



ENTERED  
07/28/2008

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

**IN RE:** §  
§  
**SCOTIA DEVELOPMENT, LLC, et. al.** § **CASE NO: 07-20027**  
§  
§ **Jointly Administered**  
**Debtor(s)** **CHAPTER 11**

**ORDER ON EMERGENCY MOTION TO ENFORCE CONFIRMATION ORDER  
AND OTHER MISCELLANEOUS RELIEF**

On this day came on for consideration the Emergency Motion for Order to Enforce Confirmation Order and Other Miscellaneous Relief (the “Motion”) filed by Pacific Lumber Company (“Palco”), Mendocino Redwood Company LLC (“MRC”), Marathon Structured Finance Fund LLP (“Marathon”) and the Official Committee of Unsecured Creditors (collectively “Movants”). The Court, having heard the evidence and arguments of counsel, finds as follows:

1. On January 18, 2007 (the “Petition Date”), various entities, including Palco and Scotia Pacific Lumber Company (“Scopac”) (collective the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Debtors’ bankruptcy cases are jointly administered under Case No. 07-20027. No trustee or examiner has been appointed in the Debtors’ bankruptcy cases. Debtors continue to operate their respective businesses and manage their properties as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. The Court confirmed the MRC/Marathon Plan in an Order entered July 8, 2008 [docket 3302] (the “Confirmation Order”). The Court stayed the effectiveness of the order for ten days until Friday, July 25, 2008, to allow the Indenture Trustee to seek a

stay pending appeal. The District Court refused the Indenture Trustee's request for a stay (2:08-mc-66). The Fifth Circuit Court of Appeals also denied the Indenture Trustee's and other Noteholders' requests for an emergency stay pending appeal. (Case No. 08-0027, Order dated July 24, 2008).

3. Immediately after the Fifth Circuit Court of Appeals denied the motions for stay pending appeal, the Indenture Trustee sent a letter asserting, for the first time, that the MRC/Marathon Plan cannot be consummated because the definition of the term "Effective Date" in the MRC/Marathon Plan requires that the Confirmation Order be a Final Order and the definition of "Final Order" requires that the Indenture Trustee's appeals be exhausted.<sup>1</sup>

4. The Indenture Trustee's latest position is contrary to the express terms of the Confirmation Order, contrary to all previous positions taken by the Indenture Trustee before this Court, the District Court, and the Fifth Circuit Court of Appeals in its request for stay pending appeal, and is contrary to the understanding of all parties that the Confirmation Order was a Final Order within the meaning of the MRC/Marathon Plan. In each court the Indenture Trustee argued as follows:

Unless the stay is granted, the Indenture Trustee will suffer irreparable harm by implementation of the MRC/Marathon Plan. Specifically, unless a stay pending appeal is granted, Marathon and MRC will quickly move to consummate the sale of Scopac's assets and then argue that the Indenture

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<sup>1</sup> The letter is the latest in a series of attempts by the Indenture Trustee to forestall or disrupt confirmation of the MRC/Marathon Plan. During the Confirmation Hearing the Indenture Trustee presented several new deals with purported stalking horse bidders, although none were binding or accepted offers. When it became clear that the Indenture Trustee Plan had no support from any party other than the Noteholders, the Indenture Trustee proposed a buyer for Palco assets, even though the Indenture Trustee had no authority to sell Palco assets other than through a proposed plan, yet the Indenture Trustee never proposed a comprehensive plan of reorganization for Scopac and Palco. Following the Court's ruling on plan confirmation, but before entry of the Confirmation Order, the Indenture Trustee alleged for the first time that it was entitled to an administrative super priority claim in excess of \$200 million. The Court postponed entry of the confirmation Order to allow the Indenture Trustee to prepare for trial of its administrative claim. Following the trial, the Court denied the administrative claim and entered the Confirmation Order.

Trustee's appeal has become moot, thereby potentially depriving the Trustee of the ability to seek complete and meaningful appellate review and eviscerating its statutory right of full appeal.

5. The MRC/Marathon Plan contains an appendix that defines certain terms used in "initially capitalized form." Among the terms are "Effective Date" and "Final Order." Reading these terms alone would suggest that the MRC/Marathon Plan could not become effective until all appeals of the Confirmation Order were exhausted. However, paragraph 53 of the Confirmation Order clearly states: "This is a Final Order" (emphasis added). The terms of paragraph 53 were negotiated by the parties following entry of the Court's Findings of Fact and Conclusions of Law. The language was specifically drafted to allow the MRC/Marathon Plan to go effective unless a stay pending appeal was granted. The Indenture Trustee previously delayed entry of the Confirmation Order for nearly one month with its administrative super priority argument which it articulated for the first time after the Court issued its Findings of Fact and Conclusions of Law on plan confirmation.

6. As the Court noted in its denial of stay pending appeal, delay in implementing the Plan would have disastrous effects upon not only the proponents of the Plan, but also on the unsecured creditors of the Debtors, the retired and current employees of the Debtors, the environment and economy of Northern California and even on the Noteholders represented by the Indenture Trustee. The Court intended to make the Confirmation Order final for the purpose of appeal and also a "Final Order" (emphasis added) as contemplated in the appendix definition of "Effective Date." The Court stayed the Order's effectiveness to allow the Indenture Trustee a reasonable opportunity to seek a stay pending appeal. To now argue that "Final Order" does mean "Final Order" as

defined in the appendix renders the stay granted by this Court in paragraph 53 meaningless. Moreover, paragraph 47 of the Confirmation Order states that “[i]n the event of any inconsistency between the MRC/Marathon Plan and this Order, this Order shall govern.” Three federal courts spent a great deal of time deciding whether to grant the Indenture Trustee and Noteholders a stay pending appeal based on their representation that the plan would go effective immediately if a stay was not granted.

7. The Indenture Trustee argues that this Court lacks jurisdiction to hear this matter because the Fifth Circuit Court of Appeals has agreed to hear a direct appeal of the Confirmation Order. 28 U.S.C. §158 provides that a direct appeal to the circuit does not “stay any proceeding of the bankruptcy court.” The fact that this case involves a direct appeal to the circuit court does not change the general rules regarding jurisdiction. Obviously, the appeal divests the bankruptcy court of jurisdiction to hear matters which were the subject of the pending appeal, but the Fifth Circuit Court of Appeals has declined to adopt a broad rule that a bankruptcy court may not consider any request which may indirectly touch upon issues involved in a pending appeal. *In re Sullivan Central Plaza I, Ltd.*, 935 F.2d 723, 727 (5<sup>th</sup> Cir. 1991). Here, the issue of finality of the Confirmation Order and the effective date of the Plan are not issues involved in the appeal. Those issues were pertinent to the stay pending appeal which was denied. The Confirmation Order is not stayed and, therefore, this Court has jurisdiction to take actions to enforce or effectuate its Order not inconsistent with the matters on appeal. *Alberti v. Klevenhagen*, 46 F.3d 1347, 1358 (5<sup>th</sup> Cir. 1995); *U.S. v. Revie*, 834 F.2d 1198, 1205 (5<sup>th</sup> Cir. 1987) (“Until the judgment has been properly stayed or superseded, the district court

may enforce it through contempt sanctions.”); *In re Whispering Pines Estate, Inc.*, 369 B.R. 752, 758 (1<sup>st</sup> Cir. BAP 2007).

8. The Indenture Trustee further cited *In re Southold Development Corp.*, 129 B.R. 18 (E.D.N.Y. 1991), for the proposition that this Court lacks jurisdiction. Although *Southold* has some facts in common with this case, and perhaps protects the Indenture Trustee from a Rule 9011 violation, it is easily distinguishable. In *Southold*, the plan provided for a stay until all appeals were exhausted. In this case, although the Plan contained a similar provision to that in *Southold*, the Confirmation Order modified or clarified that provision to allow the Plan to go effective immediately upon the lapse of any stay pending appeal. Moreover, contrary to the *Southold* case, paragraph 41 of the Confirmation Order allows the proponents of the Plan, prior to the Effective Date, to make “appropriate non-material, technical adjustments and modifications to the MRC/Marathon Plan without further notice or approval of the Bankruptcy Court.” Thus, even if this Court were without jurisdiction to interpret the “Effective Date” of the Plan, the proponents do not need an order of either the bankruptcy court or the appellate court to clarify what all the parties believed the Plan provided prior to the Indenture Trustee’s latest salvo.

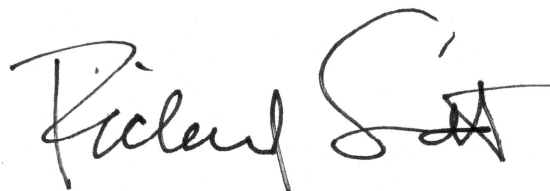
9. Both the MRC/Marathon Plan and the Confirmation Order direct the Debtors, the Estates, the Litigation Trusts, the Litigation Trust Boards, and the Litigation Trustees to take all necessary and appropriate steps and perform all necessary or appropriate acts to consummate the terms and conditions of the MRC/Marathon Plan. Absent a stay pending appeal, this Court, without question, retains jurisdiction to enforce the Confirmation Order. The Confirmation Order decrees that it is a “Final Order,” a defined

term. The parties are bound by the terms of this Order. Failure to abide by its terms risks contempt.

10. Finally, at the hearing of this matter the debtor Scotia stated that it would fulfill its obligations under the MRC/Marathon Plan. The Indenture Trustee also represented that it provided or would provide wiring instructions. Based on these representations, the relief requested by the Movants should be denied without prejudice. At the present time, the Confirmation Order is no longer stayed. If, pursuant to the Plan, the proponents want to establish an effective date, they should do so by the means set out in the Plan. If and when any party affirmatively refuses to act, the Court will take up enforcement requests.

It is so ORDERED.

Dated: 07/28/2008

A handwritten signature in black ink, appearing to read "Richard S. Schmidt". The signature is written in a cursive, somewhat stylized font.

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RICHARD S. SCHMIDT  
United States Bankruptcy Judge