

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: Case No. 18-56801-tjt
Basrah Custom Design, Inc. Chapter 11
Debtor. Hon. Thomas J. Tucker

UNITED STATES TRUSTEE'S MOTION TO DISMISS

Daniel M. McDermott, United States Trustee for Region 9, requests that this Court enter an order under 11 U.S.C. § 1112(b) dismissing this case for cause. In support of his Motion, the United States Trustee states the following:

Preliminary Statement

The Debtor seeks to use this Federal Bankruptcy Court to strong-arm its marijuana dispensary tenant for more money in a new lease. The Debtor is already entitled to thousands of dollars per month in rent and \$100,000 as soon as the tenant it takes occupancy and begins violating the Controlled Substances Act by selling marijuana. But the Debtor/landlord has second thoughts because it believes it can get even more in rent from this or another marijuana dispensary tenant. The bankruptcy case was filed after a state court ordered the Debtor to grant occupancy to this dispensary. The Debtor now wants to use the bankruptcy court to set aside this illegal contract so that he can negotiate a better illegal contract. Dismissal is warranted here.

1. The Court has jurisdiction over this matter under 28 U.S.C. Sections 1334(a) and (b), 28 U.S.C. Sections 157(a) and (b)(1), and 28 U.S.C. Section 151. This is a core proceeding under 28 U.S.C. Section 157(b)(2)(A) and (O). This motion is filed under 11 U.S.C. § 1112(b).

2. The Debtor filed a voluntary petition for relief under chapter 11 of title 11, United States Code, on December 16, 2018. [Doc. No. 1].

3. The Debtor is, ostensibly, a cabinet manufacturing and installing business run by a sole shareholder, Mr. Waseem Nocha.

4. Mr. Nocha owns two conjoined buildings located at 7451 and 7461 W. 8 Mile Road, Detroit, Michigan. The buildings have a common façade and share a common wall that used to connect the two spaces internally, but has since been walled off into separate spaces.

5. The Debtor had used the 7461 address as a showroom for its cabinet business, and the 7451 space as a workshop and storage facility, but some time ago decided to get into the medical (and now, presumably, also recreational) marijuana business.

6. An entity known as MJCC 8 Mile, LLC is now a state-licensed recreational marijuana dispensary, and had received zoning approval from the City of Detroit to operate a medical marijuana dispensary at the 7461 8 Mile Road property in 2016.

7. Either Mr. Nocha, the Debtor, or both of them together, spent considerable funds converting the showroom in the 7461 address into a turn-key location ready to open up immediately for a marijuana dispensary. The location has at least four large safes, significant camera and surveillance equipment and a metal detector installed at the front doorway.

8. On November 16, 2016, the Debtor and MJCC 8 Mile, LLC (“the Dispensary”) entered into a lease agreement for the 7461 address, with an option to purchase both that building and the conjoined building at 7451 8 Mile Road that the Debtor is currently occupying. The agreement is attached as **Exhibit A** (“the Agreement”) to this Motion.

9. Mr. Nocha owns the buildings, but the Debtor is specifically named as the landlord. *Id.* at ¶1.

10. The Agreement is for a five-year lease, with tenant option for up to six renewals of the five-year term. *Id.*

11. The rent is \$5,000 per month. *Id.* at ¶2(a).

12. No later than the date the Dispensary opens its doors to the public to sell marijuana, the Dispensary must make a one-time payment of \$100,000 to the Debtor. *Id.* at ¶2(c).

13. The only approved use of the premises, according to the lease, is for the sale of marijuana. *Id.* at 4 (“the Premises will be used for a licensed medical marijuana dispensary, and for no other purpose whatsoever”) (defined term omitted).

14. The Debtor also gave the Dispensary an option to lease the 7451 8 Mile property that Debtor is currently occupying for his business, for an additional \$15,500 in rent. *Id.* at ¶39.

15. The Debtor also gave the Dispensary an option to buy the entire two-address property for \$1.2 million, and gave the Dispensary a right of first refusal in the event the Debtor ever wants to sell or transfer the property to a third party. *Id.* at ¶¶40, 41.

16. Both the one-time \$100,000 cash payment and the \$5,000 or \$15,500 rent payments would come from the Dispensary, which operates an illegal enterprise under federal law in violation of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*

17. The funds from a potential sale of the buildings would come from the Dispensary, which operates an illegal enterprise under federal law in violation of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*

18. The marijuana facility at 7651 8 Mile Road is completed and essentially ready for a marijuana dispensary to take occupancy immediately.

19. The Dispensary wants immediate possession of the premises. It enforced its rights, in state court, under state law to occupy the premises and to pay the Debtor with funds earned from an illegal enterprise under federal law, a violation of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*

20. At some point prior to allowing the Dispensary to take occupancy of the premises, though, the Debtor refused to deliver the premises to the Dispensary – not because the Debtor wanted to disentangle itself from the marijuana industry, but because it thought it could get more money for the lease of the premises.

21. At the on-site Initial Debtor Interview with an analyst from the Office of the United States Trustee, Mr. Nocha indicated that he thinks the building is really worth \$5 million now – in contrast to the \$1.2 million option his company, the Debtor, gave to the Dispensary.

22. According to state court pleadings, the building is so valuable because it is one of the few properties that satisfy the rigorous zoning restrictions set up against marijuana operations in the City of Detroit

23. Unable to operate its marijuana enterprise in another location without incurring significant costs (and without finding another facility that meets the zoning requirements), the Dispensary sought and obtained specific performance of the lease in state court.

24. The Debtor's principal, Mr. Nocha, has already received at least \$60,000 in funds from the Dispensary. It is not clear if those payments were intended as partial payment toward the \$100,000 obligation on the day the Dispensary opens for business.

25. The Debtor filed this chapter 11 bankruptcy case nine days after the Dispensary prevailed in state court. At the Initial Status Conference in on January 9, 2019 that the Debtor revealed its primary intent in this case was to reject the lease.

26. The Debtor's schedules disclose total outstanding unsecured debts of \$266,665.78. [Doc. No. 15, p.14].

27. Even without factoring in the cabinet business, the Debtor has a contractually-enforceable revenue stream of at least \$400,000 to dedicate to the repayment of those debts: the \$100,000 it will presumably receive as soon as the Dispensary opens its doors, and the \$300,000 in rent (at \$5,000 per month) from the Dispensary. And the Dispensary is ready and willing, and eager to pay. This is enough for a greater than 100% repayment to creditors, all from an illegal source.

28. The continuation of this case places the Court in an impossible position, to assess and assign the value to the Estate of illegal activity.

a. Any motion to reject the lease under 11 U.S.C. § 365(a) would require the Court to, in some way, evaluate the Debtor's business judgment. That

would force the Court to quantify the value of illegal businesses and illegal streams of income.

b. When the Debtor moves to reject the lease, the Court will have to determine the lessee's rights to continued possession under 11 U.S.C. § 365(h), specifically so it can engage in an illegal activity.

c. The Court could likewise be faced with a plan that mandated a continuing violation of federal law for its payment stream

29. In *In re Rent-Rite Super West Ltd.*, 484 B.R. 799, 805 (Bankr. D. Colo. 2012), the bankruptcy court found that it could not enforce the protections of the Bankruptcy Code in aid of a chapter 11 debtor-in-possession whose business activities constituted a continuing federal crime. The bankruptcy court determined that the debtor's violation of federal criminal law justified the application of the clean hands doctrine and found "cause" for dismissal or conversion under 11 U.S.C. § 1112(b). *Id.* at 807-9.

30. This case should be dismissed under 11 U.S.C. § 1112(b) because the Debtor is engaged in ongoing criminal activity, and intends to continue engaging in such criminal activity, in violation of the federal Controlled Substances Act. The Debtor's criminal activity justifies application of the clean hands doctrine, and constitutes "cause" for immediate dismissal of the Debtor's case. *See In re Arenas*, 535 B.R. 845 (10th Cir. B.A.P. Aug. 21, 2015) (affirming that debtor in marijuana

business could not obtain bankruptcy relief because it violates Controlled Substances Act and constitutes cause to dismiss Chapter 7 case).

31. The Debtor cannot argue that his removal from the actual sale of marijuana itself obviates these concerns: by receiving funds and having a right to receive additional funds from an ongoing illegal enterprise, the Debtor's case should be dismissed. *See In re Olsen*, 2018 WL 989263 (9th Cir. B.A.P. Feb. 5, 2018) (affirming dismissal where debtor was a landlord for a marijuana dispensary, even though the debtor wanted to reject the executory contract in her bankruptcy proceedings).

32. The Debtor has unclean hands, and seeks to use the bankruptcy process to renegotiate a more economically favorable lease agreement – one that will still be illegal. Dismissal under these circumstances is therefore proper.

33. Even if the entire case were not reliant on illegal activity, dismissal would still be warranted under 11 U.S.C. § 1112(b). The Debtor,

- a. Has only one meaningful asset, the real property,
- b. Filed immediately after losing in state court,
- c. Is involved in a two-party dispute,
- d. Has only a few other creditors,
- e. Has virtually no ongoing business or employees, and
- f. Has little or no possibility of reorganization.

In re Laguna Associates, 30 F.3d 734 (6th Cir. 1994).

WHEREFORE, the United States Trustee respectfully requests that this Court enter an Order dismissing the above-captioned case, and granting to the UST such other and further relief as this Court deems just and proper.

Respectfully submitted,

DANIEL M. McDERMOTT
UNITED STATES TRUSTEE
Region 9

By /s/ Sean M. Cowley
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[P72511]

Dated: January 18, 2019

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: Case No. 18-56801-tjt
Basrah Custom Design, Inc. Chapter 11
Debtor. Hon. Thomas J. Tucker
_____ /

ORDER DISMISSING CASE

THIS MATTER came before the Court on the United States Trustee's Motion to Dismiss the above-captioned Chapter 7 case under 11 U.S.C. § 1112(b). All parties in interest have received notice of this Motion and the Court is otherwise fully advised in this matter.

NOW, THEREFORE,

IT IS ORDERED that this case is **DISMISSED**.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: Case No. 18-56801-tjt
Basrah Custom Design, Inc. Chapter 7
Debtor. Hon. Thomas J. Tucker

NOTICE OF MOTION TO DISMISS

The United States Trustee has filed papers with the court for an Order dismissing this Chapter 7 bankruptcy proceeding.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you not have an attorney, you may wish to consult one.)

If you do not want the court to dismiss the case, or if you want the court to consider your views on the motion, **within 21 days**, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:

U.S. Bankruptcy Court
211 West Fort Street, Suite 700
Detroit, MI 48226

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to: Sean M. Cowley, Esq.
Office of the United States Trustee
211 West Fort Street, Suite 700
Detroit, MI 48226

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

DANIEL M. McDERMOTT
UNITED STATES TRUSTEE
Region 9

By /s/ Sean M. Cowley
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Dated: January 18, 2019

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: Case No. 18-56801-tjt
Basrah Custom Design, Inc. Chapter 7
Debtor. Hon. Thomas J. Tucker

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2019, I served copies as follows:

1. Documents Served: *Motion to Dismiss for Cause, Notice of Motion and Certificate of Service.*
2. Served Upon: Basrah Custom Design, Inc.
7451 W. 8 Mile Road
Detroit, Michigan 48221

and parties on attached mailing matrix
3. Method of Service: First Class Mail

DANIEL M. McDERMOTT
UNITED STATES TRUSTEE
Region 9

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[P72511]

Dated: January 18, 2019