

FILED

FEB 17 2004

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

**U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

3	In re:)	Chapter 11
4	BABE'S ENTERTAINMENT, INC.,)	NO. 04-00726-PHX-JMM
	an Arizona corporation,)	
5	MJS HOLDINGS, LLC, an Arizona)	NO. 04-00727-PHX-JMM
	limited liability company,)	
6		
7	Debtor.)	MEMORANDUM DECISION RE: MOTION TO DISMISS

8 On February 12, 2004, a hearing was held on the Motion to Dismiss of secured creditors RJR
 9 Leasing Group ("RJR") and Stephanie's Babes, Inc. ("SBI") to convert to chapter 7, lift the automatic
 10 stay, and to appoint a trustee. The Motion was joined by the Office of the United States Trustee, who
 11 urged the court to dismiss the case. After taking the matter under advisement, the court now rules.

DISCUSSION

Prior History

17 The Debtors came into being as viable entities on or about January 4, 2002, when they purchased
 18 together, as a joint venture, the assets, goodwill and leasehold interests of SBI and RJR. The enterprise
 19 that was purchased was a nightclub located in Scottsdale, Arizona.

20 Together, the Debtors executed two notes, one for \$1,940,000 and the other for \$410,000. Both
 21 notes matured four months later, on May 6, 2002. The notes were secured by essentially all of the
 22 Debtors' assets, the same assets as were acquired in the purchase.

23 Unable to pay the notes when they became due, the Debtors opted for chapter 11 in June 2002.
 24 There, instead of filing and confirming a plan, they utilized the nine-month delay to renegotiate the SBI
 25 and RJR notes. New notes were drafted, secured by the same assets, and signed on April 25, 2003 for
 26 \$2,050,000 and \$450,000 respectively.

1 The bankruptcy cases were then dismissed, as a result of the settlements, on March 24, 2003.
 2 The respite was short-lived. Again unable to pay on their new promises, the Debtors defaulted again.
 3 On January 9, 2004, RJR and SBI filed a civil suit in Maricopa County Superior Court to foreclose their
 4 liens and have a receiver appointed in the interim to administer the assets. Judge Robert L. Gottsfield
 5 was assigned the case, and he promptly set a receivership hearing for January 16, 2004.

6 These bankruptcy cases were filed the day before such hearing, on January 15, 2004, thus
 7 invoking the automatic stay of 11 U.S.C. § 362(a). Judge Gottsfield vacated the receivership hearing,
 8 awaiting developments in the bankruptcy court.

9
 10 **The Instant Cases**

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 12 The schedules of each Debtor were filed on January 30, 2004. In Babe's Entertainment, Inc. they
 13 are listed as:

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 15 **BABE'S ENTERTAINMENT**

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SECURED CREDITOR	COLLATERAL	AMOUNT
GE Capital	Copier	1,537.00
SBI	Inventory, etc.	2,025,000.00
SPQR	Inventory, etc. (junior to SBI)	100,000.00
SUBTOTAL		2,126,537.00
Priority Claims	(City, State, Workmans Comp.)	44,457.14
Unsecured creditors		
Sacks, Tierney	Legal services 10/29/03	25,494.59

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1	Premium Financing Specialists	Liability Insurance	34,000.00
2	MJS Holdings (insider- co/debtor)	Note	42,146.45
3	Commercial Refrigeration Services	Services	632.01
4	SUBTOTAL (excluding insiders)		60,126.60
5	TOTAL (excluding insiders)		2,231,120.74

7 **MJS HOLDINGS**

9	SECURED CREDITORS	COLLATERAL	AMOUNT
10	RJR Leasing	Leasehold on Real property Deed of Trust	475,000.00
11	Sierra Mtn. Management Services	Leasehold 2 nd Deed of Trust	1,829,768.00
12	Global Communication Services	Inventory	245,000.00
13	SUBTOTAL		2,549,768.00
14	UNSECURED CREDITORS		
15	James Landman (insider)		94,000.00
16	Michael Weck (insider)		33,500.00
17	TOTAL (excluding insiders)		2,549,768.00

19
20 Thus, in the Babe's Entertainment, Inc. case, excluding the other secured creditors, which may
21 look to their collateral for satisfaction, and also excluding MJS' insider claim, the totality of the
22 remaining priority and unresolved debts aggregate \$104,583.74. Thus, these debts are small, only about
23 5%, when compared to the size of the claim of SBI in the amount of \$2,025,000.

24 Similarly, in the MJS Holdings case, the only unsecured creditors listed are the
25 owners/principals/insiders, James Ladham and Michael Weck. The secured creditor mix, besides RJR
26 with a listed debt of \$475,000, includes only two other "secured" creditors, Sierra Management and

1 Global Communications. These secured creditors can look to their collateral for satisfaction. Excluding
2 the insider debt leaves no unsecured or priority creditors.

3 4 THE LAW

5
6 Section 1112 of the Bankruptcy Code allows a court to dismiss a case for cause, if the same is in
7 the best interests of creditors.

8 In the instant cases, it is clear that these matters are nothing more than two-party disputes. This
9 fact is even more evident because the history of these cases shows that the first cases were dismissed
10 when the contractual issues with SBI and RJR were renegotiated and settled. No other creditor
11 complained about the dismissal of the cases. Therefore, these parties should litigate their disputes in state
12 court, and not burden the bankruptcy court with “pseudo-plans” and cramdown fights revolving around
13 the “accepting” votes of small, insignificant claims. If the Debtors here made what they now believe
14 were bad deals going into this business enterprise, they must now live with those decisions.

15 The law supports dismissal of these cases for cause. Here, the court finds that the instant cases
16 fall within the well-established body of case law, which groups the behavior such as is present here under
17 the label of “bad faith” filings.

18 The good faith standard for the commencement, prosecution and confirmation of chapter 11
19 bankruptcy cases is a balancing process between interests of the debtors and creditors. Little Creek Dev.
20 Co. v. Commonwealth Mortgage Corp. (In re Little Creek Dev. Co.), 779 F.2d 1068 (5th Cir. 1986).
21 “Requirement of good faith prevents abuse of the bankruptcy process by debtors whose overriding motive
22 is to delay creditors without benefitting them in any way or to achieve reprehensible purposes.” Id. at
23 1072.

24 Findings of lack of good faith “have been predicated on certain recurring but non-exclusive
25 patterns, and they are based on a conglomerate of factors rather than on any single datum.” Id. Several,
26 but not all, of the following conditions usually exist: (1) the debtor has only one asset; (2) the secured

1 creditors' lien encumbers that asset; (3) there are generally no employees except for the principals, little
2 or no cash flow, and no available sources of income to sustain a plan of reorganization or to make
3 adequate protection payments; (3) there are only a few, if any, unsecured creditors whose claims are
4 relatively small; (4) the property has usually been posted for foreclosure because of arrearage on the debt;
5 (5) there are some allegations of wrongdoing by the debtor or its principals; (6) the debtor is inflicted by
6 "new debtor syndrome," in which a one-asset entity has been created or revitalized on the eve of
7 foreclosure to isolate the insolvent property and its creditors; and (7) bankruptcy offers the only
8 possibility of forestalling loss of the property. Id. at 1073.

9 In the instant cases, most of these factors exist: (1) the debtor has only one asset: the nightclub;
10 (2) RJR and SBI's liens encumber the nightclub; (3) there are few unsecured creditors: Babe's has only
11 three non-insider unsecured creditors with aggregate debt of \$60,127.00; MJS has no unsecured debt
12 except that of the insiders; (4) twice have the Debtors filed bankruptcy to avoid the secured creditors from
13 taking actions on their collateral; (5) there have been allegations against the Debtors' principals of
14 mismanagement and conversion of company assets for personal use; and (6) bankruptcy appears to be
15 Debtors' only solution for keeping their nightclub due to the fact they have defaulted on the notes twice.
16 Therefore, this appears to be a classic case of a bad faith filing.

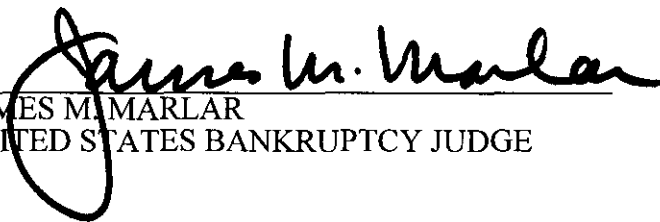
17 In addition, courts have held that in cases of a two-party dispute, a bankruptcy should be
18 dismissed because it constitutes a lack of good faith in filing and can be resolved outside of the
19 bankruptcy court. See North Central Dev. Com. v. Landmark Capital Co. (In re Landmark Capital Co.),
20 27 B.R. 273 (Bankr.D.Ariz. 1983); In re St. Paul Self Storage Ltd. P' ship, 185 B.R. 580 (9th Cir. BAP
21 1995); In re Stober, 193 B.R. 5 (Bankr.D.Ariz. 1996); In re Tucson Properties Corp., 193 B.R. 292
22 (Bankr.D.Ariz. 1995). Clearly, the instant case is only a two-party dispute between the Debtors and RJS
23 and SBI. The matter would be better resolved in state court proceedings.

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RULING

Accordingly, a separate order will be entered that grants the Motion to Dismiss, which prohibits a re-filing for 180 days, and that further provides that if these Debtors, or any successor in interest¹ to them files again for bankruptcy relief, that the clerk of the court is directed to assign such cases to this judge.

Dated this 17th day of February, 2004.


JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

Copy of the foregoing mailed this 17th day of February, 2004, to:

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By 
Judicial Assistant

¹ This provision protects against the oft-common practice of transferring all assets to a new entity, which then files in the hope of escaping another bad faith challenge.