

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>IN RE: JASON STUART ELKINS,</b>	)	<b>CHAPTER 11</b>
	)	
<b>Debtor.</b>	)	<b>CASE NO. 08-70076</b>
	)	

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**DECISION AND ORDER AND NOTICE OF RIGHT TO ASSERT CLAIM**

The matters before the Court are the Court's Show Cause Order entered March 22, 2010 directed to the Debtor and requiring that he show cause why this case should not be dismissed or converted to Chapter 7 as a result of his failure to pay the requisite conversion fee from Chapter 13 to Chapter 11 and the Motion of Powell Valley National Bank to dismiss or convert this case to Chapter 7. The Debtor appeared in person and with counsel on the specified date of April 6, 2010. In addition, the Assistant United States Trustee for the Western District of Virginia appeared as did counsel for Powell Valley National Bank. No other party in interest appeared although counsel for JECO, Inc., an affiliated debtor in this Court, was also present in the courtroom during the hearing. The conversion fee remains unpaid. The Debtor appeared and testified that he had not had the funds to pay such fee and that the freezing of the remaining funds held by the Chapter 13 Trustee pursuant to this Court's February 16, 2010 Order<sup>1</sup> conditionally granting his Motion to Convert to Chapter 11 precluded his access to funds which would have made it possible for him to pay such fee and restart business operations at the block plant. That same order preliminarily denied Powell Valley's Objection to the Motion to Convert but directed that such Objection would be treated as a post-conversion motion to dismiss or convert this case to Chapter 7 and set the same for a hearing on April 6, 2010. This Order was

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<sup>1</sup> This Order was amended by a subsequent order entered on February 19, 2010.

served upon all creditors and other parties in interest.

Although the Debtor had filed a motion to extend the time for payment of the conversion fee, which motion had been granted, he had not previously indicated to the Court prior to the April 6 hearing that his ability to pay the conversion fee and to resume business operations was contingent upon his access to the funds held by the Chapter 13 Trustee. Neither had he filed any motion requesting any change to the Court's earlier orders directing that such funds be held by such Trustee until further order of the Court. At the hearing the Debtor testified that he wanted to resume the business operations at the block plant which were previously conducted by JECO, Inc., which likewise is a debtor in a pending case in this Court.<sup>2</sup> The block plant in question has been constructed by investments made pre-petition by the Debtor and his mother and apparently post-petition by JECO and is physically located on property in which the Debtor's mother has a life estate and the Debtor and his brother jointly own the remainder. Both the Assistant United States Trustee and Powell Valley National Bank, by counsel, opposed the Debtor's request and stated that the case ought to be either dismissed or converted.

The Court concludes that it has the authority under 11 U.S.C. § 1112(b) to convert this case to Chapter 7 or dismiss it, whichever might be in the best interest of creditors. It finds that it is unlikely that a plan can be confirmed in this case, based in large degree from the long pre-conversion history of this case and the Debtor's complete loss of support from his creditors to go forward. While the issue is not entirely free of doubt, the Court finds to the extent that it is a matter of fact, and concludes to the extent that it is a matter of law, that the best

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<sup>2</sup> That case is Docket No. 08-70515. The debtor in that case filed on April 5, 2010 a motion to convert to Chapter 7.

interests of the creditors collectively in this case on balance would more likely be served by converting the case to Chapter 7. The Court's rationale is based on the Debtor's schedules filed in this case on January 28, 2008 reflecting the ownership of JECO, Inc., an undivided one-half remainder interest<sup>3</sup> in the real property upon which the block plant is located, and the block plant itself, described in Schedule B as "under construction."<sup>4</sup> The Court believes that the interests of the creditors of Mr. Elkins will best be served by a Chapter 7 Trustee acting for them in any negotiations with the Debtor and his family members over a fair resolution of their interests vis-a-vis his bankruptcy estate and that of his wholly owned corporation, JECO, especially as they relate to any re-commencement of business operations at the block plant by Mr. Elkins in his post-bankruptcy life, either individually or as a member of some new enterprise. In any event, having separate independent trustees to protect the interests of JECO's unsecured creditors, if such debtor's motion to convert is granted, and the Debtor's unsecured creditors, respectively, is best designed to achieve an equitable balance between the Debtor's need for a fresh start and the interests of such creditors in his and the corporation's bankruptcy estates. Accordingly, by means of the Court's regular form conversion order, it will order the conversion of this case to Chapter 7.

The issue of the disposition of the remaining funds held by the Chapter 13 Trustee also needs to be resolved. The potential claimants to such funds would appear to include the Debtor, the Clerk of this Court for the unpaid conversion fee, administrative claimants in the

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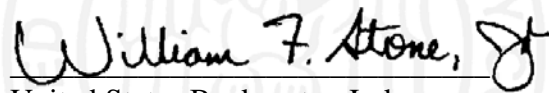
<sup>3</sup> The value of the Debtor's remainder interest in this property was set out in Schedule A at \$34,784.

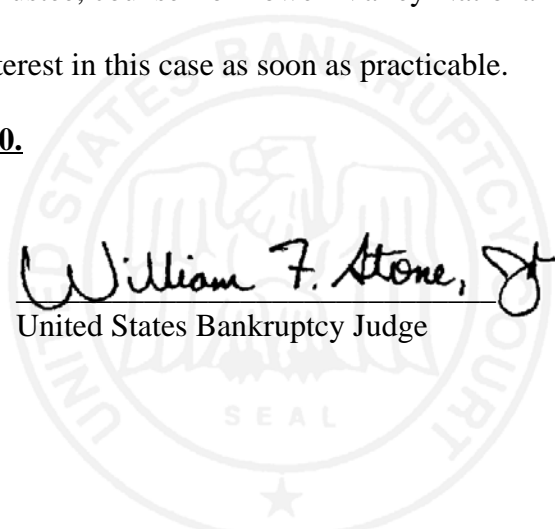
<sup>4</sup> The value of the Debtor's interest in this investment was listed at \$200,000.

Chapter 13 or Chapter 11 phases of this case, and the Chapter 7 Trustee in the converted case. The Court will recognize the claim of its Clerk for the unpaid conversion fee. The Court ORDERS that any other party in interest (other than any interest claimed solely as a pre-petition creditor of the Debtor)<sup>5</sup> who wishes to assert a claim against such remaining funds file an application to such effect setting forth the amount of such claim and the statutory or other legal basis therefore. **Any such application must be filed within fourteen (14) days of the date of service of this Order and any such application filed shall be heard by this Court in the United States Courthouse in Big Stone Gap, Virginia on May 4, 2010 at 2:00 p.m.** At that time the Court will consider all such applications so filed as well as any arguments advanced in their support and will rule upon the proper distribution thereof.

The Clerk is directed to serve a copy of this Order upon the Debtor, Debtor's counsel, the Chapter 13 Trustee, the Chapter 7 Trustee appointed upon the conversion of this case to Chapter 7, the Office of the United States Trustee, counsel for Powell Valley National Bank, and upon all creditors and other parties in interest in this case as soon as practicable.

**ENTER this 13<sup>th</sup> day of April, 2010.**

  
United States Bankruptcy Judge



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<sup>5</sup> It is the Court's intention that any rights held by such creditors in such funds will be advanced by the Chapter 7 Trustee.