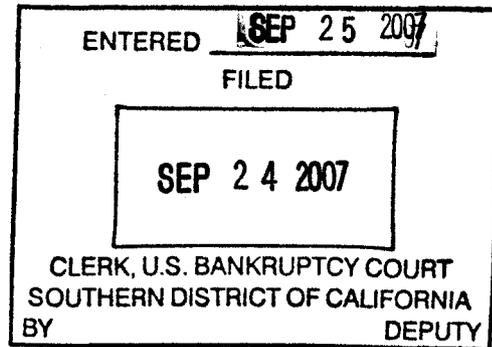


1 WRITTEN DECISION -- NOT FOR PUBLICATION



8 UNITED STATES BANKRUPTCY COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 In re) Case No. 07-01490-PB7

12) RS No. RJR-1

13 ORGANIC RECYCLING WEST,)

14 INC., a corporation,)

15 Debtor.)

16 LCLA ENTERPRISES, INC.,)

17 Movant,) ORDER ON MOTION FOR RELIEF

18) FROM STAY

19 v.)

20 ORGANIC RECYCLING WEST, INC.,)

21 a California Corporation,)

22 LESLIE T. GLADSTONE, OTAY)

23 LANDFILL, INC., and SYCAMORE)

24 LANDFILL, INC.,)

25 Respondents.)

26 This matter came on regularly for hearing on LCLA's motion for relief from stay. Following the hearing, the Court took the matter under submission because of the unusual circumstances involved.

1 The Court has subject matter jurisdiction pursuant to
2 28 U.S.C. § 1334 and General Order No. 312-D of the United States
3 District Court for the Southern District of California. This is
4 a core proceeding under 28 U.S.C. § 157(b)(2)(G).

5
6 **BACKGROUND**

7 Prior to the commencement of this case Debtor operated a
8 recycling facility. Fred Alexander was President of the Debtor
9 until he was removed in October 1, 2006. Alexander is also a 49%
10 shareholder of the Debtor. Beginning in September 2003, Debtor
11 entered into contracts with equipment leasing companies to lease
12 or finance certain equipment used in the recycling operations.
13 Alexander personally guaranteed Debtor's performance under the
14 leases. Debtor began to default on the leases in August 2006.

15 Alexander is also the President and one of four
16 shareholders of movant, LCLA Enterprises, Inc., (LCLA).
17 Beginning in September 2006, LCLA obtained assignments of the
18 claims of the lenders/lessors under each of those equipment
19 leases. LCLA paid a total of \$715,167.87 -- it asserts it did
20 not acquire the claims at a discount. Prior to the commencement
21 of this case LCLA repossessed all of the equipment. Pursuant to
22 the assignments LCLA asserts a claim of \$938,946.88 secured by
23 equipment it contends is valued at \$620,500.00.

24 The equipment is also encumbered by an attachment lien
25 in favor of Otay Landfill, Inc., and Sycamore Landfill, Inc.,
26 (Respondents) pursuant to a right to attach order dated

1 September 8, 2006 in the amount of \$336,860.04. The lien of
2 Respondents is junior to the liens of LCLA.

3 LCLA seeks relief from stay to sell the equipment at public
4 auction. Respondents oppose the motion. The Trustee in the case
5 complains that she has had, as of the date the motion was filed,
6 "insufficient time to evaluate the subject of the Motion."

7
8 **DISCUSSION**

9 LCLA moves for relief under § 362(d)(1) (lack of adequate
10 protection) and (d)(2) (no equity to Debtor and not necessary for
11 an effective reorganization.)

12 As to the equipment under eight of the ten leases/contracts
13 (those other than by U.S.Bancorp and Landmark Financial Corp.) it
14 is undisputed that there is no value beyond the claim of LCLA.
15 The only evidence the Court has is the declaration of Alexander
16 which indicates that the amount owing under each of the eight
17 leases exceeds the fair market value of the equipment covered
18 thereby.¹ LCLA has met its burden of proof under § 362(g)(1).
19 No party has attempted to make a showing under § 362(g)(2).
20 Relief from stay is warranted under § 362(d)(1).

21 The only opposition to the motion is that of Respondents and
22 applies only to the equipment under the leases assigned by U.S.
23 Bancorp and Landmark.² Respondents correctly point out that
24

25 ¹ A summary of the amounts owing under each lease and the value of the equipment
26 associated with each is set forth at page 16 of the Alexander Declaration.

² Wells Fargo Equipment Finance, Inc., has withdrawn its initial limited opposition.

1 using the evidence in the Alexander Declaration there is value
2 beyond LCLA's claim in the equipment financed by U.S. Bancorp
3 (\$21,000) and Landmark (\$45,000). However, any such equity
4 appears to be subject to the lien of Respondents, which is over
5 \$300,000.

6 Respondents appear to argue that their claim is secured by
7 other property of the estate, and therefor there might be equity
8 in this particular equipment³ for the benefit of the bankruptcy
9 estate. However, no evidence regarding the value of the other
10 property securing Respondents' claim has been proffered.
11 Moreover, the trustee still has not asserted there is equity in
12 the leases which could benefit creditors of the estate.

13 Respondents also object to relief from stay on the ground
14 that Alexander may have received preferential payments totaling
15 \$191,148.04. However, Respondents provide neither authority or
16 even argument that the potential preference is relevant to the
17 relief from stay analysis. It is possible that Respondents are
18 suggesting that LCLA's claim is subject to disallowance under
19 Code § 502(d) because its principal, Alexander received a
20 preference. However, the Court notes that to date no avoidance
21 action has been filed. More to the point, the movant is LCLA
22 Enterprises, Inc., a corporate entity whose corporate veil would
23 have to be pierced to hold it accountable under § 502(d) for any

24 ///

25
26 ³ A description of this particular equipment is set forth in the Alexander Declaration at ¶¶ 28 and 43.

1 preference Alexander might personally have received. No such
2 effort has been advanced to date.

3 The Trustee filed a Statement of Position wherein she
4 asserted that she had had insufficient time to evaluate the
5 subject of the motion. The motion was filed on June 4, 2007. As
6 of the filing of this order the Trustee will have had nearly four
7 months to conduct her evaluation. Any defenses the Trustee might
8 have to LCLA's intended foreclosure on the equipment should have
9 been discovered by now. The Trustee is, of course, free to raise
10 any and all objections (except the automatic stay) in connection
11 with any attempts by LCLA to sell the equipment. She is also
12 free to use any of her powers to attach or otherwise sequester
13 the proceeds of the anticipated public auction. However, at
14 present she has provided no reason that the equipment should not
15 be sold at public auction.

16
17 **CONCLUSION**

18 For the foregoing reasons, relief from stay is granted to
19 LCLA to utilize its state law remedies against the properties
20 subject to its leases. In addition, relief from stay is also
21 granted to any junior creditor secured by an interest in any of
22 the leases held by LCLA.

23 IT IS SO ORDERED.

24 DATE: SEP 24 2007

25 

26 PETER W. BOWIE, Judge
United States Bankruptcy Court