

SIGNED.



Dated: October 30, 2008

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

<p>In re DEXTER DISTRIBUTING CORPORATION, et al., Debtors.</p> <hr/> <p>THIS FILING APPLIES TO ALL DEBTORS</p> <hr/>	<p>) Chapter 11)) CASE NO. 2-03-bk-03546-RJH)) (Jointly Administered Cases Nos.) 2-03-bk-03548-RJH and 2-03-bk-04695-RJH) through 2-03-bk-04710-RJH)) 2-03-bk-05427-RJH) 2-03-bk-11513-RJH) 2-03-bk-11515-RJH) 2-03-bk-04288-RJH) 2-07-bk-01017-RJH) 2-07-bk-01018-RJH) 2-07-bk-01019-RJH and) 2-08-bk-05785)) MEMORANDUM DECISION ON) OLYMPIC COAST'S MOTION FOR) SUMMARY JUDGMENT RE RES) JUDICATA</p> <hr/>
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After review of the memoranda filed with respect to Olympic Coast's Motion for Summary Judgment, the Court has determined that oral argument would not assist the Court in making its decision. The Court will therefore render its decision without hearing oral argument.

The Debtors' Response suggests there is some ambiguity whether Olympic Coast is urging claim preclusion or issue preclusion, but the ambiguity seems to be resolved by Olympic's Reply, which addresses only issue preclusion.

The issue to be decided under the Debtors' Amended 2008 Plan is whether the treatment of Olympic's secured debt under that plan satisfies the requirements of Bankruptcy Code § 1129(b), assuming Olympic objects. The treatment that is proposed by the Amended 2008 Plan is to transfer to ANMP the title to Olympic's collateral and to extend the maturity date of the loans

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1 for an additional five years, to be paid by ANMP, or in the alternative to surrender the collateral
2 to Olympic in full satisfaction of its secured claim. Whether such treatment can satisfy Bankruptcy
3 Code § 1129(b) was not litigated in connection with the 2004 Plan, nor was it necessary to have
4 been litigated at that time. While the Court did determine that the treatment proposed by the 2004
5 Plan satisfied the requirements of Code § 1129(b), resolution of that issue did not require the
6 parties to litigate nor the Court to decide whether any other kind of treatment might also satisfy
7 § 1129(b).

8 Issue preclusion applies only to “‘issues of fact or law that were actually litigated
9 and necessarily decided’ in a prior proceeding.”¹ Here, the issue of whether the treatment proposed
10 for Olympic’s debt by the 2008 Plan satisfies the Code’s fair and equitable requirement was neither
11 actually litigated nor necessarily decided in connection with the 2004 Plan. Issue preclusion does
12 not apply to preclude litigation of that issue now.

13 A similar analysis would lead to the conclusion that claim preclusion similarly does
14 not apply. Whether 2008 Plan’s treatment satisfies the fair and equitable requirement would not
15 have been part of a “convenient trial unit” in litigating the treatment proposed by the 2004 Plan.²

16 Because these conclusions by themselves render issue preclusion inapplicable, the
17 Court need not address whether there is sufficient identity of the parties or whether changed
18 circumstances might also render issue preclusion inapplicable.

19 For the foregoing reasons, Olympic Coast’s motion for summary judgment is denied
20 and the hearing on that motion scheduled for November 12, 2008, at 10:00 a.m., is vacated.

21 DATED AND SIGNED ABOVE

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27 ¹*Alonso v. Summerville (In re Summerville)*, 361 B.R. 133, 143 (9th Cir. BAP 2007), quoting
Robi v. Five Platters, Inc., 838 F.2d 318, 322 (9th Cir. 1988).

28 ²*Id.* at 142, quoting RESTATEMENT (2ND) OF JUDGMENTS § 24(2) (1982).

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