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

In re CAM-PLEK OF VIRGINIA IQ CONVERTING DIVISION, INC., d/b/a IQ PAPER, EIN #54-1023994, Debtor.	No. 96-21367 Chapter 11

M E M O R A N D U M

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

This chapter 11 case came before the court for hearing on July 27, 1999, upon the motion filed June 14, 1999, by Coronet Paper Products, Inc. ("Coronet") for entry of a final decree pursuant to its Second Amended Plan of Reorganization confirmed May 13, 1998, and Fed. R. Bankr. P. 3022. For the following reasons, the motion will be denied. This is a core proceeding. *See* 28 U.S.C. § 157(b)(2)(A).

I.

In support its motion, Coronet states the following:

> 1. The Plan was confirmed by Order entered May 13, 1998 and is now final.
>
> 2. There are no deposits required by the Plan for disbursement to creditors or other third parties.
>
> 3. The real and personal property proposed to be transferred to Coronet Paper Products of Tennessee, Inc. by the Debtor pursuant to the Plan has been transferred.
>
> 4. Coronet has assumed the management of the real and personal property transferred to it under the Plan.
>
> 5. Payments under the Plan have commenced.
>
> 6. All fees due the Office of the United States Trustee have been paid.

As its seventh and last basis for entry of final decree, Coronet states that "[t]here are no pending motions, contested matters or adversary proceedings, except" for the administrative

expense claims of Dean Greer and Andrew Quillen d/b/a Mid-Atlantic Paper, both of which are presently on appeal. Coronet notes that in conjunction with Coronet's appeal of this court's January 29, 1999, order granting Mr. Greer's administrative expense claim, Coronet tendered the sum of $2,109.16 to the registry of the Court. An April 7, 1999, agreed order provides that upon final resolution of the appeal, "the prevailing party may make application to the Court for payment of the monies tendered to the Clerk by Coronet." With respect to the administrative expense claim of Andrew Quillen d/b/a Mid-Atlantic Paper, this court entered an order on April 30, 1999, disallowing the claim, which order has been appealed by Mr. Quillen.

Coronet submits that entry of a final decree in this case is appropriate based on the foregoing and notes that once the matters on appeal are resolved, the case may be reopened to address any remaining issues. Although not stated in its motion, the obvious benefit to Coronet which will result from the entry of the final decree and closing of the case is that upon closing of the case, Coronet will no longer be responsible for the payment of quarterly U.S. trustee fees pursuant to 28 U.S.C. § 1930(a)(6). The U.S. trustee does not oppose the motion and no other party in interest appeared in opposition to

the motion.

II.

11 U.S.C. § 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Similarly, Fed. R. Bankr. P. 3022 provides that "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case." Although "fully administered" is not defined in either the Bankruptcy Code or the Rules, a 1991 Advisory Committee Note to Fed. R. Bankr. P. 3022 does offer some guidance.

> Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.
>
> The court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not

> deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code. For example, on motion of a party in interest, the court may reopen the case to revoke an order of confirmation procured by fraud under § 1144 of the Code. If the plan or confirmation order provides that the case shall remain open until a certain date or event because of the likelihood that the court's jurisdiction may be required for specific purposes prior thereto, the case should remain open until that date or event.

This court observes that the advisory committee notes indicate that one of the factors that a court should consider is "whether all motions, contested matters, and adversary proceedings have been finally resolved." In the present case all contested matters have not been "finally resolved" because two remain on appeal. In fact, in the only reported decision precisely on point which either the court or Coronet has been able to find, the court refused to enter a final decree over the U.S. trustee's objection because contested matters were pending on appeal. *See In re 1095 Commonwealth Ave. Corp*., 213 B.R. 794 (Bankr. D. Mass. 1997). The court observed that the quarterly fees paid by the debtor in that case effectively imposed a substantial cost on the exercise of its appellate rights, but concluded that the pending appeals prevented the case from being "fully administered" and, therefore, the court could not enter a final decree. *Id.* at 795.

In response to this decision, Coronet asserts that the advisory committee notes do not indicate that every factor listed for consideration by the court must be met, only that the factors serve as a mere guide in assisting the court. *See In re Mold Makers, Inc.*, 124 B.R. 766, 768 (Bankr. N.D. Ill. 1990). Coronet also asks that this court follow the line of cases which hold that a case is "fully administered" at the point of substantial consummation within the meaning of 11 U.S.C. § 1101(2). *See Walnut Assoc. v. Saidel*, 164 B.R. 487, 493 (E.D. Pa. 1994); *In re Jordan Mfg. Co.,* 138 B.R. 30, 34 n.1 (Bankr. C.D. Ill. 1992); *In re BankEast Corp*., 132 B.R. 665, 668 n.3 (Bankr. D.N.H. 1991). Under § 1101(2), "substantial consummation" means—

> (A) transfer of all or substantially all of the property proposed by the plan to be transferred;
> (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
> (C) commencement of distribution under the plan.

There appears to be no question that substantial consummation has occurred in this case.

Granted, the three factors which determine substantial consummation are also three of the factors which the 1991 Advisory Committee Note to Rule 3022 suggests that a court consider in determining whether an estate has been fully

administered. However, these three factors constitute only one-half of those to be considered. Accordingly, "[t]his Court will not automatically find cases to be fully administered just because they have reached the point of substantial consummation.". *In re Gates Community Chapel of Rochester, Inc*., 212 B.R. 220, 224 n.3 (Bankr. W.D.N.Y. 1997). As stated by one court, "[o]n the bankruptcy time line, substantial consummation occurs sometime after confirmation but before the entry of a final decree. The requirements of substantial consummation are fewer than those of full administration of a case." *In re Beechknoll Nursing Homes, Inc.*, 202 B.R. 260, 262 n.2 (Bankr. S.D. Ohio 1996). Furthermore, "the use of different language by Congress creates a presumption that it intended the terms to have different meanings." *Ground Sys. Inc. v. Albert (In re Ground Sys., Inc*.), 213 B.R. 1016, 1018 (B.A.P. 9th Cir. 1997)("We do not agree .... that the terms 'fully administered' and 'substantial consummation' are interchangeable."). *See also Matter of Wade*, 991 F.2d 402, 407 n.2 (7th Cir. 1992)("The concepts of full administration and substantial consummation seem to be, however, distinct rather than mutually defining."). Accordingly, in determining whether a final decree should be entered and a chapter 11 case closed, this court must consider more than whether the plan has been substantially consummated.

One court has observed that the bankruptcy court must ensure that no motions, contested matters or adversary proceedings remain to be decided before closing a chapter 11 case. *Ericson v. IDC Serv., Inc. (In re IDC Serv., Inc.*), 1998 WL 547085 at *3 (S.D.N.Y. Aug. 8, 1998). Another court has noted in *dicta* that "the existence of one relatively minor contested matter or adversary action taken up on appeal could prohibit the entry of a final decree for years." *In re Beechknoll Nursing Homes, Inc.*, 202 B.R. at 261 (citing *In re C n' B of Florida, Inc.*, 198 B.R. 836, 839 (Bankr. M.D. Fla. 1996)(If an appeal "is pending in either the District Court or the Court of Appeals, the Chapter 11 case cannot be technically closed and no Final Decree can be entered until the appeal is resolved.")(*dicta*)).

Because the entry of a final decree is basically an administrative step which allows the clerk's office to close the file, common sense suggests that a case should not be closed if there are matters left unresolved in the case. In the present case, the clerk of the court is awaiting court instruction as to the disposition of some $2,109.16 which was tendered to the court pending appeal of Dean Greer's administrative claim. Thus, this is not the retention of jurisdiction based on the "mere possibility" that the bankruptcy court's jurisdiction will be invoked in the future, but an actual controversy in

existence. *But see In re JMP-Newcor Int'l, Inc.*, 225 B.R. 462 (Bankr. N.D. Ill. 1998)(court concluded that case had been fully administered and should be closed where only matters remaining were an pending adversary proceeding and certain plan distributions).

Furthermore, the court observes that the 1991 Advisory Committee Note to Rule 3022 indicates that "[i]f the plan or confirmation order provides that the case shall remain open until a certain date or event ..., the case should remain open until that date or event." Coronet's confirmed plan provides that "[p]rior to Coronet filed [sic] a motion or application for a Final Decree pursuant to Bankruptcy Rule 3022, the following requirements must be satisfied: ... f. There are no pending motions, contested matters or adversary proceedings." Thus, even under the terms of Coronet's own plan, the final resolution of all contested matters is not just a factor to be considered by the court in determining full administration, but is instead a binding, absolute precondition to Coronet's request for entry of final decree. *See In re Ground Sys., Inc*., 213 B.R. at 1019-20 (chapter 11 debtor bound by plan provision that case remain open until all plan payments made, notwithstanding Code requirement that case close upon full administration); *In re Indian Creek L.P.*, 205 B.R. 609, 611 (Bankr. D. Ariz.

1997)("[T]he only preconditions to the entry of a final decree are those relating to the plan and/or the order of confirmation.").

III.

Based on the foregoing, Coronet's motion for entry of a final decree will be denied. An order will be entered contemporaneously with the filing of this memorandum opinion.

FILED: August 20, 1999

BY THE COURT

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE