IT IS SO ORDERED.

Dated: September 13, 2017
03:22:51 PM

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	**CASE NUMBERS 15-41470**
HIGH CARD INDUSTRIES, LLC d/b/a PARAGON TOOL & DIE, *et al.*,	*	**15-41471**
	*	**CHAPTER 11**
Debtors and Debtors in Possession.	*	**HONORABLE KAY WOODS**

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MEMORANDUM OPINION REGARDING UNITED STATES TRUSTEE'S MOTION TO CONVERT OR DISMISS DEBTORS' CHAPTER 11 CASES

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The issue before the Court is whether the bankruptcy cases of High Card Industries, LLC d/b/a Paragon Tool & Die and High Card Properties, LLC (collectively, "High Card" or "Debtors") should be converted or dismissed. Daniel M. McDermott, the United States trustee for Region 9 ("UST"), filed United States Trustee's Motion to Convert or Dismiss Debtors' Chapter 11 Cases ("Motion to Convert or Dismiss") (Doc. 128) on August 10, 2017, seeking the post-

confirmation conversion or dismissal of High Card's chapter 11 cases.

No party, including High Card, filed an objection or response to the Motion to Covert or Dismiss. The court held a hearing on the Motion to Convert or Dismiss on September 13, 2017 ("Hearing"), at which Derrick V. Rippy, Esq. appeared on behalf of the UST. No one appeared on behalf of High Card.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 2012-7 entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. FACTUAL BACKGROUND

High Card filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code on August 17, 2015. High Card filed Debtors' Third Amended Joint Plan of Reorganization and Disclosure Statement ("Plan") (Doc. 85) on March 2, 2016. The Court entered Findings of Fact, Conclusions of Law and Order: (i) Confirming the Debtors' Third Amended Plan of Reorganization and Disclosure Statement; (ii) Granting Final Approval of Disclosure Statement; and (iii) Setting Bar Dates for Administrative Claims, Professionals' Claims, and Lease Rejection Damage Claims

("Confirmation Order") (Doc. 102) on April 22, 2016. The Plan contains the following relevant provisions:

> Upon confirmation, all property of the Debtors' estates shall vest in each respective Debtor free and clear of all liens, claims, or encumbrances except as specifically set forth in this Plan.

(Plan, Art. XI at 36.)

> Except as provided in this Plan or the Confirmation Order and so long as the Debtors are not in default of the terms of this Plan, as of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim, or other debt or liability that is discharged pursuant to the terms of this Plan are permanently enjoined from taking any of the following actions on account of any such discharged Claims, debts, or liabilities: (a) commencing or continuing in any manner any action or other proceeding against the Debtors, [sic] the property of the Debtors; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors, or the property of the Debtors; (c) creating, perfecting, or enforcing any lien or encumbrance against the Debtors, or the property of the Debtors; (d) asserting a right or subordination of any kind against any debt, liability, or obligation due to the Debtors, or the Estate or the property of the Debtors; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of this Plan.

(Plan, Art. XIII(B) at 38-39.)

The Plan further provides for the holders of allowed claims in Classes B-1 through B-3 — *i.e.*, JP Morgan Chase Bank, Huntington National Bank ("Huntington"), and the Mahoning County Treasurer, which each held a claim secured by a lien and/or mortgage on High Card's property — to be restructured and paid. (*See* Plan Art. VI(B)(3) at 29.)

Although High Card filed Transmittal of Quarterly Post Confirmation Report With Certification for the Quarter Ended: June 30, 2016 (Doc. 123) on September 30, 2016, it did not file any further notices regarding post-confirmation payment of quarterly fees to the UST.

In the Motion to Convert or Dismiss, the UST represents that, on July 18, 2017, the UST emailed High Card's counsel stating that High Card (i) was delinquent in post-confirmation statutory fees in the amount of $2,600.00; and (ii) had not filed quarterly reports for the periods ending September 30, 2016, December 31, 2016, March 31, 2017, and June 30, 2017. To date, High Card has not paid the required UST statutory fees relating to those periods.

On July 18, 2017, Huntington filed Affidavit of Default in Support of Relief from Stay ("Affidavit of Default") (Doc. 125), which sets forth that (i) High Card had defaulted on Plan payments to Huntington; (ii) Huntington had sent High Card a notice of default; (iii) High Card had failed to cure the default; and (iv) pursuant to the terms of the Plan, the effective date for relief from stay was July 1, 2017. High Card did not file a response or objection to the Affidavit of Default. The Court entered Order Granting Relief from Stay ("Stay Relief Order") (Doc. 126) on July 19, 2017, which granted Huntington relief from stay effective July 1, 2017.

II. STANDARD FOR RELIEF

The Motion to Convert or Dismiss is based on 11 U.S.C. § 1112(b)(1), which provides:

> [(b)](1) Except as provided in paragraph (2) and subsection (c), on 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 interest of creditors and the estate.

11 U.S.C. § 1112(b)(1) (2017).

Section 1112(b)(4) of the Bankruptcy Code identifies a non-exhaustive list of causes for conversion or dismissal, including: (i) "(K) failure to pay any fees or charges required under chapter 123 of title 28"; and (ii) "(N) material default by the debtor with respect to a confirmed plan." 11 U.S.C. § 1112(b)(4)(K) and (N).

There is no dispute that High Card has failed to pay the required quarterly fees to the UST. Moreover, Huntington has obtained relief from stay, as contemplated by the confirmed Plan, based on High Card's failure to make payments to Huntington, as required by the Plan. Case law establishes that failure to make payments to one creditor can constitute a material default under a confirmed plan. *See Ohio v. H.R.P. Auto Center, Inc. (In re H.R.P. Auto Center, Inc.)*, 130 B.R. 247 (Bankr. N.D. Ohio 1991). Consequently, the Court finds that High Card is in material default

with respect to the confirmed Plan. Thus, cause exists for the Court to convert or dismiss High Card's substantively consolidated cases.[1]

III. ANALYSIS

Because the Court has found that cause exists to grant relief under § 1112(b)(1), it must then determine which remedy — dismissal, conversion, or the appointment of a trustee — is in the best interests of creditors and the estate. One of these remedies is mandatory unless the Court finds and specifically identifies unusual circumstances that establish that dismissal or conversion is not in the best interests of creditors and the estate. No one has suggested and there is no evidence that any unusual circumstances exist so that dismissal or conversion is not in the best interests of creditors and the estate. Accordingly, the Court finds that there are no such unusual circumstances.

Counsel for the UST represented that, prior to the Hearing, he had been in contact with Anthony J. DeGirolamo, Esq., counsel for High Card. Mr. DeGirolamo stated that he had not been able to contact High Card and, consequently, had no position or opposition to the Motion to Convert or Dismiss. Initially, counsel for the UST suggested that conversion might be the appropriate remedy in these cases, but acknowledged that dismissal would also be

[1] Substantive consolidation was effectuated when the Court entered the Confirmation Order.

appropriate. For the reasons set forth below, the Court finds that dismissal of High Card's cases is in the best interests of creditors and the estate.

As set forth in the confirmed Plan, property of the estate revested in High Card at confirmation. "[C]onversion does not disturb confirmation or revoke the discharge of preconfirmation debt. . . . Property which revested in a reorganized debtor at confirmation remains property of that entity; conversion does not bring that property into the converted case." *Nat'l City Bank v. Troutman Enters., Inc. (In re Troutman Enters., Inc.)*, 253 B.R. 8, 13 (B.A.P. 6th Cir. 2000). Because property of the estate revested in High Card at confirmation, there would not be any property for a chapter 7 trustee to administer if these cases were to be converted. Thus, conversion of High Card's cases would not benefit any creditor. Accordingly, the Court finds that conversion is not in the best interests of creditors and the estate.

The Court finds it necessary to provide some clarification regarding text that it added to the Stay Relief Order. This text reads as follows:

> In addition to the relief set forth below, the Court hereby finds and orders that the injunction in the Confirmation Order (Doc. 102), Section F.2 (p. 12), is no longer applicable or in force because the Debtors are in default of the terms of the Plan. The Court further finds and orders that, based on the Debtors' default, the debt to Huntington is not discharged and, accordingly, the discharge injunction in 11 U.S.C. Sec. 524 is not in effect.

(Stay Relief Order at 1.) The express terms of Article XIII of the Plan provide that the injunction in the Plan is effective only so long as High Card is not in default. Thus, because the Stay Relief Order found that High Card was in default under the Plan, the Plan injunction — by its own terms — was no longer in effect. The Court clarifies that the Stay Relief Order did not affect discharge of the pre-confirmation debt owed to Huntington. Instead, what is not discharged is the post-confirmation debt High Card owes to Huntington as established by the confirmed Plan.

> "Once the reorganized plan is approved by the bankruptcy court, each claimant gets a 'new' claim based upon whatever treatment is accorded to it in the plan itself." The plan is essentially a new and binding contract between the Reorganized Debtor and the Petitioning Creditors.

In re Troutman, 253 B.R. at 11 (quoting *In re Benjamin Coal Co.*, 978 F.2d 823, 827 (3d Cir. 1992)) (parenthetical omitted). High Card's obligation to Huntington, as set forth in the confirmed Plan, remains valid and enforceable. Confirmation of the Plan had the dual effect of discharging the pre-confirmation debt and replacing it with the Plan claims.

In the instant case, no purpose would be served by either converting this confirmed chapter 11 case to one under chapter 7 or appointing a chapter 11 trustee. Thus, dismissal is the appropriate and required remedy. Accordingly, the Court will dismiss High Card's confirmed chapter 11 cases.

An appropriate order will follow.

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