

NEWS & DEVELOPMENTS

Delaware Bankruptcy Court Denies Motion to Convert

Under [a memorandum](#) order dated October 23, 2014, the Delaware Bankruptcy Court denied a party's request to have the debtors' chapter 11 cases converted to chapter 7 cases. While sympathetic to the movant's request, the court ultimately determined that the relevant parties were making some progress toward the goal of a plan of reorganization and therefore conversion was not warranted at this time.

Debtors Simplexity LLC, et al, filed a chapter 11 petition on March 16, 2014. On May 14, 2014, First Third Bank (FTB), in its role as agent under the debtors' pre-petition secured facility and the debtors' debtor-in-possession financing, filed a motion to convert the debtors' three related chapter 11 cases into chapter 7 cases. FTB argued that the debtors could not be rehabilitated, the continued chapter 11 cases would harm creditors of the debtors, and Section 1112(b) of the Bankruptcy Code required the court to convert the debtors' cases upon their showing of cause. The court denied FTB's May 14 motion on the grounds that the incomplete record and early nature of the debtors' cases constituted an unusual circumstance (as provided under Section 1112(b)(2)) that warranted denial of the motion.

Later, on September 25, 2014, FTB filed a second motion to convert the debtors' cases. FTB argued therein that the reasons previously relied on by the court to deny FTB's earlier motion (such as an incomplete record and the early status of the case) no longer warranted denial of the motion to convert. FTB again cited Section 1112(b) (that provides for conversion upon good cause shown) arguing that conversion was necessary because there was not a reasonable likelihood that the debtors could confirm a plan in a reasonable amount of time.

While the court agreed with certain of FTB's arguments, it declined to grant the motion at this time. The court accepted that its earlier reasons for denying the motion to convert (i.e., an incomplete record and the early stage of the case) no longer were sufficient to find unusual circumstances under Section 1112(b)(2). However, relying on the statements of counsel for various parties, the court also concluded that there were sufficient grounds to find that there was a reasonable likelihood of a plan being confirmed. In this regard, the court credited statements of counsel for the debtors and the Official Committee of Unsecured Creditors regarding their ongoing discussions toward an agreement regarding a confirmable plan. According to the court, these discussions were sufficient at this time to satisfy "unusual circumstances" under Section 1112(b)(2). The court also credited that FTB would be exposed to minimal harm from the denial of its motion, particularly as the court indicated that it would enter an order to convert the

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debtors' cases if the parties were not successful in reaching agreement on a confirmable plan by December 1, 2014.

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