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BANKRUPTCY - CALIFORNIA

In re City of San Bernardino California

United States Bankruptcy Court, C.D. California, Riverside Division - October 16, 2013 - B.R. - 2013 WL 5645560

A major creditor of the City of San Bernardino, the California Public Employee Retirement System (CalPERS), objected to the eligibility of the City to file a petition under chapter 9 of the Bankruptcy Code on the grounds that it did not desire to effect a plan of adjustment (§109(c)(4)) and did not file the petition in good faith (§921).

The court noted that is widely endorsed that “no bright-line test exists for determining whether a debtor desires to effect a plan because of the highly subjective nature of the inquiry under §109(c)(4).” So long as the evidence shows that the “purpose of the filing of the chapter 9 petition not simply be to buy time or evade creditors,” a bankruptcy court may properly find that the § 109(c)(4) requirement has been met.

The court concluded that the City took a number of actions of public record that objectively demonstrate that the City desired to effect a plan, including: presenting a budget report to city council; conducting open public meetings regarding the City’s financial future; voting to declare a fiscal emergency; preparing a cash flow analysis; preparing a fiscal emergency plan; and approving a pre-pendency plan. These uncontroverted facts sufficiently show that after taking steps to cut costs and raise revenue, the City – faced with a 45.9 million dollar cash deficit – had little choice but to restructure its debt.

Section 921(c) provides that a court may dismiss a chapter 9 petition if the debtor did not file the petition in good faith. Unlike the eligibility requirements of §109(c), the court’s power to dismiss a petition under §921(c) is permissive, not mandatory. As in many other considerations of good faith in the context of bankruptcy, the test is a totality of the circumstances where the Court is given the power to weigh the numerous factors in light of the circumstances as a whole in determining whether good faith is lacking. In this case, the court concluded that the City had met its burden by a preponderance of the evidence and shown that its chapter 9 petition was filed in good faith

“The purposes of chapter 9 are met by this proceeding. The integrity of the bankruptcy system is not offended by this proceeding. The City, its citizens, and its creditors deserve a chance to achieve an orderly financial future. The Court finds the City of San Bernardino eligible to proceed in its chapter 9 case.”