

Dated: July 24, 2013
The following is ORDERED:



Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re
JOSEPH B. SHARP, II,
Debtor.

Case No. 12-26412-L
Chapter 13

Joseph B. Sharp, II,
Movant,

v.

(Debtor's Motion to Approve Partial
Transfer of LLC Interest [Dkt. No. 48])

Sylvia Ford Brown,
Standing Chapter 13 Trustee,
Respondent.

**ORDER DENYING WITHOUT PREJUDICE
MOTION TO APPROVE PARTIAL TRANSFER
OF FRACTIONAL INTEREST IN LLC**

BEFORE THE COURT is the motion of the Debtor, Joseph B. Sharp, II, seeking this court's approval to transfer a portion of his interest in Indigo LR, LLC ("Indigo"), to two employees of Indigo. The Chapter 13 Trustee, Sylvia Ford Brown ("Trustee") objected. The court conducted an

evidentiary hearing on May 9, 2013, and directed counsel to file post-trial briefs. Bruce Ralston, attorney for the Debtor, has filed his brief, but the Trustee has not filed a timely response.

Although the Debtor's motion indicates that he desires to sell a portion of his interest in Indigo to two employees, at the hearing the Debtor indicated that in fact he wished to *give* the interests to the employees as a "bonus" of some sort. The Debtor indicated that he wished to give these interests to Indigo's employees to fulfill a promise that he and his ex-wife, the other owner of Indigo, had made at some point in the past. The Debtor admitted that there is no writing evidencing the terms and/or conditions of this undertaking. What is clear is that transfer of a portion of his interest to employees of Indigo was not accomplished prior to the filing of his bankruptcy petition on June 19, 2012.

The Debtor concedes that his interest in Indigo is property of his bankruptcy estate,¹ but has made no effort to evaluate that interest. Schedule B-Personal Property lists his interest as "45% of Indigo LR, LLC; expected to be reduced to 27.5% soon," with a value of "1.00" (Bankruptcy Case, Dkt. No. 1, p. 11). The Debtor testified that Indigo returned a profit of approximately \$125,000 in 2012, but was unable to give any additional financial information about the company. The Debtor's testimony leads the court to believe that the Debtor's interest is worth more than \$1.00.

Although counsel for the Debtor has briefed numerous issues, in fact the only issue before the court is whether the Debtor should be permitted to "sell" a portion of his interest in Indigo for an unspecified amount. The court agrees with the Debtor in principal that sale of the asset would

¹ See Debtor's Memorandum of Law in Support of Motion to Approve Partial Transfer of Fractional Interest in LLC, Dkt. No. 59, p. 4; *see also* 11 U.S.C. § 541(a) (the bankruptcy estate is comprised of "all legal and equitable interests of the debtor in property as of the commencement of the case."). This concession comes after the hearing. At the hearing, counsel for the Debtor maintained that the Debtor's interest did *not* constitute property of the bankruptcy estate.

benefit creditors, but, so far as is known to the court, no offer to purchase has been communicated to the Debtor or the Trustee. Pursuant to the Bankruptcy Code, a trustee, after notice and a hearing, may use, sell, or lease property of the estate other than in the ordinary course of business. 11 U.S.C. § 363(b)(1). In cases filed under Chapter 13 of the Bankruptcy Code, the debtor has, exclusive of the trustee, the rights and powers of a trustee under section 363(b). 11 U.S.C. § 1303. The Debtor thus has the right to sell a portion or all of his interest in Indigo after notice and an opportunity for hearing, but the Trustee also has the right and duty to raise relevant objections. The Trustee has properly objected that the Debtor cannot simply give away assets of the estate without compensating the creditors for the value of those assets either in the form of sale proceeds or in the form of increased plan payments.

As the court expressed at the hearing on the Debtor's original motion, the limitation upon his ability to sell or give away his interest in Indigo is found in the so-called "best interests of creditors test." That test is codified at section 1325(a)(4) of the Bankruptcy Code, which directs the court to confirm a plan if "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of [title 11] on such date." 11 U.S.C. § 1325(a)(4). Over the Trustee's objection and the Debtor's own testimony indicating that his interest has some value in excess of \$1.00, the Debtor has failed to come forward with evidence tending to establish the value of his interest in Indigo to the estate. Moreover, the Debtor has failed to disclose the sales price that he expects to realize upon sale of a portion of his interest. Without these two crucial pieces of information, the court cannot determine whether the Debtor's proposal complies with the requirements of the Bankruptcy Code.

Accordingly, the motion is **DENIED** without prejudice to the Debtor renewing the motion upon a proper showing.

cc: Debtor
Attorney for the Debtor
Chapter 13 Trustee
United State Trustee
All creditors and interested parties