

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

CROSSROADS ENTERPRISES, RM.,
Debtor.

BKY 4-91-2348

MEMORANDUM ORDER GRANTING
RELIEF FROM STAY

At Minneapolis, Minnesota, June 18, 1991.

The above-entitled matter came on for hearing before the undersigned on 23rd day of May, 1991 on a motion by Schuette Real Estate Fund ("Schuette") for relief from the automatic stay under either subsection (d)(1) or subsection (d)(2) of section 362 of the Bankruptcy Code. 11 U.S.C. Sections 362(d)(1) and (d)(2). This Court has jurisdiction over the parties to and the subject matter of this case pursuant to 28 U.S.C. Sections 157 and 1334, and Local Rule 103. Moreover, this Court may hear and finally adjudicate this motion because its subject matter renders such adjudication a "core" proceeding pursuant to 28 U.S.C. Section 157(b)(2)(G).

The Debtor is a Minnesota general partnership. Its only asset, aside from cash in a bank account and a debt owed by a related partnership, is its interest in an unimproved, 30-acre parcel of real estate (the "Property") located in the Town of Rib Mountain, Marathon County, Wisconsin. Schuette holds the first mortgage on the Property. The Debtor last made a mortgage payment to Schuette in May of 1989. At that time, Schuette served a notice of default declaring due the entire amount of the note secured by the first mortgage. On October 3, 1990, the Marathon County Circuit Court entered a foreclosure judgment in favor of Schuette. The Debtor's redemption period expired on April 1, 1990 without the Debtor exercising its statutory right. A foreclosure sale was scheduled for April 5, 1991, but the sale was stayed by the Debtor's filing of a voluntary petition for relief under Chapter 11 of the Code two days before.

The judgment of foreclosure fixed the debt to Schuette, as of June 25, 1990, at \$1,085,191.04. As of May 23, 1991, the debt to Schuette, including interest and costs of foreclosure, was \$1,183,898.70. The Property is also encumbered by estimated real estate tax liens of \$21,497.92, which are senior to the first mortgage, and liens from two docketed judgments to a single creditor totaling \$113,826.75 plus postjudgment interest, which are junior to the first mortgage. In addition to the claims of Schuette and the judgment creditor, the Debtor's schedules list unsecured claims totalling approximately \$30,500.00.

The Debtor's schedules list the value of the Property at \$1,600,000.00 based on a written "offer" to purchase the Property for a price equal to the Debtor's valuation. Testimony revealed that the "offer" was rife with contingencies, such as obtaining approval from local land-use planning authorities, which may not soon, if ever, come to pass. Schuette's expert witness opined that the value of the Property is \$1,200,000.00.

Schuette has demonstrated "cause" for relief from the automatic stay. 11 U.S.C. Section 362(d)(1). Lack of good faith in filing constitutes "cause" for relief from stay. *Little Creek Dev. Co. v. Commonwealth Mortgage Co.* (In re *Little Creek Dev. Co.*), 779 F.2d 1068 (5th Cir. 1986).

Based on the totality of the circumstances, I conclude that the Debtor filed its petition in bad faith. In re *Marion Street Partn'p*, 108 B.R. 218, 223 (Bkcty. D. Minn. 1989). The Debtor's prospects for a successful reorganization within a reasonable

period of time appear dim but not impossible. Such a finding alone is not sufficient to support dismissal or relief from stay for bad faith. In re Lumber Exchange Ltd. Partn'p, 125 B.R. 1000, 1004 (Bkcty. D. Minn. 1991) (dismissal denied because there was "[n]o extrinsic evidence of bad faith"); In re Marion Street Partn'p, 108 B.R. at 225 (dismissal and relief from stay denied because of "dearth of evidence that debtor's petition was filed for sole purpose of delay"). The Debtor's filing, however, has all the other indicia of a bad-faith filing:

1. The Debtor's tenuous interest in the Property is its only significant asset;
2. The Debtor has few unsecured creditors and their claims are small in relation to Schuette's claim;
3. The Debtor has no employees;
4. The Debtor's financial problems involve essentially a dispute between the Debtor and Schuette which has been the subject of state court litigation, as a result of which the Debtor has completely exhausted its state-court remedies; and
5. The Debtor filed for bankruptcy protection virtually on the eve of a foreclosure sale as part of a pattern of conduct indicating an intent to hinder and delay Schuette, which included evasion of service in the foreclosure proceeding, the making of an unsuccessful motion to adjourn the foreclosure sale, and an ongoing failure to pay real estate taxes, interest and penalties accruing against the Property.

See In re Marion Street Partn'p, 108 B.R. at 222.

ACCORDINGLY, IT IS HEREBY ORDERED:

The stay imposed by 11 U.S.C. Section 362(a) is modified to permit Schuette Real Estate Fund to obtain a foreclosure sale and judicial confirmation thereof and to perform any other action necessary to complete foreclosure of its mortgage on the following real property:

That land described as Lot No. 1 on a certain Certified Survey Map. No. 4285 dated January 4, 1987 and recorded in the office of the Registrar of Deeds for Marathon County in Volume 16 of Certified Survey Maps at page 53 also described as follows:

Those parts of the SE1/4 SE1/4 and SW1/4 SE1/4, Section 10, T 28 N, R 7 E, Town of Rib Mountain, Marathon County, Wisconsin, lying east of U.S. Highway 51 and West of County Highway "N" and excepting the North 33.00 feet thereof. More particularly described to wit: Commencing at the Southeast corner of said Section 10; N 89 degrees 55'35"W 54.96 feet to the West line of said County Highway "N" and the point of beginning; thence along said West line N 3 degrees 16'20" W 319.28 feet; thence along the arc of a curve concave to the Southwest whose radius is 1077 feet, whose central angle is 33 degrees 23'37" and whose chord bears N 19 degrees 28'43" W 618.86 feet; thence continue along said West line N 36 degrees 41'26" W 412.38 feet; thence along the arc of a curve concave to the Northeast whose radius is 1255 feet and whose chord bears N 35 degrees 37'34" W 61.85 feet and to a point lying 33 feet South of the North line of said SE1/4 SE1/4; S 89 degrees 57'20" W parallel to the North line of said SE1/4 SE1/4 and SW1/4 SE1/4 1199.84 feet to the Easterly right of way line of U.S. Highway 51; thence along said right of way line S 27 degrees 37'31" E 209.90

feet; S 30 degrees 29'16" E 400.50 feet; S 24 degrees 45'46" E 300.38 feet; S 27 degrees 37'31" E 538.41 feet; thence along the South line of said SE1/4 SE1/4 as monumented by Certified Survey Map Number 1592 S 89 degrees 55'35" E 1030.87 feet to the point of beginning; excepting therefrom the land described in a Partial Release of Mortgage dated February 12, 1988 and recorded in the office of the Registrar of Deeds for Marathon County, Wisconsin, on February 12, 1988 in Volume 473 of Micro-records on page 510 as document number 884216 and further excepting therefrom land described in a Partial Release of Mortgage dated August 10, 1988 and recorded in the office of the Registrar of Deeds for Marathon County, Wisconsin, on September 23, 1988 in Volume 488 of Micro-records on pages 1157-1158 as document number 895875.

Nancy C. Dreher
United States Bankruptcy Judge