

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
NORTHWESTERN CORPORATION,)	Case No. 03-12872 (CGC)
)	
Debtor.)	
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MEMORANDUM DECISION

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CASE, J.

Before the Court is the McGreevey Class Action Claimants' ("Class") Motion For an Order Granting Relief from the Automatic Stay to Commence an Adversary Proceeding Relating to Assets Upstreamed to the Debtor by Clark Fork and BlackFoot, LLC (the "Motion") (Docket No. 1163). NorthWestern Corporation filed an objection to the Motion which was joined by the Official Committee of Unsecured Creditors. After considering all relevant pleadings, oral argument heard on May 17, 2003, and for the reasons set forth below, the Motion is granted.

BACKGROUND

On September 14, 2003 (the "Petition Date"), the Debtor filed a voluntary petition for relief under title 11 of the Bankruptcy Code. Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its properties as debtor-in-possession.

The Debtor filed its initial disclosure statement and plan of reorganization on March 11, 2004. Numerous objections were filed by parties in interest. The Debtor filed an amended disclosure statement and a first amended plan of reorganization on May 14, 2004 and May 17, 2004, respectfully. After the hearing held on May, 17, 2004, the Court entered an Order on May 26, 2004 approving the Debtor's first amended disclosure statement. The confirmation hearing is currently scheduled for August 25, 2004.

By order dated October 10, 2003, the Court established January 15, 2004 (the "Bar Date") as the deadline for creditors to file proofs of claims with respect to claims that arose prior to the commencement of the bankruptcy case. On January 14, 2004, the McGreevey Claimants filed two proofs of claims (Claim Nos. 691 and 744).

Prior to the Petition Date, on or about August 16, 2002, the McGreevey Claimants filed an action against the Montana Power Company, pending in the Montana State Court.¹ The McGreevey class is a certified class of over 100,000 former shareholders of the former Montana Power Company. The Class asserts claims against the Montana Power Company that arise out of that company's sale of substantially all of its assets without shareholder approval. The basic structure of the transaction has been described in this Court's Memorandum Decision denying Comanche Park's motion for relief from stay of even date, and will not be repeated here.

JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(A) and (G).

DISCUSSION

Although 11 U.S.C. § 362(a) provides for an automatic stay of the commencement of an adversary proceeding against a debtor, the Bankruptcy Code provides that a party may seek relief from stay in certain circumstances. In relevant part § 362(d) states that:

on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay --- (1) for cause . . .

11 U.S.C. § 362(d)(1).

McGreevey argues that cause exists to allow the Class to file an adversary proceeding for determination of the equitable interests in the Montana utility property on the grounds that it is a necessary prerequisite to any plan of reorganization or confirmation, and should be resolved in

¹ McCreevey, et al. v. Montana Power Company, et al., No. DV 01-141, Montana Second Judicial District Court.

the bankruptcy. In addition, McGreevey argues that the Debtor and/or any party in interest would not be prejudiced by such an adversary proceeding.

Unlike Comanche, the McGreevey class expressly asserted a fraudulent conveyance claim in its proof of claim. McGreevey further asserts that, pursuant to stipulation in the Montana State Court, it specifically preserved its right to assert a fraudulent conveyance claim at a later time. If that were the end of the analysis, then the McGreevey class would be entitled to stay relief just as Magten was. However, this Motion has a somewhat different twist. The Debtor asserts that, by virtue of an order entered in the state court litigation (pursuant to the stipulation referenced above) the McGreevey class is left only with an unsecured claim against NorthWestern and is barred from asserting a fraudulent conveyance claim that would return the assets to Clark Fork.

Both the stipulation, relied upon by McGreevey class, and the order, relied upon by NorthWestern, were entered in the Montana State Court litigation as a result of a motion by NorthWestern to be added an additional party defendant. The McGreevey class objected to the motion; following negotiations, NorthWestern filed a "Substitute Motion" which contained numerous stipulations and representations to the Court as part of the agreement of McGreevey class to withdraw its objection. Among the key provisions of the Substitute Motion are the following:

1. NorthWestern's stipulation and representation that it will be responsible for any judgment which might be entered in the proceedings against Clark Fork to the extent that Clark Fork might not have sufficient assets to satisfy such judgment;

2. NorthWestern's stipulation that it had no present plans to spin off, merge or reorganize any of the utility business assets which are to be transferred from Clark Fork to NorthWestern as part of the "going flat" transaction;
3. NorthWestern's representation that it would not pledge, incur a security interest, lien, or assume additional indebtedness except as specifically set forth in the Substitute Motion;
4. NorthWestern's stipulation and representation that it will not take any action intentionally designed to frustrate the ability of the McGreevey plaintiffs to obtain the utility business assets if there is a judgment entered in the pending state court case;
5. And finally, the stipulation by NorthWestern and Clark Fork that the McGreevey plaintiffs retained all rights and remedies to thereafter challenge the transfer of assets from Clark Fork as a fraudulent transfer.

The Substitute Motion was filed November 15, 2002. On the same day, the "Order Adding NorthWestern Corporation as an Additional Party Defendant" was signed by the Montana District Court Judge. That order did not specifically recite, reference, or incorporate the stipulations and representations contained in the substitute motion. It did, however, contain the following language: "That as stipulated and agreed to by Northwestern Corporation, Northwestern Corporation shall be responsible for any judgment which might be entered in these proceedings against NorthWestern Energy, LLC to the extent that NorthWestern Energy, LLC might not have sufficient assets to satisfy such a judgment."

The McGreevey class asserts that, as a result of the Substitute Motion, NorthWestern specifically agreed that it retained the right to pursue the fraudulent conveyance case for which it

is now seeking relief from stay. Further, the McGreevey class asserts that it has an additional claim based upon NorthWestern's violations of the stipulations and representations made in the Substitute Motion. NorthWestern, on the other hand, asserts that, as a result of the order, all that the McGreevey class has now is an unsecured claim against NorthWestern. In effect, NorthWestern argues that any separate claims that the McGreevey class may have had, including the right to bring a fraudulent conveyance claim, have been merged into a general claim against NorthWestern which can, and should, be resolved through the claims objection process, rather than through the proposed separate adversary proceeding.

NorthWestern's arguments on this point are too clever, by far. Its reading of the order would eviscerate the specifically negotiated stipulations and representations in the Substitute Motion. The fact that the order only references one of the stipulations - that is that NorthWestern would be responsible itself for any judgment amount - does not render the other stipulations nullities. This Court's reading of the Montana State Court documents is that the stipulations and representations made by NorthWestern are an essential part and predicate of the order allowing NorthWestern to be added as a party defendant. As such, they survive and may be relied upon by the McGreevey class.

CONCLUSION

For the foregoing reasons, the Court will grant the McGreevey Motion. Counsel for the McGreevey class is to submit a form of order.



Charles G. Case
United States Bankruptcy Judge