

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

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FILED
MAR -6 2012
CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 In re) Case No. 10-13256-PB11
12) Case No. 11-02444-PB11
13 DAVID SCOTT CARPENTER,)
14 ALMA LYDIA CARPENTER,) ORDER ON MOTION TO CONVERT,
15) DISMISS OR APPOINT CHAPTER 11
16 Debtors.) TRUSTEE
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16 These administratively consolidated cases have some history.
17 David and Alma Carpenter are familiar with the bankruptcy
18 process. The court records show they first invoked it in 1996
19 by filing a Chapter 13 case, which they performed and earned a
20 discharge in 2000. In 2002, they filed another Chapter 13, but
21 did not appear for the first meeting of creditors, resulting in
22 prompt dismissal about six weeks after filing. Then, in early
23 2003, they filed another Chapter 13. Although they were
24 represented by the same counsel in both the 2002 and 2003 cases,
25 the latter was dismissed for failure to file schedules. Then
26 came a hiatus in filing.

1 In December, 2009, Alma filed another Chapter 13, in her
2 own name. It was an incomplete filing, although filed by
3 counsel, and was dismissed about twenty days later for failure
4 to file schedules. About nine days later, Alma filed again,
5 assisted by the same counsel. The underlying issues were joined
6 in that case in the opposition to extension of the stay filed by
7 the Luna estate. The Luna estate had obtained a substantial
8 state court jury verdict in March, 2009 against Alma, and was
9 pursuing efforts to collect on it. Meanwhile, Alma filed a
10 notice of appeal, and the appeal was stayed by the December, 2009
11 bankruptcy filing. The details are more fully set out in the
12 pleadings. The Court granted relief from the stay to allow the
13 appeal to go forward to conclusion, while otherwise extending
14 the stay. Then, with multiple matters pending, here and
15 elsewhere, debtor voluntarily dismissed the case. That triggered
16 applications from the Luna estate for a 180 day bar to refileing
17 and for sanctions for the 2010 filing because debtor had too much
18 debt to be a Chapter 13 debtor. The 180 day bar was granted,
19 and the Luna estate settled the sanctions request as to Alma's
20 attorneys, but not Alma.

21 The 180 day bar as to Alma was entered August 6, 2010.
22 In the meantime, however, with no automatic stay to prevent
23 collection efforts, the Luna estate pursued recovery of the
24 outstanding judgment against Alma by seeking to liquidate
25 properties she held in joint tenancy with her husband, David.
26 So on July 28, 2010 David filed the instant Chapter 11 as a

1 barebones petition and employed the attorneys Alma had brought in
2 in the prior 13 to represent her on the sanctions motion.

3 The docket in this Chapter 11 tells much of the rest of the
4 story. David began by proffering a stipulation between he and
5 Alma for administration of her assets by David's estate,
6 purporting to settle a controversy between them. That request
7 was denied, and the Luna estate was granted relief from the stay
8 to complete the state court appeal, and to pursue collection
9 against Alma's joint tenancy interest in several identified
10 properties. That order was entered November 16, 2010.

11 On February 16, 2011 Alma filed again, the 180 day bar
12 having expired. It, too, was a barebones filing, and Alma's
13 new counsel filed a motion to impose the stay, necessitated by
14 the multiple prior filings, which was granted. Then David filed
15 a motion in Alma's case for joint administration of the cases,
16 and he filed a motion for relief from the stay so the appeal
17 could go forward, even though he was not a judgment debtor,
18 because of the burden on his joint tenancy interests. The Luna
19 estate opposed in part, requesting the same order for relief they
20 had been granted in David's case, which included being able to
21 proceed against Alma's joint tenancy interests in certain
22 properties.

23 Meanwhile, the Luna estate brought a motion to convert,
24 dismiss, or appoint a trustee. The Court denied David's motion
25 for relief as to the appeal, so Alma filed her own motion.
26 Ultimately, the Court took under submission the Luna estate's

1 motions to dismiss, convert or appoint a trustee as to both Alma
2 and David. In October 2011 the Court set the matter for further
3 review, and thereafter continued the hearing.

4 The docket in David's case sets out the largely cosmetic
5 efforts to suggest progress, and the Court held hearings on
6 proposals for a plan and disclosure statement which were clearly
7 legally insufficient. In re Perez, 30 F.3d 1209 (9th Cir. 1994);
8 In re Ambanc La Mesa Ltd. Ptnrshp, 115 F.3d 650 (9th Cir. 1997).

9 At the continued hearing on March 5, 2012, after the parties
10 reviewed the lack of meaningful progress and more importantly,
11 the lack of feasibility demonstrated by the filed operating
12 reports, coupled with the infusion of money from unidentified
13 sources to make certain payments; the accrual of unpaid real
14 property taxes, (illustrating further the lack of feasibility);
15 combined with debtors' proposal to not have to liquidate the
16 property with the most equity for at least three years after the
17 State court appeal becomes final, all parties, including the
18 United States Trustee urged conversion of the case (except the
19 debtors). Having afforded these debtors time after time to
20 advance a plan, the Court finds and concludes that debtors Alma
21 and David Carpenter have failed to demonstrate a reasonable
22 likelihood of rehabilitation. Nor have they shown any reasonable
23 prospect of reorganization within a reasonable period of time.
24 That results in prejudice to the creditors of this estate,
25 especially in regard to timely payment of post-petition real
26 estate taxes.

1 For the reasons stated above, as well as those stated on the
2 record in open court, the Court grants the motions of the Luna
3 estate to convert each of these cases, Case No. 10-13256 and Case
4 No. 11-02444 to cases under Chapter 7 forthwith.

5 IT IS SO ORDERED.

6 DATED: MAR - 6 2012

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9 PETER W. BOWIE, Chief Judge
10 United States Bankruptcy Court
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