

ORDERED.

Dated: July 15, 2011



*Eileen W. Hollowell*

Eileen W. Hollowell, Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

<p>10 In re:</p> <p>11 AREK FRESSADI,</p> <p>12 _____</p> <p>13 Debtor.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No.: 4:11-bk-01161-EWH</p> <p><b>MEMORANDUM DECISION ON MOTION TO CONVERT</b></p>
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**INTRODUCTION**

Certain creditors seek to have this individual Chapter 11 case converted to Chapter 7. For the reasons explained below, the case will instead be dismissed and a 180-day bar against refiling anything other than a Chapter 7 petition will be imposed.

**FACTS AND PROCEDURAL HISTORY**

The Debtor has been embroiled in litigation ("Litigation") regarding approximately five acres of real property in Cave Creek, Arizona ("Property") for almost a decade. The Litigation includes banks and the Town of Cave Creek. It involves reciprocal easement claims and other claims related to the Property. All of the Litigation claims are based on common law or state law causes of action. On January 17, 2011, after summary judgment was entered against the Debtor on a judicial foreclosure complaint regarding the Property filed by M&I Marshall & Ilsley Bank ("M&I"), Debtor filed a Chapter 11 petition. The Debtor was originally represented by counsel. On the eve of a final hearing on M&I's motion for relief from stay to permit it to proceed with its judicial foreclosure, Debtor's counsel moved to withdraw and the Debtor requested a continuance of the final hearing. Counsel's motion to withdraw was granted, the request for the continuance was denied. Thereafter, the Debtor filed numerous pleadings, including five different versions of a plan of reorganization.

1 Post-petition, the Debtor began to remove certain of the Litigation lawsuits (the "Removed  
2 Cases"), including M&I's judicial foreclosure suit (4:11-ap-999), to this Court. Various of the  
3 defendants in the Removed Cases responded by filing requests for remand and notices of  
4 non-consent to bankruptcy court jurisdiction in the Removed Cases.

5 On April 28, 2011, M&I moved to convert the case (the "Motion to Convert"). The Motion  
6 to Convert was joined by Real Estate Equity Lending, Inc. ("REEL"). M&I sought an expedited  
7 hearing on the Motion to Convert because of the Debtor's transfer of the Property to a related entity.  
8 The Debtor objected and Scenic Vistas, LLC, the recipient of the transfer, joined in that objection.  
9 Because stay relief had been granted to M&I regarding the Property which would permit M&I to  
10 seek relief in state court regarding any unauthorized transfer of the Property and because the  
11 expedited hearing had not been set as an evidentiary hearing, the Court denied M&I's request for  
12 expedited relief. The Motion to Convert was continued to July 13, 2011, which was also set as a  
13 combined hearing on approval of a disclosure statement and plan of reorganization. The Debtor was  
14 ordered to have a disclosure statement on file for his previously filed Plan "D" by June 10, 2011.  
15 The Debtor timely filed a disclosure statement and attached a new Plan "E." Plan E indicates that,  
16 in addition to transferring the Property to Scenic Vistas, LLC, the Debtor had also transferred, post-  
17 petition, his equity interest in various entities to family members. None of those transfers were  
18 approved by the Court. Like its predecessors, Plan E's feasibility depended on Debtor successfully  
19 prosecuting and prevailing on all of the Removed Cases--even ones where final judgments and  
20 rulings adverse to the Debtor had previously been entered.

21 M & I filed a ballot rejecting Plan E and an objection to confirmation, which was joined by  
22 REEL. No ballot report was filed by the Debtor to indicate that there was any vote cast accepting  
23 Plan E. On July 13, 2011, the court conducted the hearing on Plan Confirmation and a continued  
24 hearing on the Motion to Convert.

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26 **JURISDICTION**

27 Jurisdiction is proper under 28 U.S.C. §§ 1334 and 157(b)(2)(A).  
28

1 **ISSUES**

- 2 1. Can the Debtor's Plan be confirmed?  
3 2. Should the Debtor's case be converted?  
4

5 **DISCUSSION**

6 Based on a review of Plan E and the entire record in the case, including but not limited to  
7 the Debtor's admitted unauthorized transfers of estate property, it is clear that the Debtor filed his  
8 Chapter 11 petition in bad faith to avoid, set aside, or re-litigate judgments entered in the Litigation.  
9 The terms of Plan E have not, therefore, been proposed in a good faith effort to reorganize as  
10 required by 11 U.S.C. § 1129(a)(3) but simply for the purpose of continuing the Litigation in  
11 another forum. Forum shopping has long been held to be an improper purpose for seeking  
12 Chapter 11 relief. See In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990) (citing forum  
13 shopping as one factor for a court to consider when abstaining). As a result of these findings, and  
14 the fact that Debtor has already proposed multiple plans, the Debtor will not be permitted any  
15 further opportunity to propose a plan of reorganization.<sup>1</sup>

16 After considering the entire record in the bankruptcy case as well as a number of the  
17 judgments entered against the Debtor in the Litigation, the Court concludes that the Debtor has been  
18 manipulating and abusing the bankruptcy process. At the July 13 hearing, the Court queried M&I  
19 and REEL's counsel as to what purpose would be served by converting the Debtor's case to  
20 Chapter 7. Both counsel expressed an interest in having a Chapter 7 trustee untangle the series of  
21 transfers the Debtor has purportedly made of his property both pre- and post-petition. However,  
22 neither counsel could identify for the Court what estate resources would be available to a Chapter  
23 7 trustee to undertake such an investigation. Even a cursory review of the Removed Cases and the  
24 docket in the Debtor's administrative case indicates that the Litigation is ongoing, complex, and  
25 contentious. The Court accordingly exercises its discretion under 11 U.S.C. § 105(a) and, sua

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27 <sup>1</sup>The Removed cases will be remanded because none of the cases involve the Court's core jurisdiction.  
28 See *Stern v. Marshall*, 541 U.S. \_\_\_\_, 131 S. Ct. \_\_\_\_, 2011 U.S. LEXIS 4791 (June 23, 2011) (unconstitutional  
for bankruptcy courts as Article I courts to adjudicate common and state law causes of action which are not part  
of estate's counterclaim to creditor claim).

1 sponte, orders that the Debtor's case be dismissed. Tennant v. Rojas (In re Tennant), 318 B.R. 860  
2 (B.A.P. 9th Cir. 2004).

3 Based on the record and the Court's determination that the Debtor's case was filed in bad faith  
4 it further finds that the Debtor and any entity in which the Debtor has any interest should be subject  
5 to a 180-day bar against filing any petition, other than a Chapter 7 petition, in the Bankruptcy Court  
6 for the District of Arizona. See Casse v. Key Bank Nat'l Ass'n (In re Casse), 198 F.3d 327, 339 (2d  
7 Cir. 1999). The Court further finds that it is appropriate in the circumstances of this case to direct  
8 the Clerk of the Bankruptcy Court, for the next thirty six (36) months, to assign to this Court any  
9 bankruptcy case filed by the Debtor or by an entity in which the Debtor has an interest.

10 The foregoing, along with the record of the July 13 proceeding, constitutes the Court's  
11 findings of fact and conclusions of law on the Motion to Convert and confirmation of Debtor's  
12 Plan E. A separate order dismissing Debtor's case will be entered this date.

13 DATED AND SIGNED ABOVE.

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15  
16 To be noticed via the Bankruptcy Noticing  
Center ("BNC") to the following:

17 Arek Fressadi  
18 10780 S. Fullerton Rd.  
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19 Scott Humble  
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