

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

In Re:  
CEDARS LAKESIDE LIMITED PARTNERSHIP,  
A MINNESOTA LIMITED PARTNERSHIP,  
Debtor.

CHAPTER 11  
Bky. 3-90-5993

ORDER

At St. Paul, Minnesota.

This matter is before the Court on motions of the Debtor for use of cash collateral, with objection by First Trust National Association (First Trust), and by First Trust for relief from stay. Appearances are as noted in the record. The Court, having heard and received relevant evidence, and having heard oral arguments and reviewed the briefs of counsel, and now being fully advised in the matter, makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

Cedars Lakeside Limited Partnership has no employees. The Debtor's only asset, operated by the Debtor's general partner under contract with the Debtor, is a multifamily housing project financed through housing revenue bonds authorized and issued by the city of Little Canada, where the property is located. The bonds were issued in 1986, in the principal amount of \$7,700,000. First Trust holds a first mortgage and security interest in the Project, along with an assignment of rents, under an Indenture of Trust with the city of Little Canada to administer the bonds. The Debtor defaulted on its obligations in October of 1990, failing to make a monthly payment due in the amount of \$58,580. No payments have been made by the Debtor since that time. The Debtor filed a Chapter 11 petition on December 20, 1990, prior to a scheduled hearing in state court for the appointment of a receiver in connection with a mortgage foreclosure action commenced by First Trust. Since the filing, the Debtor has been operating the project through its general partner under a cash collateral agreement with First Trust.

First Trust has now objected to the further use of cash collateral and has moved for relief from stay, claiming that: the Debtor is not engaged in business within the meaning of Chapter 11 and therefore does not qualify for relief under that chapter; the petition was filed in bad faith; and, that no reorganization is likely because a plan cannot be confirmed in the case over its objection.

II.

The Debtor outlined a plan at the hearing that would provide for full payment of its obligation to First Trust. The evidence included income and expense projections that were prima facie credible. A sufficient showing was made by the Debtor that confirmation of a plan is possible over the objection of First Trust and that such a plan is in prospect.(1) The Debtor's witness testified that the plan is in process of preparation and that it could be filed within twenty days.

Footnote 1

It should not be inferred from this finding, that the Court believes that the plan, as outlined, is in all respects confirmable. Contrary, aside from feasibility concerns there exist a number of potential obstacles to confirmation. For instance, payment of First Trust in full would, under the Debtor's proposal, treat its undersecured claim more favorably than other unsecured claims. Additionally, the Debtor apparently intends to propose a plan that would pay security holders a portion of what the Debtor refers to as a partial return on their investments that the Debtor was obligated to pay prepetition. The proposal might violate the absolute priority provisions of the Code.

End Footnote

Although First Trust is apparently suspicious of the Debtor's principal, regarding both motives and representations made in actual dealings with First Trust, the Movant has produced no evidence that the case was filed in bad faith. The Court finds that the case was not filed in bad faith.

First Trust argues that the Debtor was organized and exists as a passive investment entity, and that it does not qualify for relief under Chapter 11, citing, *Wamsganz v. Boatman's Bank of De Soto*, 804 F.2d 503 (8th Cir. 1986). First Trust claims that:

[t]he Debtor does not employ anyone or directly provide a service to anyone. The Debtor merely holds the Apartment Complex as a passive investment much the same way an individual would own a share of stock in a business such as the General Motors Corporation.

See: Notice of Motion, Motion And Memorandum For Relief From Stay, filed on March 21, 1991. The comparison is mismatched.

The Debtor Partnership is analogous to the corporation, not to corporate investors. Shareholders of a corporation and the equity holders of limited partners are comparable. Corporations and limited partnerships are, likewise, comparable. But corporate shareholders and limited partnerships are not.

Cedars Lakeside Limited Partnership is a profit driven business entity that owns and operates tangible income producing property. The operation can be enhanced, modified, and reorganized through the business decisions and applications of the owner (the Debtor) to determine, influence, and alter the income stream generated by the property. While the existence of employees can be a factor in determining whether a particular endeavor is a business, it is not controlling. See: *In re Metro Limited*, 108 B.R. 684 (Bankr. D. Minn. 1988). Cedars Lakeside Limited Partnership is not disqualified as a Chapter 11 debtor.

III.

Based on the foregoing, IT IS HEREBY ORDERED: Relief from stay is denied. Debtor's continued use of cash collateral is allowed, conditioned upon the Debtor's filing of a plan and disclosure statement within twenty days of the entry of this ORDER.

Dated: April 9, 1991

By The Court:

DENNIS D. O'BRIEN  
U.S. BANKRUPTCY JUDGE