

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:07-bk-04878-ABB
Chapter 11

Joyce, Don & Associates Inc.,

Debtor.

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ORDER

This matter came before the Court on the Motion to Dismiss Case as a Bad Faith Filing, or in the Alternative, Convert Case to Chapter 7 (Doc. No. 15) (“Dismissal Motion”) filed by Central Florida Investment, Inc. (“CFI”) seeking to dismiss or convert this case pursuant to 11 U.S.C. Section 1112(b). Evidentiary hearings were held on November 8, 2007, December 13, 2007, and January 3, 2008 at which representatives of the Debtor Joyce, Don & Associates, Inc., a/k/a Joyce Don and Associates, Inc. (“Debtor”), counsel for CFI, and various parties in interest appeared. The Court makes the following findings and conclusions after reviewing the pleadings and evidence, hearing live testimony and argument, and being otherwise fully advised in the premises.

The Debtor is a Florida corporation whose principals are Donna Daniels, its President (“Daniels”), and Osmond Decoteau (“Decoteau”), its Vice President. Daniels and Decoteau jointly own 100% of the Debtor’s stock.

CFI sold a parcel of undeveloped real property known as 6303 Grand National Drive, Orlando, Florida 32819 (“CFI Property”) to the Debtor on January 26, 2006 and funded \$4,200,000.00 of the purchase price of \$4,700,000.00. CFI holds a perfected secured lien of \$4,200,000.00 against the Property pursuant to the Mortgage and Security Agreement executed on January 24, 2006 and recorded in the Public Records of Orange County, Florida on February 15, 2006.

CFI instituted foreclosure proceedings after the Debtor defaulted on the loan and obtained a Final Judgment of Foreclosure in favor of CFI on September 10, 2007. The

foreclosure sale was scheduled for October 11, 2007 at 11 a.m. The Debtor stayed CFI’s foreclosure sale by filing a Chapter 11 Petition (Doc. No. 1) on October 11, 2007 (“Petition Date”), minutes before the sale was to take place. The Debtor’s sole purpose in filing the Petition was to delay the foreclosure.

The Petition was executed by Daniels as an “Authorized Individual” and as “Attorney for Debtor.” Daniels is not an attorney and falsely held herself out as counsel for the Debtor. The Petition was impermissibly filed by the Debtor *pro se*. Local Bankr. R. 1074-1; Palazzo v. Gulf Oil Corp., 764 F.2d 1381, 1385 (11th Cir. 1985) (“The rule is well established that a corporation is an artificial entity that can act only through agents, cannot appear *pro se*, and must be represented by counsel.”)¹

The Debtor listed, as its sole assets in Schedule A, two parcels of real property described as 14810 Tilden Road, Winter Garden, Florida and 5750 W Oak Ridge Road, Orlando, Florida (Doc. Nos. 1, 36). The Debtor owned two additional parcels of land prepetition, the CFI Property and a parcel with identification number 10-23-27-0000-00-037. It transferred the parcels by quitclaim deed to Ambeeka Holding Corp. on October 9, 2007—two days prior to the Petition Date. No consideration was paid for the transfers. The principals and shareholders of Ambeeka Holding Corp. are Decoteau, Daniels, and a Mr. Patel.

The Debtor’s only creditors of consequence are the secured creditors who hold liens on the four parcels of real property. The secured debt exceeds \$8,000,000.00. Each parcel is subject to a separate foreclosure proceeding. Daniels and Decoteau testified the Debtor has no unsecured creditors and no employees. The Debtor has no personal property. The Debtor has no income and no realistic prospect of generating income. There is a substantial and continuing diminution of the estate due to the interest accruing on the secured debt. No reasonable likelihood of rehabilitation of the Debtor exists.

¹ The Debtor subsequently engaged counsel who entered his appearance on November 9, 2007 (Doc. No. 31). The Debtor, through counsel, filed amended schedules and statements on November 16, 2007 (Doc. No. 36).

Dismissal of a Chapter 11 bankruptcy case is required pursuant to 11 U.S.C. Section 1112(b)(1) where the “movant establishes cause” and “unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate” are absent. 11 U.S.C. § 1112(b)(1) (2007). “Cause” includes “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). A court is empowered to *sua sponte* dismiss a case pursuant to 11 U.S.C. Section 305(a) to prevent abuse of the bankruptcy system.

Good faith is an implicit requirement for filing for bankruptcy protection. Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va. (In re Phoenix Piccadilly, Ltd.), 849 F.2d 1393, 1394 (11th Cir. 1988); Shell Oil Co. v. Waldron (In re Waldron), 785 F.2d 936, 941 (11th Cir. 1986). The bankruptcy laws are “intended to give a ‘fresh start’ to the ‘honest but unfortunate debtor.’” Marrama v. Citizens Bank of Mass., 127 S. Ct. 1105, 1116 (2007) (*citation omitted*). A petition filed in bad faith is subject to dismissal. State Street Houses, Inc. v. N. Y. State Urban Dev. Corp. (In re State Street Houses, Inc.), 356 F.3d 1345, 1347 (11th Cir. 2004); The Bal Harbour Club, Inc. v. AVA Dev., Inc. (In re Bal Harbour Club, Inc.), 316 F.3d 1192, 1195 (11th F.3d 2003); In re Phoenix Piccadilly, Ltd., 849 F.2d at 1395.

The circumstantial factors evidencing bad faith include:

- (i) The debtor has only one asset in which it does not hold legal title;
- (ii) The debtor has few unsecured creditors who claims are small in relation to the claims of the secured creditors;
- (iii) The debtor has few employees;
- (iv) The property is the subject of a foreclosure action as a result of arrearages on the debt;

- (v) The debtor’s financial problems involve essentially a dispute between the debtor and the secured creditors which can be resolved in a state court action; and
- (vi) The timing of the debtor’s filing evidences an intent to delay or frustrate the legitimate efforts of the debtor’s secured creditors to enforce their rights.

In re Phoenix Picadilly, Ltd., 849 F.2d at 1394-95. This list of factors is “non-exhaustive and not to be rigidly applied . . .” In re State Street Houses, Inc., 356 F.3d at 1347.

CFI has established cause for dismissal exists pursuant to 11 U.S.C. Section 1112(b). No unusual circumstances are present establishing dismissal is not in the best interests of the creditors and the estate. This case was filed in bad faith. All of the Picadilly factors are present. Additional factors evidencing the Debtor’s bad faith are Daniel’s misrepresenting herself as an attorney in the Petition, the Debtor’s transfer of property to an affiliate entity two days before the Petition Date, and Decoteau’s lack of candor in his testimony.

The filing is an abuse of the judicial system and the purposes of Chapter 11. The case is due to be dismissed pursuant to 11 U.S.C. Sections 1112(b), 105(a), and 305(a)(1).

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Dismissal Motion is hereby granted and the above-captioned case is hereby **DISMISSED** effective January 25, 2008; and it is further

ORDERED, ADJUDGED AND DECREED that, pursuant to 11 U.S.C. Section 105(a), Joyce, Don & Associates, Inc., a/k/a Joyce Don and Associates, Inc., Donna Daniels, Osmond Decoteau, their legal representatives, administrators, successors and assigns, and any individuals or entities that may assert an interest in the parcels of real property described

ereinabove at pages 1 and 2 are hereby prohibited from filing a petition in bankruptcy under Title 11 of the United States Code for a period of one hundred eighty (180) days from the date of entry of this Order.

Dated this 30th day of January, 2008.

/s/Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge