



**Dated: October 01, 2019**  
**The following is ORDERED:**

A handwritten signature in cursive script that reads "Jennie D. Latta".

**Jennie D. Latta**  
**UNITED STATES BANKRUPTCY JUDGE**

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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In re  
SKEFCO PROPERTIES, INC.,  
Debtor.

Case No. 19-26580-L  
Chapter 11

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**MEMORANDUM OPINION**

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BEFORE THE COURT are two motions filed by creditor Renasant Bank: a motion to dismiss the Chapter 11 case pursuant to 11 U.S.C. § 1112(b)(1), and a motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). The Debtor objected to both of the motions, and the court conducted a hearing to consider both on September 26, 2019. The only witness was James Skefos, the President, sole board member, and sole shareholder of the Debtor. After considering the testimony of Mr. Skefos, the exhibits to his testimony, and the schedules, statements, and other papers filed in this case, the court makes the following findings of fact and conclusions of law. This is a core bankruptcy proceeding. 28 U.S.C. § 157(b)(2)(A), (G), (O).

## FINDINGS OF FACT

The Debtor, Skefco Properties, Inc. (“Debtor” or “Skefco”), is a Tennessee corporation, having its offices at 2884 Walnut Grove Road, Memphis, Tennessee.

Skefco is indebted to Renasant Bank as evidenced by two promissory notes. Note No. 1 (Loan #1478) is dated June 22, 2012, in the original principal amount of \$209,294.81. It appears to be secured by a deed of trust dated February 5, 2004, modified March 13, 2009, and June 22, 2012, granting a lien on property known as 14-16 South Front Street, Memphis, Tennessee. Note No. 2 (Loan #0803) is dated May 29, 2007, in the original principal amount of \$76,000. It appears to be secured by a deed of trust dated May 29, 2007, modified July 26, 2010, and June 22, 2012, granting a lien on the north side of Democrat Road (3610 Democrat Road), Memphis, Shelby County, Tennessee. *See* Dkt. No. 20, Motion to Dismiss.

Renasant Bank also made loans to Mr. Skefos individually and to Consolidated Poultry and Egg Co., Inc. (a corporation owned by Mr. Skefos).

Skefco filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on August 20, 2019.

In Schedule D, the Debtor listed an indebtedness to Renasant Bank in the amount of \$173,357, secured by a lien on 14-16 South Second Street, which the Debtor indicated is disputed.

Renasant Bank filed a proof of claim on September 25, 2019 (the night before the hearing on the present motions), in the amount of \$673,362.46. The Addendum to Proof of Claim indicates that this amount includes debt owed by Mr. Skefos in the amount of \$17,412.69, and by Consolidated Poultry in the amount of \$466,598.45. The amount Renasant Bank claims to be owed by the Debtor is only \$189,351.32, but Renasant Bank claims that the collateral for each of

the debts secures the others. The proof of claim contains no information concerning how the amounts of indebtedness were calculated.

The Debtor had not objected to the proof of claim at the time of the hearing, which occurred less than 24 hours after the proof of claim was filed.

The Debtor also acknowledges debts to the following:

<u>Creditor</u>	<u>Amount</u>	<u>Collateral</u>
Community Bank	\$60,000	3071 Douglass
Estate of Harry Valsamis	\$1,250,000	139 Madison Avenue
City of Memphis	\$98,000	
Shelby County	\$112,000	

Although the Debtor does not treat the claims of the City of Memphis or Shelby County as secured claims, these claims consist of unpaid property taxes. The Shelby County Trustee has filed 15 proofs of claim on behalf of the county and 16 proofs of claim on behalf of the city.<sup>1</sup> Some of these claims relate to properties not listed by the Debtor in Schedule A/B. Two of them are in the name of Consolidated Poultry rather than the Debtor. See attached spreadsheet.

The claims register at this time reveals proofs of claim filed by the Shelby County Trustee and Renasant Bank, but no others. The deadline to file proofs of claim is December 17, 2019, for all creditors except governmental creditors. The deadline for governmental units to file proofs of claim is February 18, 2020.

The total amount of all claims filed to date is \$881,380.01. In addition to the proofs of claim that have been filed, the Debtor lists obligations to Community Bank in the amount of

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<sup>1</sup> The Shelby County Trustee appears to have duplicated one claim. Claim Nos. 30 and 31 are supported by the same tax bill related to 4695 Hwy. 61 S. There also appears to be a transcription error in Claim No. 30 which is entered in the Claims Register as \$16,200.27 although the Proof of Claim shows \$26,200.27 owed.

\$60,000 secured by property valued at \$50,000, and Estate of Henry Valsamis in the amount of \$1,250,000, secured by property valued at \$950,000. Pursuant to 11 U.S.C. §§ 501, 502, and 1111(a), these claims are deemed allowed.

The Debtor's assets consist of \$400 in a checking account and 15 parcels of real property that the Debtor values in the aggregate at \$4,473,000.

Although the Debtor failed to disclose it in its petition,<sup>2</sup> the Debtor filed a previous Chapter 11 petition on September 19, 2017, Case No. 17-28262, which was dismissed by consent on May 10, 2019, upon the motion of the United States Trustee.

James Skefos was also the subject of a Chapter 11 petition filed September 18, 2017, Case No. 17-28243, which was dismissed by consent on May 10, 2019, upon the motion of the United States Trustee.

Consolidated Poultry was the subject of a Chapter 11 petition filed June 18, 2017, Case No. 17-25324, which was dismissed by consent on December 7, 2017, upon the motion of the United States Trustee.

In this case the Debtor has filed each of its required schedules and statements. Its representative, Mr. Skefos, attended the meeting of creditors. He has opened debtor-in-possession bank accounts. The Debtor has filed its initial monthly operating report. It has filed a Small Business Disclosure Statement. All of this was accomplished within the first 36 days.

At the hearing, Mr. Skefos provided liability and casualty insurance certificates with respect to the properties of the Debtor.

At the hearing, counsel for the Debtor indicated a willingness on the part of the Debtor to sell properties if necessary to obtain confirmation of a plan. Mr. Skefos also testified that he is

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<sup>2</sup> On September 30, 2019, the Debtor filed an amended petition that discloses the prior case.

willing to have some of the properties sold. To date, however, no application to engage a real estate agent on behalf of the Debtor has been filed.

At the hearing, counsel for the Shelby County Trustee, who is responsible for the collection of both city and county property taxes, announced that the Shelby County Trustee joined in the motions of Renasant Bank.

At the hearing, counsel for the United States Trustee announced that he had filed a separate motion to dismiss on behalf of the United States Trustee. That motion is set for hearing on November 7, 2019.

## **CONCLUSIONS OF LAW**

### **Motion to Dismiss**

Bankruptcy Code section 1112(b)(1) permits the court to dismiss a case or convert it to a case under chapter 7, whichever is in the best interests of creditors and the estate, on request of a party in interest, for cause, unless the court determines that appointment of a chapter 11 trustee or examiner is in the best interests of creditors and the estate. Section 1112(b)(4) provides sixteen examples of cause for dismissing or converting a case under chapter 11. Renasant Bank asserts that most of those instances of cause are present in this case, but a closer examination of its reasons reveals that almost all relate to the previous case filed by the Debtor. The court will consider each of its arguments in turn.

- A. Renasant claims that there is a continuing loss or diminution to the estate as the result of the Debtor's failure to pay property taxes. What it refers to are pre-petition taxes, all of which are presumably included in the proofs of claim filed by the Shelby County Trustee. No taxes have become due in the post-petition period.

- B. Renasant claims that the Debtor's prior monthly operating reports were deficient and that fact indicates mismanagement. Renasant did not, however, introduce any previous operating reports as hearing exhibits and did not question Mr. Skefos about previous operating reports or management. The Debtor has filed the one operating report that has come due during the pendency of the present case. It covers a period of ten days. The court is not prepared to draw any conclusions about the Debtor's management from this single operating report.
- C. Renasant claims that the Debtor has failed to maintain insurance on its property. The Debtor provided a Certificate of Liability Insurance that covers operation at the following locations: 426 St. Paul, 3610 Democrat, 14-16 S. Second Street, 137-143 Madison Avenue, 10 S. Second Street, 3489 Jackson Avenue, 6 S. Second Street, 2890 Celia [sic, perhaps Celon], and 3071 Douglass. *See* Hearing Exh. No. 3. The Debtor also provided Evidence of Property Insurance at the following locations: 426 St. Paul, 3610 Democrat, 14-16 S. Second, 137-143 Madison, 10 S. Second, and 3489 Jackson Ave. *See* Hearing Exh. No. 3. Renasant failed to explain how, if at all, this coverage is deficient. The two properties that secure its indebtedness are included in the certificates of insurance. Mr. Skefos testified that all properties are properly insured.
- D. Renasant Bank lists unauthorized use of cash collateral as one example of cause for dismissing the Debtor's case, but failed to demonstrate that there had in fact been unauthorized use of case collateral. The monthly operating report reflects that the only receipt during the ten-day period covered by the report was an owner contribution of \$1,250.

- E. Renasant Bank argues that in the Debtor's previous case, the Debtor failed to comply with an agreed order concerning use of cash collateral by failing to file all required bi-monthly reports, failing to pay certain taxes, and failing to remit rentals from a tenant of the Second Street property to Renasant. No proof concerning any of this was provided at the hearing. And Renasant failed to point to any instance of the Debtor's failure to abide by the orders of the court in the presently pending case.
- F. Renasant lists failure to satisfy timely any filing or reporting requirement as an additional example of cause, but failed to provide proof of such failure in the pending case.
- G. [omitted in Renasant Bank's motion]
- H. Renasant Bank argues that the Debtor's failure to file "R2015 reports" as well as monthly operating reports constitutes cause for dismissing this case. This argument appears to relate to the previous case.
- I. Renasant Bank argues that failure to pay taxes owed after the date of the order for relief constitutes cause for dismissing this case. Renasant failed to point to any taxes that have come due since the filing of the petition on August 20, 2019.
- J. Renasant Bank lists but does not elaborate on failure to file a disclosure statement or to file or confirm a plan as additional cause for dismissal. Since the filing of the Renasant's motion, the Debtor has filed a disclosure statement. Moreover, the case is still in its infancy. The exclusive period for the Debtor to file a plan does not expire until February 18, 2020.
- K. [omitted]
- L. [omitted]

M. Renasant Bank argues that the Debtor will be unable to effectuate substantial consummation of a confirmed plan. It again refers back to the failure of the Debtor to obtain confirmation of a plan in its previous case and explains that the plan was not confirmed because the judge who presided over that case was concerned about a potential offset available to the Debtor as the result of pending litigation. This argument is better directed to subsection 1112(b)(4)(J), failure to confirm a plan within a time fixed by title 11 or by the court. No plan has been confirmed in the pending case, so there can be no argument about the Debtor's failure to consummate a confirmed plan. The court has no reason to believe at this point that the Debtor will be unable to obtain confirmation of a plan. Both Debtor's counsel and Mr. Skefos indicated a willingness to sell property if needed to obtain confirmation of a plan. The Summary of Assets and Liabilities filed by the Debtor indicates assets in excess of liabilities in the amount of \$2,780,043.

Renasant Bank is understandably frustrated by the filing of this second case by the Debtor, but it has failed to demonstrate cause for dismissing it at this early stage. *Elmwood Dev. Co. v. Gen. Elec. Pension Trust (Matter of Elmwood Dev. Co.)*, 964 F.2d 508, 511 (5th Cir. 1992) (Serial filing of chapter 11 petition does not per se provide a basis for dismissing the petition.); *Fruehauf Corp. v. Jartran, Inc. (In re Jartran, Inc.)*, 886 F.2d 859, 866-67 (7th Cir. 1989) (same).

The court questioned the attorney for the United States Trustee at the close of the hearing about the appointment of a trustee or the conversion of this case to chapter 7. He did not recommend either. After having had an opportunity to more carefully review the schedules and statements, the court concludes that neither would be in the best interests of creditors or the estate at this time. Based upon the evidence and record before the court, there are no general unsecured creditors whose interests would be better protected by a trustee either under chapter 7 or



chapter 11. Each of the debts listed by the Debtor is secured by real property. There was no proof that any of the property is declining in value. It is still very early in this case. The court concludes that cause does not exist for the dismissal, conversion to chapter 7, or the appointment of a chapter 11 trustee at this time.

### **Motion for Relief from Stay**

Bankruptcy Code section 362(d)(1) directs the court to grant relief from the automatic stay to a party that demonstrates cause, including lack of adequate protection of an interest in property of such party in interest. 11 U.S.C. § 362(d)(1). Section 361 gives examples of adequate protection. 11 U.S.C. § 361. Adequate protection may include an “equity cushion,” that is, collateral value in excess of applicable liens. *Americredit Fin. Serv., Inc. v. Nichols (In re Nichols)*, 440 F.3d 850, 856 (6th Cir. 2006).

In support of its motion, Renasant Bank points to the Debtor’s prepetition failure to pay property taxes and its receipt of notice of cancellation of insurance as of August 16, 2019, prior to the filing of the petition on August 20, 2019.

There is a substantial equity cushion protecting the Renasant’s interest in the Debtor’s property. Renasant identifies the collateral owned by the Debtor that secures its proof of claim as 14-16 South Second and 3610 Democrat. The Debtor values 14-16 South Second at \$800,000, and 3610 Democrat at \$145,000, for a total value of \$945,000. Renasant did not dispute these values. The Shelby County Trustee filed proofs of claims with respect to 3610 Democrat in the aggregate amount of \$5,296.43, representing four years of unpaid taxes. *See* Proof of Claim Nos. 8 and 22. The Shelby County Trustee did not file proofs of claim with respect to 14-16 South Second. Renasant Bank asserts that its aggregate claim in the amount of \$673,362.46 is secured by these two properties. The aggregate claim includes debts owed by Mr. Skefos and Consolidated

Poultry. Even if no value is assigned to collateral owned by Mr. Skefos individually or Consolidated Poultry, there is an equity cushion of \$266,341.11 protecting Renasant's interest ( $\$945,000 - \$5,296.43 - \$673,362.46 = \$266,341.11$ ). On this record there is no danger that the accrual of taxes will prevent Renasant Bank from recovering its claim from the value of its collateral.

With respect to insurance, the Debtor provided proof of liability insurance and property insurance with respect to the two properties that secure Renasant Bank's claims. *See* Hearing Exh. No. 3. The buildings on Democrat Road are insured against loss for \$60,000 and the building at 15-16 South Second Street is insured at \$407,000. Renasant did not dispute the adequacy of this coverage but did ask that it be shown as a loss payee on the policies. This is a reasonable request.

Renasant Bank did not seek relief from the automatic stay under the alternative ground of section 362(d)(2), lack of equity, for good reason. The record before the court shows that the Debtor has substantial equity in the properties which secure Renasant's claim.

On the record before the court, no cause has been shown to grant relief from the automatic stay at this time.

### **CONCLUSION**

For the foregoing reasons, the court concludes that the motions to dismiss and for relief from the automatic stay should be **DENIED**. The court will enter separate orders consistent with this opinion. The Debtor will be directed to provide proof that Renasant Bank is listed as loss payee with respect to its collateral within fourteen days of the entry of the related orders.

cc: Debtor  
Attorney for Debtor  
Creditor Renasant Bank  
Attorney for Renasant Bank  
United States Trustee  
Attorney for United States Trustee  
Matrix

SKEFCO PROPERTIES, INC.							
CASE NO. 19-26580-L							
Property Address	Value	Creditor	Scheduled Debt	POC	County Tax	City Tax	Equity
<b>On Debtor's Schedule A/B</b>							
3384 Thomas	DK						DK
2940 Lotus	42,000.00						42,000.00
0 Saint Paul 00012	450,000.00				2128.43	1195.92	446,675.65
0 Saint Paul 00013					270.75	271.66	(542.41)
0 Saint Paul 00014					1,528.32	1,235.01	(2,763.33)
3610 Democrat	145,000.00	Renasant Bank		13,262.23	2,849.48	2,446.95	126,441.34
3489 Jackson	200,000.00				775.98	612.36	198,611.66
3071 Douglass	50,000.00	Community Bank	60,000.00		292.61	221.91	49,485.48
4695 Third Street	500,000.00						500,000.00
2896 CELA	86,000.00				12,836.05	6,177.18	66,986.77
141-43 Madison	200,000.00						200,000.00
139 Madison	150,000.00				14,053.03	13,817.08	122,129.89
Julius Goodman	950,000.00	Estate of Harry Valsamis	1,250,000.00				950,000.00
137 Madison	150,000.00						150,000.00
10 South Second	300,000.00				16,249.62	14,973.46	268,776.92
14-16 South Second	800,000.00	Renasant Bank	173,357.00	176,089.09			623,910.91
6 South Street	450,000.00				6,562.92	6,300.65	437,136.43
<b>TOTAL</b>	<b>4,473,000.00</b>		<b>1,483,357.00</b>	<b>189,351.32</b>	<b>57,547.19</b>	<b>47,252.18</b>	<b>4,178,849.31</b>
<b>Not on Debtor's Schedule A/B</b>							
4695 Hwy 61 South					35,004.42	26,200.27	
3500 Mayfair					859.04	804.73	
426 St. Paul Commercial					7,606.72	7,395.77	
426 Saint Paul Tangible	(Tax bills in the name of Consolidated Poultry)				3,682.32	5,391.53	
2884 Walnut Grove					39.79	33.32	
<b>TOTAL</b>					<b>47,192.29</b>	<b>39,825.62</b>	