

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE

In re	)	
	)	
PENKING TRUST	)	Case No. 94-20783
	)	Chapter 11
	)	
Debtor	)	

MEMORANDUM OPINION

This case came on for hearing on June 14, 1994, upon the motion to dismiss or, in the alternative, for relief from the automatic stay filed by Dollar Bank, Federal Savings Bank ("Dollar Bank") on June 6, 1994. As counsel for the petitioning creditors who initiated this involuntary Chapter 11 case requested an opportunity to brief the issues raised by Dollar Bank's motion to dismiss, the court took that portion of the motion under advisement. As to the remainder of Dollar Bank's motion directed to relief from the automatic stay, the court set a final hearing to be held, if necessary, on July 7, 1994. The court, now having considered the motion to dismiss, the arguments raised in the petitioning creditors' response to the motion filed June 13, 1994, the memorandum of petitioning creditors in opposition to the motion filed on June 24, 1994, and Dollar Bank's memorandum of law in reply filed June 28, 1994, agrees with Dollar Bank that the case should be dismissed.

I.

As background, the involuntary petition was filed by three of the debtor's creditors, Ominsky, Welsh & Steinberg, P.C., B.A. McKinley,<sup>1</sup> and Eric S. Weiss with Mintz, Rosenfeld & Co. on May 31, 1994. Copies of the summons and involuntary petition were served upon the debtor by U.S. mail on the same day. Because no response or motion was filed by Penking Trust in opposition to the involuntary petition, the court entered an order for relief on June 24, 1994, in accordance with 11 U.S.C. § 303(h) and Fed. R. Bankr. P. 1013(b).

Dollar Bank, a secured creditor of the debtor, holds first and second deeds of trust encumbering (1) certain real property consisting of approximately 10.778 acres owned by the debtor; and (2) a leasehold interest of the debtor in certain real property consisting of approximately 19.335 acres (collectively referred to as the "Kingsport Mall Property"). Dollar Bank also claims a security interest in the rents, issues and profits of the Kingsport Mall Property by virtue of an assignment of rents. Prior to the involuntary petition being filed, Dollar Bank instituted foreclosure proceedings against the Kingsport Mall Property and

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<sup>1</sup>At the hearing before this court on June 14, 1994, counsel for the petitioning creditors advised the court that Mr. McKinley had inadvertently signed the petition in his individual capacity. At that time, counsel tendered to the court for filing an amended petition, reflecting that rather than B.A. McKinley, individually, the correct creditor was "B.A. McKinley as Trustee of B.A. McKinley P.C. Money Purchase Pension Plan." See *Amended Petition* filed June 14, 1994. Counsel for Dollar Bank announced that Dollar Bank would not object to the amendment so that the court could proceed with ruling on its pending motion.

scheduled a foreclosure sale for May 31, 1994. Dollar Bank also sought and obtained pursuant to a May 16, 1994 order of the Chancery Court for Sullivan County, Tennessee, the appointment of a receiver<sup>2</sup> to collect the rents from the Kingsport Mall Property pending the foreclosure.

Five days prior to the scheduled foreclosure sale, the debtor petitioned the Sullivan County Chancery Court for an injunction enjoining the foreclosure sale, which request was denied by the court after an evidentiary hearing. Thereafter, on May 31, 1994, the petitioning creditors filed this involuntary Chapter 11 petition against the debtor which stayed the foreclosure sale scheduled for that same day.

As will be discussed in more detail below, the relationship between Dollar Bank and the debtor may be traced through three prior Chapter 11 bankruptcy cases, the first of which was filed by the previous owner of the Kingsport Mall Property, Kingtenn Realty Associates, Ltd. ("Kingtenn Realty") in New Jersey on June 7, 1991, (the "Kingtenn Realty Bankruptcy").<sup>3</sup>

At that time, Penking Trust was the largest creditor of Kingtenn Realty, holding a note in the amount of \$6.75 million which was secured by a wrap-around mortgage on the Kingsport Mall

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<sup>2</sup>On June 21, 1994, this court, upon the motion of Dollar Bank and without objection by the petitioning creditors or the debtor, entered an order authorizing the state court-appointed receiver to continue to collect and hold the rents from the Kingsport Mall Property and to pay ordinary operating expenses, and otherwise excusing the receiver from compliance with 11 U.S.C. § 543(a).

<sup>3</sup>*In re Kingtenn Realty Associates, Ltd.*, No. 91-12775JW, U.S. Bankruptcy Court for the District of New Jersey.

Property. The Kingtenn Realty Bankruptcy resulted in a confirmed plan proposed by Penking Trust and supported by Dollar Bank whereby the assets of Kingtenn Realty were transferred to Penking Trust in exchange for its assumption of Kingtenn Realty's obligations, including those owed to Dollar Bank. The second and third Chapter 11 cases,<sup>4</sup> were filed by Penking Trust ("*Penking Trust I*" and "*Penking Trust II*"), in the Eastern District of Pennsylvania, with both cases ending in dismissals upon the motions of Dollar Bank, one because Penking Trust was then ineligible for relief, and the most recent case being dismissed on March 10, 1994, for "bad faith" under 11 U.S.C. § 1112(b).

Dollar Bank argues in the pending motion to dismiss that the prior findings and determination by Judge Fox in the dismissal of *Penking Trust II* concerning the debtor's bad faith and inability to effectuate a plan are *res judicata* and binding upon the petitioning creditors. Dollar Bank further contends that the petitioning creditors are insiders or friends of the debtor and that this case should be dismissed because of the alleged bad faith of the debtor and the petitioning creditors in filing this involuntary case which "was in reality an attempt by the debtor to circumvent the prior dismissal." See *Memorandum of Law* by Dollar Bank at p. 10. In response, the petitioning creditors assert, *inter alia*, that the dismissal of *Penking Trust II* did not address the ability of other

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<sup>4</sup>The second bankruptcy case, *In re Penking Trust*, No. 93-13088F, and the third case, *In re Penking Trust*, No. 17500F, were commenced by Penking Trust on May 20, 1993, and on December 22, 1993, respectively. The cases were dismissed by respective orders entered November 22, 1993, and on March 10, 1994.

parties in interest, such as the petitioning creditors herein, to file and effectuate a plan as allowed by 11 U.S.C. § 1121(c), and "since the Bankruptcy Code places no specific prohibition on serial filings by the same debtor, these creditors cannot possibly be estopped by the dismissals in Pennsylvania from commencing their first case." See *Memorandum of Petitioning Creditors in Opposition to Motion to Dismiss* at p. 5. The petitioning creditors deny that they are insiders of the debtor and deny that the involuntary petition was filed at the urging of the debtor. They maintain that they have acted in good faith in seeking relief from this bankruptcy court. Because, as set forth below, this court concludes that the doctrine of *res judicata* bars this Chapter 11 proceeding, it will not be necessary for this court to consider the allegations regarding the good faith of the debtor and the petitioners in this case or the lack thereof.

## II.

The relevant facts in this case are not in dispute. Certified copies of the memorandum opinions and orders of Judge Fox in *Penking I* and *Penking II* regarding the dismissal of those cases were introduced into evidence by Dollar Bank at the hearing and establish the following:

1. In January 1970, various individuals borrowed \$3.7 million from an entity known as Frazier (or Fraser) Mortgage Investments, which was used to construct Kingsport Mall. The construction loan was secured by a first deed of trust on the Kingsport Mall

Property. In 1973, the loan and deed of trust were modified and assigned to Dollar Bank, and in 1974, the same individuals borrowed an additional \$200,000 from Dollar Bank, which was secured by a second deed of trust on the Kingsport Mall Property.

2. In the early 1980's, the Kingsport Mall Property was sold to Kingtenn Realty, a New Jersey limited partnership whose corporate general partner was G.A. David & Affiliates, Inc. Mr. George A. David, a real estate developer, was the controlling shareholder and officer of the general partner. The shopping mall was managed on Kingtenn Realty's behalf by Affiliated Management, Inc. ("AMI"), whose principal also is Mr. David.

3. Penking Trust was created by a trust agreement dated December 21, 1987, with the beneficiaries consisting of G.A. David<sup>5</sup> & Affiliates, Inc. Profit-Sharing Plan; Robert B. Turk, P.A. Profit-Sharing Plan; and B.A. McKinley, P.C. Pension Plan. These beneficiaries had been the owners of partnership interests of Penking Associates, Ltd., a New Jersey limited partnership, whose sole asset was a note in the amount of \$6.75 million payable from Kingtenn Realty, secured by a wrap-around mortgage on the Kingsport Mall Property. That partnership was dissolved upon the resignation of the general partner, and the limited partners thereafter transferred their interests in the asset to Penking Trust.

4. In June 1991, Kingtenn Realty filed a voluntary Chapter 11 petition in the U.S. Bankruptcy Court for the District of New

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<sup>5</sup>Mr. David is also the trustee and beneficiary of the G.A. David & Affiliates, Inc. Profit-Sharing Plan.

Jersey, which was quite possibly triggered by the default of Kingtenn Realty in the notes owed to Dollar Bank and in the deeds of trust secured thereby. The voluntary petition was authorized by Mr. David, acting through the corporate general partner.

5. Shortly after Kingtenn Realty filed for bankruptcy relief, Dollar Bank filed a motion to, *inter alia*, dismiss the case or terminate the stay. The motion was settled on terms later incorporated into a plan which was proposed by Penking Trust and supported by Dollar Bank. The plan which was confirmed by order of the court entered February 5, 1992, provided for the transfer of the Kingsport Mall Property to Penking Trust in exchange for its agreement to fund the plan and assume on a nonrecourse basis all the obligations of Kingtenn Realty, including those owed to Dollar Bank. The plan<sup>6</sup> further provided for payment in full of the Dollar Bank loans by December 31, 1993, to be accomplished by the selling or the refinancing of the Kingsport Mall Property. Prior to that time, Penking Trust was required to tender monthly interest payments only to Dollar Bank.

6. Kingsport Mall Property continued to be managed by AMI even after Penking Trust assumed ownership of the Kingsport Mall Property. Subsequent to the plan's confirmation, Penking Trust

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<sup>6</sup>The confirmed plan also stated that "[t]he court hereby retains exclusive jurisdiction of these proceedings (a) to consider any modification of the Plan after substantial consummation as defined in Section 1101(2) of the Code; (b) to hear and determine all Causes of Action and all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of the Plan . . . . The Kingtenn Realty Bankruptcy case was apparently closed on July 23, 1993.

began negotiations toward a sale or refinancing of the Kingsport Mall Property, but did not meet with success. In March 1993, Penking Trust ceased tendering the interest payments owed to Dollar Bank under the plan, because Penking Trust needed to use the rents generated from the tenants to maintain the property and, particularly, to pay for much needed roof repairs.

7. When Penking Trust ceased making the interest payments, Dollar Bank declined to forbear and, instead, exercised a rents assignment clause and notified the tenants of Kingsport Mall to pay all future rents to Dollar Bank. Rather than seeking relief from the bankruptcy court in New Jersey that had approved the plan in the Kingtenn Realty Bankruptcy, Penking Trust filed its own Chapter 11 bankruptcy case in Pennsylvania on May 20, 1993. This case was dismissed by order entered November 22, 1993, because Penking Trust was not a "business trust" within the meaning of the Code and was ineligible to file for bankruptcy.<sup>7</sup> Penking Trust then filed a notice of appeal.

8. Penking Trust was unable to obtain a stay pending appeal of the dismissal of *Penking Trust I*, so Dollar Bank once again sought to collect the rents from the tenants, and listed the Kingsport Mall Property for foreclosure sale. In turn, Penking

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<sup>7</sup>After the filing of *Penking Trust I*, and after the issue of eligibility of the debtor was raised, a second restated trust agreement, dated August 27, 1993, was executed by the two beneficiaries in an effort to make Penking Trust a "business trust" and eligible for bankruptcy relief. However, Judge Fox declined to evaluate the debtor's eligibility other than at the time of the commencement of the case, and left open the issue of whether the debtor could immediately file, in good faith, another Chapter 11 case upon dismissal.

Trust filed its second Chapter 11 case on December 22, 1993, and subsequently dismissed its appeal in the *Penking Trust I* case.

9. Dollar Bank sought to have *Penking Trust II* dismissed or converted upon the grounds, *inter alia*<sup>8</sup>, that the case was not filed in good faith since the debtor had no objective ability to reorganize because it could not modify the terms and status of the confirmed plan in the Kingtenn Realty Bankruptcy. Judge Fox, in a well researched and reasoned opinion, acknowledged that some courts consider any attempt to modify a confirmed and substantially consummated<sup>9</sup> Chapter 11 plan in a successive Chapter 11 case, thereby circumventing 11 U.S.C. § 1127 (b),<sup>10</sup> as being in bad faith.<sup>11</sup> He also discussed the other line of cases wherein courts have allowed a modification of a previously confirmed and substantially consummated Chapter 11 plan in a successive Chapter 11 case where it is demonstrated that there has been a material unanticipated change in circumstances which both justifies the debtor's default under the first plan and makes reorganization

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<sup>8</sup>The issue of the eligibility of the debtor was not raised in *Penking Trust II*.

<sup>9</sup>There was no doubt that the confirmed plan in the Kingtenn Realty Bankruptcy case had been substantially consummated.

<sup>10</sup>11 U.S.C. § 1127(b) only allows a modification of a confirmed Chapter 11 plan before substantial consummation of the plan.

<sup>11</sup>*See, e.g., In re Miller*, 122 B.R. 360, 366-67 (Bankr. N.D. Iowa 1990); *In re AT of Maine, Inc.*, 56 B.R. 55 (Bankr. D. Me. 1985); *In re Northampton, Corp.* 37 B.R. 110 (Bankr. E.D. Pa. 1984).

under a second plan likely.<sup>12</sup> Without having to determine whether Penking Trust's good faith in seeking Chapter 11 relief in *Penking Trust II* should be analyzed based on a strict interpretation of 11 U.S.C. § 1127(b) or based upon the unforeseen change in circumstances approach, Judge Fox concluded that *Penking Trust II* should be dismissed because even under the change in circumstances approach, the debtor could offer no evidence that the purported reasons for default under the confirmed plan were unforeseen at the time of confirmation.

In addition to the facts taken from the findings of Judge Fox in *Penking Trust I* and *Penking Trust II*, the court also has before it the original deposition transcripts of two of the petitioning creditors, attorney Lennard B. Steinberg with the Philadelphia law firm of Ominsky, Welsh & Steinberg, P.C., and of B.A. McKinley, the trustee for the B.A. McKinley, P.C. Money Purchase Pension Plan, which were filed on June 28, 1994, by Dollar Bank in support of its motion to dismiss. The deposition of Mr. Steinberg reveals that he and his firm have acted as counsel for entities related to Mr. David for some ten years or more, and that Mr. Steinberg socializes with Mr. David. In fact, Mr. Steinberg candidly admitted that it was he, who after having a conversation with Mr. David and learned of the pending foreclosure, contacted the other two creditors about filing the involuntary case. And although Mr. Steinberg denied

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<sup>12</sup>See, e.g., *Matter of Elmwood Development Co.*, 964 F.2d 508 (5th Cir. 1992), rehearing denied, 974 F.2d 1337 (5th Cir. 1992); *Matter of Mableton-Booper Associates*, 127 B.R. 941 (Bankr. N.D. Ga. 1991); *In re Casa Loma Associates*, 122 B.R. 814 (Bankr. N.D. Ga. 1991).

that Mr. David had suggested or prompted him to file the involuntary case, the facts are that he had never instituted an involuntary petition against a client before; that he is an attorney for several of Mr. David's entities and a social acquaintance of Mr. David; that his firm's claim came about as a result of work performed during the pendency of *Penking Trust I* and involved the attempts to change Penking Trust to a business trust in order to meet the eligibility requirements of a "debtor" under the Code; and that the amount of the claim asserted by him and his firm is relatively small, approximately \$3,000. Most important, however, is the fact that Mr. Steinberg's firm was listed as a creditor in *Penking Trust II*.<sup>13</sup>

Mr. McKinley also acknowledged that he was a longtime friend and business acquaintance of Mr. David and that he was "rooting" for him in his "fight" with Dollar Bank. Mr. McKinley, in fact, telephoned Mr. David after the hearing on motion to dismiss to inform him as to what had occurred at the hearing. Mr. McKinley further testified that he was a creditor in *Penking Trust II* and that he had received notice of the motion to dismiss and the hearing thereon in *Penking Trust II*. However, he stated that he chose not to object to Dollar Bank's previous motion to dismiss because he did not believe he would be paid anyway. The claim of

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<sup>13</sup>Mr. Steinberg did not remember receiving notice of the filing of *Penking Trust II*, but did not dispute the certificate of service which evidenced that his firm had been served. Mr. Steinberg explained that he was "fairly busy in my practice, and if I would have received a notice, I would have probably disregarded it." See *deposition transcript* at pp. 13-14.

B.A. McKinley, P.C. Money Purchase Pension Plan, which is approximately \$64,000, arose upon the sale of its beneficial interest in Penking Trust to the remaining beneficiaries of the trust in March 1990. See *deposition transcript* at pp. 20-22.

As to the remaining petitioning creditor, Mintz, Rosenfeld & Co., the certified copy of the *Statement of Financial Affairs* filed by the debtor in *Penking Trust II* shows that this creditor is the accounting firm for Penking Trust and has performed accounting functions for the debtor since 1981. The claim of Mintz, Rosenfeld & Co. was listed by the debtor in the *Penking Trust II* case as an unsecured claim in the amount of \$8,500. Further, a certified copy of the certificate of service of attorney Toby M. Daluz filed in *Penking Trust II* establishes that it was served with notice of the hearing of Dollar Bank's motion to dismiss in *Penking Trust II*.

### III.

The doctrine of *res judicata*, also known as claim preclusion, is applied by courts to promote the finality of judgments, which in turn increases certainty, discourages multiple litigation and conserves judicial resources. See *Sanders Confectionery Products, Inc. v. Heller Financial, Inc.*, 973 F.2d 474, 480 (6th Cir. 1992), *cert. denied*, 113 S.Ct. 1046 (1993), *rehearing denied*, 113 S.Ct. 1628 (1993). To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits. See *Montana v. United States*, 440 U.S. 147, 154, 99

S.Ct. 970, 974 (1979). In order to successfully assert the doctrine as a bar to an action, a party must establish the following:

1. The entry of a valid, final decision on the merits in a prior action by a court of competent jurisdiction;

2. The same parties, or their privies, are involved in the pending action as were involved in the prior action;

3. The pending action raises an issue actually litigated or which could and should have been litigated in the prior action; and

4. The pending and prior actions involve the same subject matter or cause of action.

*See Sanders Confectionery*, 973 F.2d at 480; *Newton v. Herskowitz (In re Gatlinburg Motel Enterprises, Ltd.)*, 106 B.R. 492, 496 (E.D. Tenn. 1989).

With respect to the first element, a final decision on the merits in the first action, the Sixth Circuit Court of Appeals has held that "[a] final judgment is one which disposes of the whole subject, gives all the relief that was contemplated, provides with reasonable completeness for giving effect to the judgment and leaves nothing to be done in the cause save superintend, ministerially, the execution of the decree." *In re Gatlinburg Motel Enterprises, Ltd.*, 106 B.R. at 496, quoting *City of Louisa v. Levi*, 140 F.2d 512, 514 (6th Cir. 1944).

It is clear in the present case that the dismissal decision as set forth in the order and accompanying memorandum entered by Judge Fox in *Penking Trust II* on March 10, 1994, is a valid, final

decision on the merits entered by a court of competent jurisdiction. The *Penking Trust II* court rendered its opinion after a full hearing on the merits of the issue of whether Penking Trust had the objective ability to reorganize due to the terms and status of the confirmed plan in the Kingtenn Realty Bankruptcy case. Accordingly, this first requirement has been met.

With respect to the second element, the involvement of the same parties, the petitioning creditors in this case admittedly were scheduled creditors in *Penking Trust II*. See *Response to Motion to Dismiss or, in the alternative, Relief of the Automatic Stay* at para. 3. Entities such as creditors and equity security holders in the debtor are considered "parties" for *res judicata* purposes. See *Sanders Confectionery*, 973 F.2d at 480. As creditors of Penking Trust, the petitioning creditors received notice of the bankruptcy filing of *Penking Trust II*, notice of the motion to dismiss or convert and the hearing on the motion. In fact, the petitioning creditors do not take issue with the general contention of Dollar Bank that they each had the opportunity to be heard on the motion to dismiss in *Penking Trust II*, but either ignored the proceeding or chose not to participate. Therefore, the requirement that the same parties be involved in both actions is satisfied.

The third element necessary for the application of *res judicata* is whether this action raises an issue which was actually litigated or which should have been litigated in the context of the *Penking Trust II* case. The petitioning creditors contend that

Judge Fox's decision dealt solely with the narrow issue of the debtor's ability to modify the terms of the confirmed plan in the Kingtenn Realty Bankruptcy case and that no consideration was given to the ability of other parties in interest such as unsecured creditors to file a plan modifying the agreement between Dollar Bank and Penking Trust. They argue that this court must give them as unsecured creditors the opportunity to seek relief from the bankruptcy court and that this court must determine afresh "what is in the best interests of all the creditors of the debtor?"

The petitioning creditors fail to address, however, why they did not raise these arguments in the *Penking Trust II* case. As stated above, they do not dispute that they knew that Dollar Bank had asked the court in *Penking Trust II* to dismiss or convert the case and that Dollar Bank was requesting this relief so it could foreclose on the Kingsport Mall Property. And as parties to the bankruptcy they had the right to be heard on the issue of whether this debtor could reorganize. In ruling on Dollar Bank's motion, Judge Fox thoroughly addressed the issue of whether the confirmed and substantially consummated plan in the Kingtenn Realty Bankruptcy case could be modified by the debtor. Had the petitioning creditors chosen to object to Dollar Bank's motion to dismiss or convert and asserted their argument that they should be allowed to propose a plan which would alter the obligations of Penking Trust *vis-a-vie* Dollar Bank, Judge Fox would have also had the opportunity to evaluate and determine that question as well. Thus, there is no doubt that this action raises an issue which

could have been litigated in the *Penking Trust II* case.

With respect to the question raised by the petitioning creditors that this court must consider what is in the best interest of all the Penking Trust creditors, this issue not only could have been litigated but may have actually been decided by Judge Fox in dismissing *Penking Trust II*. Dollar Bank's motion to dismiss or convert in that case was based on 11 U.S.C. § 1112(b) which provides that "on request of a party in interest . . . , the court may convert a case under this chapter to a case under Chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate," (emphasis supplied). Thus, inherent in the court's ruling dismissing rather than converting the Chapter 11 case was a finding that dismissal as opposed to conversion would be in the best interest of creditors. See *In re Superior Siding & Window, Inc.* 14 F.3d 240, 242-243 (4th Cir. 1994) (once cause is established, § 1112(b) requires a determination of whether dismissal or conversion is in the best interests of creditors and the estate); *In re Schriock Construction, Inc.*, \_\_\_ B.R. \_\_\_, 1994 WL 234527 (Bankr. D.N.D. 1994); *In re Great American Pyramid Joint Venture*, 144 B.R. 780, 791 (Bankr. W.D. Tenn. 1992) ("The choice of conversion or dismissal under §1112(b) must be based on a 'best interest of creditors and the estate' test.").

The fourth and final requirement for application of the *res judicata* doctrine is that the present and previous actions involve the same subject matter or cause of action. Although the present

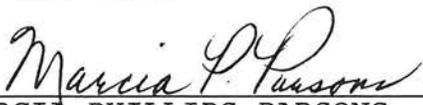
Chapter 11 case was instituted by an involuntary petition, and the previous case of *Penking Trust II* was commenced by the debtor voluntarily, both involve the same subject matter and facts, *i.e.*, modification of a confirmed and substantially consummated plan and the same cause of action, a Chapter 11 case with *Penking Trust* as the debtor. Accordingly, the last requirement has been met.

The court having found that all the elements for successfully establishing the doctrine of *res judicata* have been met, it is appropriate that this case be dismissed. By this ruling, the court does not intend to suggest that an unsuccessful Chapter 11 case can never be followed by an involuntary Chapter 11. However, it is clear to the court that under the facts of this case, if the petitioning creditors wanted to be heard on the issues of whether this debtor can reorganize and whether dismissal of the Chapter 11 was in their best interests, they could and should have raised their concerns in conjunction with Dollar Bank's motion to dismiss in *Penking Trust II* when Judge Fox was considering these issues less than four months ago. Because they chose to ignore or disregard that opportunity, the doctrine of *res judicata* precludes them from raising these issues again under the same facts.

An order dismissing the case will be entered in conjunction with the entry of this memorandum.

ENTER: July 6, 1994

BY THE COURT

  
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MARCIA PHILLIPS PARSONS  
United States Bankruptcy Judge