

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1608118233>

ZoomGov meeting number: 160 811 8233

Password: 974829

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8:20-10545 Katie Ki Sook Kim

Chapter 7

Adv#: 8:20-01141 East West Bank v. Kim et al

- #1.00** STATUS CONFERENCE RE: Complaint to determine nondischargeability of debt, in objection to debtor's discharge pursuant to 11 U.S.C. Section 523(a)(2) (A) and (B), and 727(a)(2)(A); or alternatively for: (1) Avoidance and recovery of preferential transfers [11 U.S.C. Section 547(b), and 550]; (2) Avoidance and recovery of fraudulent transfers [11 U.S.C. Section 548, and 550]; (3) Preservation of avoided transfers [11 U.S.C. Section 551]; (4) Disallowance of any claims held by defendants [11 U.S.C. Section 502(d); and (5) California voidable transactions act [Civil Code Section 3439-3439.14]

Docket 1

Tentative Ruling:

Tentative for 12/17/20:

Deadline for completing discovery: November 23, 2021

Last date for filing pre-trial motions: December 2, 2021

Pre-trial conference on: December 16, 2021 @ 10:00AM

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Defendant(s):

Katie Ki Sook Kim

Pro Se

Kiddo's E3, Inc.

Pro Se

Chrysanthemum by Eileen LLC

Pro Se

SMT Apparel, Inc.

Pro Se

Verna Fashion, Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT... Katie Ki Sook Kim

Chapter 7

Plaintiff(s):

East West Bank

Represented By
Clifford P Jung

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8:13-19732 Steven William Gentile

Chapter 11

**#2.00 PRE-TRIAL CONFERENCE RE: Order To Show Cause Why Sanctions Should Not Be Issued Pursuant To 11 USC Section 105 And 524
(set from s/c hrg held on 10-28-20)**

Docket 0

***** VACATED *** REASON: CONTINUED TO 1-28-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE=TRIAL
HEARING ENTERED 12-14-20**

Tentative Ruling:

Tentative for 10/28/20:
Continue in favor of mediation?

Party Information

Debtor(s):

Steven William Gentile

Represented By
Michael G Spector
Vicki L Schennum
Rafael R Garcia-Salgado
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room

5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

Adv#: 8:20-01011 Bridgemark Corporation v. Placentia Development Company LLC

**#3.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Preferential Transfers
(cont'd from 12-02-20 per order on stip to further cont s/c entered 11-13-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-10-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON INITIAL STATUS CONFERENCE ENTERED 12-14-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Defendant(s):

Placentia Development Company

Pro Se

Plaintiff(s):

Bridgemark Corporation

Represented By
Erin E Gray
James KT Hunter
William N Lobel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 12-02-20 per stip. to cont. hrgs entered 11-13-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-10-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ON: (1) CHAPTER 11 STATUS CONFERENCE; (2) MOTION FOR
RELIEF FROM AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11
CASE ETC. ENTERED 12-14-20**

Tentative Ruling:

Tentative for 2/26/20:

The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#5.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 12-02-20 per order approving stip, to cont, hrgs entered
11-13-20)

**PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR**

Docket 53

***** VACATED *** REASON: CONTINUED TO 2-10-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ON: (1) CHAPTER 11 STATUS CONFERENCE; (2) MOTION FOR
RELIEF FROM AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11
CASE ETC. ENTERED 12-14-20**

Tentative Ruling:

Tentative for 2/26/20:

If all that is requested is that both sides be free to complete the state court action, including post trial motions and appeals, to final orders, that is appropriate. Enforcement stes will require further orders of this court.

Grant as clarified.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Movant(s):

Placentia Development Company,

Represented By
Robert J Pfister

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#6.00 Objection Of Placentia Deveopment Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero
(con't from 12-02-20 per order apprvng stip. to cont. hrgs entered 11-13-20)

Docket 93

***** VACATED *** REASON: CONTINUED TO 2-10-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ON: (1) CHAPTER 11 STATUS CONFERENCE; (2) MOTION FOR
RELIEF FROM AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11
CASE ETC. ENTERED 12-14-20**

Tentative Ruling:

Tentative for 3/25/20:

Stipulation to continue to 4/29/20 expected per phone message. Status?

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#7.00 Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b) (cont'd from 12-02-20 per order apprvg stip. to cont. hrgs, entered 11-13-20)

Docket 54

***** VACATED *** REASON: CONTINUED TO 2-10-21 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS ON: (1) CHAPTER 11 STATUS CONFERENCE; (2) MOTION FOR RELIEF FROM AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11 CASE ETC. ENTERED 12-14-20**

Tentative Ruling:

Tentative for 2/26/20:

This is the motion of Judgment Creditor, Placentia Development Company, LLC ("PDC") to dismiss Bridgemark Corporation, LLC's ("Debtor's") Chapter 11 case pursuant to 11 U.S.C. §1112(b) and/or motion for relief from the automatic stay pursuant to 11 U.S.C. §362 (action in nonbankruptcy forum). The motion is opposed by Debtor. No other party has filed any responsive papers.

1. Basic Background Facts

Debtor filed its Petition on January 14, 2020. PDC is the primary creditor owed approximately \$42.5 million on account of a state court judgment entered after years of litigation over Debtor's unauthorized use of PDC's land for purposes of extracting oil. Debtor's principal, Robert J. Hall, testified under oath that the company does not have the ability to pay the judgment debt because Debtor's business involves a finite resource of constantly diminishing value. Debtor's second largest non-insider creditor is owed less than \$25,000, and all of Debtor's other debts combined add up, at most, to a few hundred thousand. PDC reports that it is offering to acquire all such legitimate, non-insider debts at par. In other words, the judgment owed to PDC accounts for approximately 99.8% of the estate's debt. There do not

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT... **Bridgemark Corporation**

Chapter 11

appear to be any other debts listed as disputed, contingent, or unliquidated. The authorizing resolution appended to Debtor's Petition admits that the purpose of this chapter 11 filing is to allow Debtor a stay pending appeal because the Debtor (and one presumes, its principals) cannot afford a supersedeas bond. During the punitive damages portion of the state court trial this testimony was elicited:

"We cannot pay the 27 million We have no ability to pay any of this. ... I don't care how you do it. There's just no way around that. We don't have the ability to pay it and operate a business. It's done."
Trial Tr. (Ex. B to Kibler Declaration) at 3125:9-13."

Mr. Hall also testified that at best, Bridgemark might theoretically be able to pay the \$27 million in compensatory damages at \$1 million per year, interest-free, over 27 years. See *Id.* at 3156:20-23 ["We can't pay it. ... If they would let us pay a million dollars a year for 27 years with no interest, we might be able to work it out."] But as Mr. Hall also testified, Bridgemark is built on "an asset that's declining in value every year.... It just goes down and down and down." *Id.* at 3113:8-12.

By prior motion the court was informed that Debtor will attempt post judgment motions to reduce the judgment and/or obtain a new trial. No information is provided as to the status of any of those.

The court is also informed that PDC has filed a state court lawsuit against members of the Hall family, who are 100% equity holders of Debtor, alleging, among other things, that the Halls used Debtor as a vehicle to pay hundreds of thousands of dollars to affiliated entities in the form of "management fees" or "consulting fees," which the affiliated entities then – through non-arms' length "loans" to the Halls – used to purchase multi-million-dollar homes, extravagant cars and furnishings, valuable pieces of art, and luxury yachts for personal use and benefit.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT... **Bridgemark Corporation**

Chapter 11

2. Motion to Dismiss & Relief from Stay Standards

Section 1112(b) of the Bankruptcy Code provides:

"[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

The statute includes a non-exhaustive list of certain types of "cause," including "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation," *Id.* § 1112(b)(4)(A), and "gross mismanagement of the estate," *Id.* § 1112(b)(4)(B).

Similarly, section 362(d) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section ... for cause," and also provides the non-exhaustive example of "lack of adequate protection."

Given the non-exhaustive nature of "cause" referenced in both sections of the Code, courts have read the term "cause" to include bankruptcy filings that are not appropriate invocations of federal bankruptcy jurisdiction – such as filings in which the avowed purpose of the bankruptcy petition is to avoid posting an appellate bond, or where the petition seeks merely to move what is essentially a two-party dispute from a state court to a federal bankruptcy court. As a matter of shorthand, the case law interpreting §§362(d)(1) and 1112(b) often refer to these types of cause as dismissals for "bad faith" or for lack of "good faith." See generally *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) [employing this terminology, but cautioning that it is misleading: "While the case law refers to these dismissals

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT... **Bridgemark Corporation**

Chapter 11

as dismissals for 'bad faith' filing, it is probably more accurate in light of the precise language of section 1112(b) to call them dismissals 'for cause.']. Thus, the shorthand phrase "good faith" (which does not appear in the statute) does not turn on an inquiry into subjective motivations, thoughts, or feelings. Instead, the question is whether a particular bankruptcy filing transgresses "several, distinct equitable limitations that courts have placed on Chapter 11 filings" in order to "deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws." *Id.*

In this context, whether there is "cause" for dismissal or relief from stay "depends on an amalgam of factors and not upon a specific fact." *In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014). Four pertinent factors include whether the debtor has unsecured creditors, cash flow, or sources of income to sustain a feasible plan of reorganization, and whether the case is "essentially a two-party dispute capable of prompt adjudication in state court." *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 582–83 (9th Cir. BAP 1995). Courts are particularly suspicious of filings in which the express purpose of the chapter 11 petition is to stay execution of a judgment without an appellate bond. See e.g., *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 128 (3d Cir. 2004) ("[I]f there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay to avoid posting an appeal bond in another court."). In such cases, courts consider some or all of the following factors to determine whether bankruptcy jurisdiction is being properly invoked:

- "Whether the debtor had financial problems on the petition date, other than the adverse judgment";
- "Whether the debtor has relatively few unsecured creditors, other than the holder of the adverse judgment";
- "Whether the debtor intends to pursue an effective reorganization within a reasonable period of time, or whether the debtor is unwilling or unable to propose a meaningful plan until the conclusion of the

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT... **Bridgemark Corporation**
litigation"; and

Chapter 11

- "Whether assets of the estate are being diminished by the combined ongoing expenses of the debtor, the chapter 11 proceedings, and prosecution of the appeal." *In re Mense*, 509 B.R. at 280 (footnotes and citations omitted).

"The bankruptcy court is not required to find that each factor is satisfied or even to weigh each factor equally. Rather, the ... factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *In re Prometheus Health Imaging, Inc.*, 2015 WL 6719804, at *4 (9th Cir. BAP Nov. 2, 2015) (citations, internal quotation marks, and brackets omitted). Indeed, "[a] bankruptcy court may find one factor dispositive or may find bad faith even if none of the factors are present." *In re Greenberg*, 2017 WL 3816042, at *5 (9th Cir. BAP Aug. 31, 2017) (citing *Mahmood v. Khatib (In re Mahmood)*, 2017 WL 1032569, at *4 (9th Cir. BAP Mar. 17, 2017)).

3. Was Debtor's Petition Filed for a Proper Purpose?

PDC argues that Debtor's petition is a textbook bad faith filing. In support PDC cites *In re Integrated Telecom Express*, 384 F.3d 108, 128 (3d Cir. 2004), where the court stated bluntly: "if there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay provision to avoid posting an appeal bond in another court." PDC also cites *In re Casey*, 198 B.R. 910, 917–18 (Bankr. S.D. Cal. 1996) for the proposition that the "use [of] bankruptcy to defeat the state law appeal bond requirement" is not a "legitimate bankruptcy purpose."

In response Debtor argues that at least some courts have held that a chapter 11 filing can properly substitute for posting an appeal bond. For example, Debtor cites *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032,

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT... **Bridgemark Corporation**

Chapter 11

1048 (9th Cir. 2013) where the court found:

Here, unlike in *Marsch* and *Boynton*, the record suggests that Howard and Ilene's liquid assets were probably insufficient to satisfy the judgment or cover the cost of a supersedeas bond. The bankruptcy court found that the Fraud Judgment amounted to over \$12 million plus interest, that the "custom" in Texas was to set appeal bonds at 150% of the judgment, and that Howard did not have sufficient liquid assets to post a bond of that size. Although the record does not invariably indicate that the Debtors could not finance a supersedeas bond, we cannot say that the bankruptcy court's determination was clearly erroneous. Moreover, notwithstanding their ability to finance a bond, Howard and Ilene's inclusion of the Fraud Judgment in their initial Plan suggests that they filed their bankruptcy petition for the proper purpose of reorganization, not as a mere ploy to avoid posting the bond.

Debtor argues that the language quoted above, and others expressing similar sentiment, is applicable to our case. Debtor also points out that it is not attempting to avoid posting an appeal bond, it simply cannot do so, which Debtor argues is a critical distinction.

PDC argues that the cases cited by Defendant must be viewed according to their unique factual context, rather than relying solely on the ultimate result. For example, PDC points out that in *Marshall*, the judgment creditor who moved to dismiss the case as a bad faith filing had already missed the claims bar date (which was November 15, 2002) when he filed the motion to dismiss (on December 13, 2002). See *In re Marshall*, 298 B.R. 670, 674 (Bankr. C.D. Cal. 2003). At the time the motion to dismiss was filed, the debtors had already proposed a plan that would pay every other creditor with timely claims in full. *Id.* It was in this context that the Circuit court held that the bankruptcy court had not abused its discretion in denying the motion to dismiss for bad faith. Indeed, the *Marshall* Circuit court stated, "we agree with the bankruptcy court that '[p]erhaps the most compelling grounds for denying

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room

5B

10:00 AM

CONT... **Bridgemark Corporation**

Chapter 11

a motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation." *Marshall*, 721 F.3d at 1048 (quoting 298 B.R. at 681)). PDC persuasively argues that it would be inappropriate to infer a broader rule from *Marshall*. PDC argues with some persuasion that the other cases cited by Debtor were ones in which the courts based their holdings on the unique circumstances before them and did not articulate rules of general applicability.

Similarly, on the relief of stay question, Debtor's citation to *In re Badax, LLC*, 608 B.R. 730 (Bankr. C.D. Cal. 2019), also appears to be misplaced. Debtor takes a small section of the opinion where the court stated that the conclusion of bad faith was not based solely on the debtor's failure to obtain a bond, but rather based on a totality of the circumstances. *Id.* at 741. However, PDC points out that the *Badax* court specifically held that relief from stay was granted because the case had been filed in an attempt to delay execution on an adverse judgment and also because "there [was] no basis to conclude that a speedy, efficient and feasible reorganization [was] realistic." *Id.*

In contrast PDC argues that the instant case is more similar in substance to several other cases including *Windscheffel v. Montebello Unified School District (In re Windscheffel)*, 2017 WL 1371294 (9th Cir. BAP Apr. 3, 2017). In *Windscheffel*, the debtor filed an appeal of an approximately \$3 million state court judgment, but "claimed that he was unable to post the required supersedeas bond to stay enforcement of the judgment." *Id.* at *1. "He filed bankruptcy to avoid posting the bond and to stay [the judgment creditor's] collection efforts." *Id.* The debtor had, at most, four unsecured creditors (including the judgment creditor). The debtor filed a proposed chapter 11 plan that was "a thinly veiled attempt to avoid the state court's award of punitive damages, attorneys' fees, and interest because it proposed to pay 49.22 percent of [the judgment creditor's] claim, which was (not coincidentally) the approximate amount of the state court judgment without punitive damages, attorneys' fees, and interest." *Id.* The debtor later amended his plan to provide that if the judgment were upheld on appeal, he

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT... **Bridgemark Corporation**

Chapter 11

would liquidate his assets and give the proceeds to the judgment creditor. *Id.* The Ninth Circuit BAP affirmed the bankruptcy court's holding that the "totality of the circumstances" warranted dismissal of the case for cause. *Id.* at *4.

PDC argues that Debtor has admitted in the authorizing resolution attached to its Petition that this case was filed to circumvent the requirement to post a supersedeas bond: "Since the Company lacks the financial resources to post a bond, the only way to protect the interests of all stakeholders [i.e., the Hall family] is to commence a case under chapter 11" Docket No. 1 at PDF page 5 of 101. PDC also points to the First Day Declaration, and specifically the section entitled "Events Leading to the Bankruptcy" which only mentions the judgment debt, and really nothing else, as the major cause of the bankruptcy filing. Therefore, PDC argues with some persuasion that it is obvious that the only purpose served by filing the Chapter 11 petition was to attempt to avoid the posting of an appeal bond. After all, Debtor's entire business model as amplified in Mr. Hall's testimony is built upon extracting a finite and irreplaceable resource, which might be said to make a reorganization over time inherently less feasible than other businesses.

PDC next argues that because the dispute is solely between PDC and Debtor, for purposes of a finding of bad faith, this case is fundamentally a two-party dispute, which is continuing even now. PDC cites *In re Murray*, 543 B.R. 484, 494–95 (Bankr. S.D.N.Y. 2016), *aff'd*, 565 B.R. 527 (S.D.N.Y. 2017), *aff'd*, 900 F.3d 53 (2d Cir. 2018), for the proposition that, "Bankruptcy is a collective remedy, with the original purpose – which continues to this day – to address the needs and concerns of creditors with competing demands to debtors' limited assets" As such, PDC argues, "[a] chapter 11 reorganization case has been filed in bad faith when it is an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction." *Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at Wild Horse Ranch, LLC)*, 2011 WL 4502102, at *10 (B.A.P. 9th Cir. Aug. 26,

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT... **Bridgemark Corporation**
2011).

Chapter 11

PDC argues that there is no need for the "collective remedy" of bankruptcy as articulated above because there are no other creditors with competing demands to Debtor's assets. All other claims against Debtor are *de minimis* relative to the Judgment, and also appear to be undisputed. Cf. *In re Mense*, 509 B.R. at 281 (dismissing chapter 11 case where debtors had "few unsecured creditors" other than judgment creditor); *In re Windscheffel*, 2017 WL 1371294, at *5 (affirming dismissal of case where claims of other unsecured creditors were "negligible" compared to judgment creditor's claim). In fact, if the judgment debt did not exist, it appears Debtor would have more than sufficient cash on hand to pay any other outstanding debts without difficulty. See First Day Decl. ¶¶ 22 (stating that Debtor has unrestricted cash of approximately \$4.2 million) & 28–30 (describing secured car loans, royalty obligations, and accounts payable totaling less than \$700,000). PDC reminds the court that it also offers to acquire all legitimate, non-insider claims at par value, leaving no reason that such creditors cannot be paid in full.

Finally, PDC argues, citing *In re Chu*, 253 B.R. 92, 95 (S.D. Cal. 2000) that for purposes of a finding of bad faith, Debtor's prepetition improper conduct provides additional support for dismissing the case outright or granting relief of stay. Thus, use of a debtor's assets to fund the expenses of its principals is one factor indicative of bad faith. See, e.g., *In re Mense*, 509 B.R. at 281 n.26. PDC argues that Debtor's alleged tortious prepetition conduct, which precipitated the underlying lawsuit that ultimately led to the judgment (which included punitive damages), should be considered by the court. The court should also consider the allegations contained in the litigation PDC has pending against the Hall family, which alleges that family members essentially used Debtor as a piggy bank to mask income from Debtor.

Though perhaps not always perfect analogues, it appears that PDC's characterization of Ninth Circuit jurisprudence is more in line with the current

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT... **Bridgemark Corporation**

Chapter 11

case than those cases cited by Debtor. To be clear, the court is less concerned with Debtor's heated rhetoric impugning PDC's motivation in pursuing this motion (and PDC's allegations of post-petition misconduct by the Debtor and the Hall family) than it is with PDC's arguments that a reorganization is likely not feasible due to the enormous judgment debt and Debtor's ever diminishing product source. The court is also not impressed with Debtor's assertion that allowing PDC to collect on its judgment would amount necessarily to a business fatality. First, it is far from clear that PDC wants to "kill" the Debtor as it would seem far more logical to continue operations, at least until the judgment is paid. Perhaps not so clear is why the Hall family should get to stay in authority. Debtor's principals, as the trial court found, are responsible for this misfortune as indicated by the addition of punitive damages to the judgment.

The court also disagrees with Debtor's premise that simply because Debtor is currently operating a viable business, a successful reorganization is realistic. Even Debtor's authorities suggesting a Chapter 11 to avoid an appeal bond may serve a legitimate purpose do so largely because a reorganization benefitting an array of creditors with divergent interests seemed possible or even likely. See e.g. *Marshall*, 721 F.3d at 1048-49 (quoting 298 B.R. at 681), citing *Marsch*, 36 F. 3d at 828 and *In re Boynton*, 184 B.R. 580, 581, 583 (Bankr. S.D. Cal. 1995). But little or no effort is made here to show how this Debtor can possibly confirm a non-consensual plan under these circumstances, where 99+% of the debt is in hostile hands. This must particularly be so where PDC has offered to make all other creditors whole either by buying the claims or by filing a competing plan. How does Debtor get away with claiming an impaired consenting class in those circumstances, even if separate classification maneuvers could succeed? Adding to this problem is Mr. Hall's admission that the assets are a diminishing resource, thus calling into question the feasibility of a long-term payout. Debtor may cite to 11 U.S.C. §1129 (c) which requires the court, when two plans are confirmable, to consider the interests of equity. But this

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

CONT... Bridgemark Corporation

Chapter 11

assumes that Debtor's plan could in any event be confirmable, a somewhat dubious proposition. A plan that proposes nothing more than delay while the appeals are resolved should be regarded as "dead on arrival."

But the court is willing to give the Debtor a short but reasonable extension to answer these questions about just how probable a reorganization is or can be despite these obstacles. In this the court is uninterested in platitudes; rather, a point by point, connect the dots proposal to reorganization that could be plausibly crammed down is what is needed. Further, PDC may also amplify the record with a more complete evidentiary showing which might support a charge of prepetition fraud or mismanagement as discussed at §§1104(a)(1) (or implicated in 1112) thereby strengthening the argument that there is no legitimate reason for maintaining management. Debtor should not expect an extension of exclusivity, however, which will run out on or about May 14, 2020.

Continue hearing about 60 days to allow Debtor to explain how reorganization is feasible in these circumstances.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray