UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

IN RE:	)	CHAPTER 11
	)	CASE NO. 06-70145-JDW
FIRSTLINE CORPORATION,	)	
	)	
DEBTOR.	)	

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Official Committee of Unsecured Creditors	Michael D. Langford Kilpatrick Stockton 1100 Peachtree Street NE, Suite 2800 Atlanta, Georgia 30309
For Wells Fargo Bank	David B. Kurzweil Greenburg Traurig Suite 400, The Forum 3290 Northside Parkway Atlanta, Georgia 30327

MEMORANDUM OPINION

This matter comes before the Court on the Official Committee of Unsecured Creditors' motion to appoint a trustee. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(A). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

Debtor, FirstLine Corporation, filed a Chapter 11 petition on March 6, 2006. Its sole shareholder, director, and CEO is Donald Murphy.

On the petition date, Debtor hired Glass Ratner Advisory and Capital Group, LLC as its chief restructuring officer. Thomas Santoro, the senior managing director of Glass Ratner, worked directly with Debtor. Under an engagement agreement, his duties included hiring and firing employees, cash management, and ensuring compliance with the DIP financing agreement.

The DIP financing was provided by Wells Fargo Bank. Pursuant to the DIP loan documents, Debtor was required to comply with a number of financial covenants and "milestone" covenants. The financial covenants related to cash collections, sales, line item cash expenditures, and total disbursements. The milestone covenants required that certain events take place by certain deadlines, including filing a motion to approve bid procedures, court approval of bid procedures, and filing a motion to sell. Failure to comply with any covenant was an event of default.

The Official Committee of Unsecured Creditors filed a motion to appoint a Trustee.

The Court held a hearing on the motion on May 24, 2006. At the hearing, the Committee offered evidence to demonstrate that Debtor's principal, Mr. Murphy, engaged in behavior that frustrated efforts to move the Chapter 11 case forward.

Mr. Santoro testified that Mr. Murphy did not allow him to carry out his duties. His recommendations were ignored and his instructions vetoed. For example, on the first day of his employment, Mr. Santoro proposed a key employee retention program to provide some stability for salaried employees. Mr. Santoro raised the issue again after several key employees–including a plant manager and both controllers–resigned. Even though the idea had the support of Wells Fargo, Mr. Murphy refused to implement it. By refusing to permit Mr. Santoro to use the company e-mail system, Mr. Murphy also restricted Mr. Santoro's ability to simply communicate with the employees in an effort to relieve the anxiety created by the bankruptcy filing and to improve morale.

In addition, Debtor failed to comply with both milestone and financial covenants under the DIP financing agreement. First, Debtor was required to file a motion for approval of bid procedures by April 19, 2006. It failed to meet the deadline, and Wells Fargo granted an extension under April 26, 2006. However, the motion was not filed until April 28, 2006, and Debtor ultimately objected to its own motion.

With regard to the financial covenants, Debtor defaulted on the provision relating to cash collections. Debtor was required to achieve at least 85% in actual collections of the amount budgeted for the corresponding two-week period. It failed to do so for the period of April 17 to April 28, 2006. Mr. Santoro was required to submit a certification to Wells Fargo every Monday indicating whether or not Debtor was in compliance with all the

covenants. He certified that Debtor was in default. Subsequently, Wells Fargo sent a notice of default to Debtor and a notice of its intent to reduce the inventory advance rate from 48% to 38%.

The inventory advance rate establishes the amount of money Debtor can borrow. The original rate was set at 48% of the value of Debtor's inventory. Upon default, Wells Fargo began reducing the rate by 2% each week, with the final reduction to occur on June 6, 2006. Each 2% reduction represented a reduction of approximately $170,000 in the amount available to borrow. Under such circumstances, Mr. Santoro testified that Debtor would not be able to operate for more than two or three weeks.

Mr. Santoro also testified that Mr. Murphy refused to fully fund a court-ordered reserve to pay professional fees. Debtor was required to make monthly deposits to the reserve. For example, it was required to pay $25,000 for Glass Ratner's fees for the first 8 weeks, and $20,000 per week thereafter. Mr. Santoro instructed the appropriate employees to make the payments, but Mr. Murphy countermanded those instructions. He never allowed timely payments, and reduced the deposit amounts to match billing invoices provided by Glass Ratner. Mr. Santoro explained to Mr. Murphy that the professionals were not entitled to money deposited in the reserve until they obtain court approval for their fees, and Debtor could object to the fee requests. Nevertheless, Mr. Murphy refused to fully fund the reserve.

Debtor's only opposition to the motion to appoint a trustee came from Mr. Murphy's testimony. Mr. Murphy provided little in the way of facts to contradict the testimony of Mr. Santoro. On the contrary, Mr. Murphy testified that Wells Fargo refused to return to the

financing terms as they existed prior to default unless Mr. Murphy was replaced with a Trustee. Mr. Murphy could not explain how Debtor would continue to operate if the original terms were not reinstated. The remainder of Mr. Murphy's testimony was comprised of statements regarding his dedication to Debtor and what amounted to accusations of collusion between Wells Fargo and Glass Ratner to plunder his company.

After considering the evidence, the Court granted the motion to appoint a Trustee in open court and now supplements that Order with this Memorandum Opinion.

Conclusions of Law

The Bankruptcy Code provides for the appointment of a Chapter 11 Trustee in the following circumstances:

> (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor;
>
> (2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number or holders of securities of the debtor or the amount of assets of liabilities of the debtor; or
>
> (3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1104(a).

In this case, Mr. Murphy has continuously obstructed efforts to proceed with the Chapter 11 case he chose to file in this court. He has countermanded the instructions and recommendations of the CRO, and he has interfered with the CRO's ability to manage Debtor's finances, to manage communications, to hire and fire employees, and to formulate

and implement a financial stabilization plan. In addition, without the appointment of a Trustee, the lender is unwilling to return to the favorable financing terms that will enable Debtor to continue operating beyond the next two weeks. Based on these facts, the Court finds that it is in the interest of the creditors and the estate to appoint a Trustee.

An Order in accordance with this Opinion has been entered on May 24, 2006.

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