed, and Munson did not know the amount of taxes owed or for how long they have been past due.

(B.A.P. 8th Cir. 2009). Under § 1112(b)(4)(A), a "substantial or continuing loss to or diminution of the estate *and* the absence of a reasonable likelihood of rehabilitation" constitutes cause. 11 U.S.C. § 1112(b)(4)(A) (emphasis added).

Signature Bank, as the moving party, has the burden of proving cause under § 1112(b). *Loop Corp. v. U.S. Trustee*, 379 F.3d 511, 517–18 (8th Cir. 2004). Once the movant shows cause, the Court must dismiss or convert the case unless:

> the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that--
>
> > (A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and
> >
> > (B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—
> >
> > > (i) for which there exists a reasonable justification for the act or omission; and
> > >
> > > (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(2). Therefore, in order to survive dismissal or conversion, the debtor must provide rebuttal evidence from which the Court could make specific findings of unusual circumstances establishing that conversion or dismissal is not in the estate's or creditors' best interests and otherwise satisfy the provisions of § 1112(b)(2). *In re Roan Valley, LLC*, 2009 WL 6498188, at *6 (Bankr. N.D. Ga. 2009); *see Loop Corp.*, 379 F.3d at 517 (discussing burden of proof and rebuttal evidence under § 1112(b)).

Signature Bank argues that it has met its burden under § 1112(b)(4)(A) because the *Assignment of Leases and Rents* is an absolute assignment that conveyed absolutely title to the rents to Signature Bank; therefore, Signature Bank concludes the rents are not part

of WSP's bankruptcy estate. Signature Bank is correct that if the rents were not part of the estate, cause would be met under § 1112(b)(4)—removing WSP's sole income stream would result in a "substantial and continuing loss to or diminution of the estate" and WSP would have no reasonable likelihood of rehabilitation.[5] This Court has reviewed assignments in two recent cases to determine whether the assignments were absolute or merely agreements for security. In the first case, *In re Pinnacle Point Properties, LLC*, 5:10-bk-72044 [*Pinnacle*], the Court found, in the context of a motion to use cash collateral, that the assignment of rents was an absolute assignment, and, therefore, an absolute conveyance to the assignee. As a result, the rents at issue were not property of the estate. In the second case, *In re All You, LLC*, 5:10-bk-74049, the Court found the assignment of rents was not an absolute assignment, but rather operated as additional security. Contrary to Signature Bank's counsel's repeated representations to the Court that the present case is "on all fours" with the *Pinnacle* case, after consideration of the assignment in this case, the Court believes this assignment is significantly different from the assignment in *Pinnacle*. Regardless, the Court does not have to reach this issue. If the Court determined that the assignment was merely an agreement for security and the rents are property of WSP's estate, WSP's case must still be dismissed or converted for cause under § 1112(b)(4)(A) for the reasons discussed below.

Under § 1112(b)(4)(A), a substantial and continuing loss to or diminution of the estate can be shown "by demonstrating that the debtor incurred continuing losses or maintained a negative cash flow position after the entry of the order for relief." *In re Schriock Constr., Inc.*, 167 B.R. at 575. The Eighth Circuit has stated that "[u]nder the interpretation of § 1112(b)(1) consistently used in bankruptcy courts, this negative cash flow situation alone is sufficient to establish a 'continuing loss to or diminution of the estate.'" *Loop Corp.*, 379 F.3d at 515–16 (citing *In re Schriock Constr., Inc.*, 167 B.R. at

[5] Given the amount of equity the schedules reflect WSP has in its leasehold interest, a liquidating chapter 11 plan might be plausible; however, WSP put on no evidence at trial that it intends to liquidate all or part of its leasehold interest.

575 and *In re 3868-70 White Plains Rd., Inc.*, 28 B.R. 515, 518 (Bankr. S.D.N.Y. 1983)).

In this case, WSP's April operating report filed on May 25, 2011, shows a net loss of $390.00 for the month ending February 28, 2011; a net income of $3188.00 for the month ending March 31; and a net loss of $120.00 for the month ending April 30. However, "[t]o determine if there is a continuing loss to or diminution of the estate, the Court must fully evaluate the present condition of the Debtor's estate and look beyond financial statements." *In re Vallambrosa Holdings, L.L.C.*, 419 B.R. 81, 88 (Bankr. S.D. Ga. 2009). While the operating report shows a positive net income for the month ending March 31 and net losses for the months ending February and April of less than $400.00 each, WSP's expenses as reflected on the operating report do not appear to include any payments to Signature Bank. The Court does not know the exact amount of WSP's monthly payment to Signature Bank—the promissory note is not in evidence and no one testified to the exact amount. Munson testified that WSP owes Signature Bank about $12,000.00, possibly $14,000.00, a month. Based on Munson's testimony regarding how much rent WSP receives monthly from its three tenants and assuming the first floor tenant, Northwest Health, will begin paying an amount equal to the other tenants,[6] WSP's maximum monthly income is about $9100.00. Therefore, considering the sum of WSP's expenses, March 2011 would also reflect a negative cash flow.

WSP introduced little evidence to rebut the evidence concerning its negative cash flow or to show how it could meet its obligations. Munson testified that although she cannot pay the monthly debt to Signature Bank "at this interest rate . . . if it was back where it belonged when we first started the note, yes, we could service it very well." However, she did not testify to either the current or past interest rate, or how WSP planned on

[6] This assumption is generous. Northwest Health is the first floor tenant, and its April operating report, which is in evidence, shows that it only paid $750.00 in rent in March and $750.00 in April. The other two tenants occupy approximately the same square footage and pay at least $3000.00 per month in rent.

meeting all of its expenses with its current rental income while maintaining a positive cash flow. Because WSP has had a negative cash flow for two of the three months reported since the entry of the order for relief, and because all three months would have resulted in a substantial negative cash flow considering the sum of WSP's obligations, the Court finds that WSP has effectively maintained a negative cash flow since the filing of the bankruptcy petition. This evidence is enough to satisfy Signature Bank's burden of proof regarding the first element of § 1112(b)(4)(A). Thus, the Court finds that there has been a "substantial or continuing loss to or diminution of the estate," and the first element of § 1112(b)(4)(A) has been met.

The second element of § 1112(b)(4)(A) is whether WSP has a "reasonable likelihood of rehabilitation." A reasonable likelihood of rehabilitation refers "to the debtor's ability to restore the viability of its business." *Loop Corp.*, 379 F.3d at 516. A North Dakota bankruptcy court expounded on a court's charge in determining whether a chapter 11 debtor can rehabilitate:

> [R]ehabilitation necessarily hinges upon establishing a cash flow from which current obligations can be satisfied. It is thus incumbent upon the court in the instant case to determine whether [the debtor] can emerge as an economically viable enterprise capable of servicing its obligations under a plan. This finding in turn requires an assessment of the feasibility of the debtor's proposal for rehabilitation, as contained in the first modified plan of reorganization together with the disclosure statement, under a cramdown scenario. Such a discussion necessarily overlaps with an evaluation of certain confirmational prerequisites under § 1129 and consideration of whether it is reasonable to believe that the debtor will be able to effectuate a confirmable plan of reorganization under any scenario.

In re Schriock Constr. Inc., 167 B.R. at 576. In this case, the Court has testimony and other evidence that (1) WSP's expenses exceeds its income by thousands of dollars each month when considering its obligation to Signature Bank, (2) WSP's sole source of income is its rents, and (3) WSP has rented all of its space in the WSP Building. Once again, this evidence is enough to satisfy Signature Bank's burden on the second element and require WSP to provide rebuttal evidence concerning its likelihood of rehabilitation.

However, at the June 8 hearing, WSP provided scant testimony about its plan for rehabilitation. The most the Court can construe from testimony about WSP's rehabilitation plan is that WSP still intends on Northwest Health pursuing its business plan of finding a full-time doctor and operating a health clinic in the WSP building, and that if the interest rate on the note to Signature Bank "was back where it belonged when [WSP] first started the note," WSP could pay the note "very well." Munson testified that Northwest Health's income has improved. (See Debtor's Ex. 3.) However, Northwest Health's income is not WSP's income. And despite Northwest Health's increased income in certain months, Northwest Health has only been able to make rent payments to WSP in the amount of $750.00 twice in 2011, according to Northwest Health's April 2011 operating report. Munson testified very generally about WSP's goals and did not provide any details describing how WSP is planning to pursue its prior business plan, whether it intends to adjust the interest rate in a plan, or whether it intends on raising rent. Further, there was no testimony about a plan to sell the leasehold interest in whole or part or about any source of new capital. Munson's good intentions are simply not enough to convince the Court that this debtor is capable of rehabilitating in spite of its current obligations and lack of revenue.

The Court recognizes that "[a] Court should not precipitously sound the death knell for a debtor by prematurely determining that the debtor's prospects for economic revival are poor." *In re Economy Cab & Tool Co., Inc.*, 44 B.R. 721, 724 (Bankr. Minn. 1984) (quoting *In re Shockley Forest Indus., Inc.*, 5 B.R. 160, 162 (Bankr. N.D. Ga.1980). The Court's analysis must consider that "the stated purpose of Chapter 11 is to further the rehabilitation of businesses in economic distress." *Id*. WSP did not put on any proof at the hearing as to how it will be able to rehabilitate. This bankruptcy case is six months old, no plan or disclosure statement has been filed as of the date of the June 8 hearing, and WSP is outside the exclusivity period under § 1121. The Court should not speculate as to possible ways WSP can rehabilitate in order to save it from dismissal. *See In re Hunt's Health Care Ctr., Inc.*, 1990 WL 300920, at *6 (Bankr. N.D. Ind. 1990) (stating that the "possibilities for a successful rehabilitation cannot be founded upon speculation

and conjecture"). WSP must come forward with proof to show a reasonable likelihood of rehabilitation. *In re Quail Farm, LLC*, 2010 WL 1849867, at *5 (Bankr. N.D. W. Va. 2010) (finding that the debtor had no reasonable likelihood of rehabilitation where the court received "only the weakest of evidence from the Debtor regarding a business plan," which was "well-meaning and earnest, [but] long on hope and short on details").

The fact alone that WSP's schedules represent that there is equity in the leasehold interest is not sufficient to show a reasonable likelihood of rehabilitation. Even if WSP suggested at the June 8 hearing that its plan was to liquidate the equity in the leasehold interest—which it did not—bankruptcy courts have recognized that rehabilitation "does not necessarily denote reorganization, which *could* involve liquidation. Instead, rehabilitation signifies something more, with it being described as 'to put back in good condition; re-establish on a firm, sound basis.'" *In re Fall*, 405 B.R. 863, 867–68 (Bankr. N.D. Ohio 2009) (emphasis added) (citing *In re The V. Cos.*, 274 B.R. 721, 725 (Bankr. N.D. Ohio 2002)); *see also In re Landmark Atl. Hess Farm, LLC*, 448 B.R. 707, 714–15 (Bankr. D. Md. 2011) (stating that "[c]ourts have held that rehabilitation is not synonymous with reorganization and the determination is not whether a debtor can confirm a plan, but whether the debtor has sufficient business prospects."). Therefore, the fact that WSP might have equity in the leasehold interest that would enable it to propose a liquidating plan does not show that WSP has a reasonable likelihood of re-establishing itself as a business in good condition.

Additionally, the presence of equity alone is not an "unusual circumstance" as contemplated by § 1112(b)(2). *In re Fall*, 405 B.R. at 870 (stating that the fact that the estate may have equity does not "rise to the level of an 'unusual circumstance,' as both events are commonly encountered in Chapter 11 cases."). The phrase "unusual circumstances" is not defined by the code, but the phrase "contemplates conditions that are not common in chapter 11 cases." *In re Pittsfield Weaving Co.*, 393 B.R. 271, 274 (Bankr. D. N.H. 2008); *In re Orbit Petroleum, Inc.*, 395 B.R. 145, 149 (Bankr. D. N.M. 2008) (finding an unusual circumstance sufficient to deny conversion or dismissal where

the plan proposed to pay all creditors in full on the effective date of the plan).

The Court notes that this case is very similar to *In re 3868-70 White Plains Rd., Inc.*, a New York bankruptcy case cited by the Eighth Circuit in *Loop Corp.*, in which Court found that both prongs of § 1112(b)(4)(B) had been met. The court in *3868-70 White Plains Rd., Inc.* concluded that

> [i]t is undeniable that this debtor has continually demonstrated a negative cash flow resulting in "continuing loss" and "diminution of the estate." The debtor has been unable to make any payments to its first mortgagee during the pendency of this case, which is now over six months old. This debtor has no unencumbered assets and has offered no evidence concerning any source of new capital. It is thus readily apparent that the debtor's cash flow is insufficient to pay its current obligations on the first mortgage and there are no alternate sources for payment for current expenses.

In re 3868-70 White Plains Rd., Inc., 28 B.R. 515, 518 (Bankr. S.D. N.Y. 1983). Similarly here, WSP's case is six-months old, WSP's cash flow has been insufficient in certain months to meet its normal monthly operating expenses much less any payment to Signature Bank, and WSP has no apparent alternate sources of revenue.

In sum, the Court finds that the creditor has shown that WSP has no reasonable likelihood of rehabilitation because (1) WSP's maximum revenue is limited—even if each of its three tenants paid $3025.00 a month, WSP would be limited in revenue to no more than $9075.00 a month; (2) when considering the payments to Signature Bank, WSP's operating and other expenses would exceed its maximum income by at least $2925.00 per month, possibly more;[7] (3) WSP provided no evidence of its plan for rehabilitation—specifically, how it will propose to close the income-to-expense gap on a permanent basis; and (4) six months after the case has been filed, WSP has not proposed a disclosure statement or plan and did not testify about a plan. Therefore, the Court finds

[7] WSP's expenses would most likely exceed its income by more than $2925.00 given Munson's testimony that the payment to Signature Bank is "possibly" $14,000.00 per month.

that both elements of § 1112(b)(4)(A) have been met, and the Court finds that Signature Bank has proven "cause." The Court also finds, based on the entire record before it, that "cause" has been met generally under § 1112(b)(1). Additionally, WSP did not provide the Court with any evidence of "unusual circumstances" that would make it in the best interests of the estate or the creditors of the estate for the Court to allow WSP to remain in a chapter 11 case; nor did WSP show that there is a reasonable likelihood that a plan will be confirmed within a reasonable period of time.

Based on the Court's finding of cause under § 1112(b)(1) and (b)(4(A) and the absence of unusual circumstances, the Court finds that a chapter 11 rehabilitation is not in the best interests of WSP's creditors or the estate and the case should be dismissed or converted.

Conclusion

The Court finds that Signature Bank met its burden to show "cause" under § 1112(b)(1) and (b)(4)(A). However, for the reasons stated above, Signature Bank's motion to dismiss is granted upon the condition that the Court finds that conversion is not in the best interests of the creditors and the estate under 11 U.S.C. § 1112(b). The Court will hold a hearing to determine whether the case should be converted rather than dismissed on July 20, 2011, at 1:30 p.m., in the United States Bankruptcy Court, Fayetteville, Arkansas.

IT IS SO ORDERED.

July 1, 2011

DATE

BEN T. BARRY
UNITED STATES BANKRUPTCY JUDGE

cc: Stanley V. Bond, attorney for WSP
J.R. Carroll, attorney for Signature Bank
U.S. Trustee
All creditors and interested parties