IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
SLI, INC., *et al.*,	)	Case No. 02-12608 (WS)
	)	Jointly Administered
Reorganized Debtors.	)	
	)	**Re: Docket No. 1113**

OPINION DENYING MOTION OF THE REORGANIZED DEBTORS FOR FINAL DECREE CLOSING CERTAIN CASES OF THE REORGANIZED DEBTORS[1]

Before the Court is the motion of the Reorganized Debtors for Final Decree Closing seven of their eight jointly administered cases [Docket No. 1113] (the "Motion"). For the reasons set forth below, the Motion will be denied.

FACTS

These are eight jointly administered chapter 11 cases, commenced on September 9, 2002, whose plans were confirmed under a Second Amended Joint Chapter 11 Plan of Reorganization (the "Confirmation Order") that became effective on June 30, 2003.

Under the confirmed plan, litigation rights, including the right to pursue preference actions, were vested in a Litigation Trust. Between and among the Litigation Trust and the Plan Administrator or Disbursing Agent, preference and avoidance actions are to be brought, resolved, administered, and any recovered proceeds received as a result of preference avoidance actions have been, and will continue to be, paid by those parties and through the estates, and not the Debtors. The only remaining litigation is (1) a preference action against Sylvania Osram, Inc. ("Osram") and (2) Osram's appeal on various grounds to the Third Circuit Court of Appeals of the Confirmation Order. Final briefs in that matter have been submitted to the Court of

[1] This Memorandum Opinion constitutes the Court's findings of fact and opinions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

Appeals, but oral argument, if there is to be any, has not yet been set. That appeal is from an order of the District Court dismissing on equitable mootness grounds Osram's appeal of the Confirmation Order. It apparently is the case that Osram has not sought any stays pending those appeals.

Other than what might arguably result in respect to such matters from an overturning of the Confirmation Order by the Court of Appeals, Osram does not dispute the Debtors' assertions that: (a) as of now all claims filed against the Debtors' estates have been resolved; (b) distributions to be effected and property to be transferred under the plan have been made or have occurred; (c) Debtors have fully paid or commenced paying administrative and priority claims and payments under the plan; and (d) Debtors have long since assumed management and operation of the reorganized business.

If the Motion is not granted, fees payable by the Debtors to the United States Trustee ("UST") will accrue at the rate of an estimated $5,000 per calendar quarter.

ANALYSIS

Section 350(a) of the Bankruptcy Code[2] provides: "After an estate is *fully administered* and the court has discharged the trustee, the court shall close the case." 11 U.S.C. § 350(a) (emphasis added). Federal Rule of Bankruptcy Procedure 3022 provides: "After 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." Fed. R. Bankr. P. 3022 (emphasis added).

[2] Unless otherwise indicated, all citations to statutory sections are to the Bankruptcy Code (the "Code"), 11 U.S.C. § 101 *et seq.*

Neither the Bankruptcy Code nor the Bankruptcy Rules define the term "fully administered." However, the Advisory Committee Note (1991) to Bankruptcy Rule 3022 states:

> 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.

Fed. R. Bankr. P. 3022, Advisory Committee Notes (1991).

Courts tend to use the above stated factors in determining whether a case has been "fully administered." In the end, however, these factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before the case is closed. *See In re Mold Makers, Inc.*, 124 B.R. 766, 768-69 (Bankr. N.D. Ill. 1991). Of the six noted factors, only two are relevant here, the others having been satisfied.

The last listed factor relates to the preference action against Osram. Its pendency, however, does not militate in favor of keeping the case open because, as noted, the action is being pursued and will be disposed of, and any funds received disbursed, by a combination of the Liquidating Trustee and the Plan Administrator, all essentially acting independently of the Reorganized Debtors. The administration of the bankruptcy case itself is not really implicated by that preference action, and thus its pendency provides no basis for keeping these cases open.

What remains is the appeal of the Confirmation Order, and specifically, whether or not its pendency is enough to keep the case open. In this Court's opinion, it is. As noted in *Mold Makers*, *supra*: "[T]he heart of a Chapter 11 case is the proposal, approval, and confirmation of a plan." *Id.* at 767. No extensive citation of authority is needed for that truism. However, one

may evaluate the chances or likelihood that the Confirmation Order might yet be reversed or remanded as a result of that pending appeal, it is the fact of the appeal and the nature of the issues involved that raises the weight to be accorded this factor to one of overriding preeminence. With the finality of the Confirmation Order still in play (as opposed to the other less important matters), one simply cannot conclude, even in the face of the satisfaction of all of the other noted factors, that a case can be considered as having been "fully administered."

Rule 5009-1 of the Local Rules for this District (the "Local Rules") addresses the matter of entry of a final decree closing a chapter 11 case. Insofar as is relevant to the Motion, that Local Rule provides that debtors can seek a final decree after substantial consummation, provided that all fees due under 28 U.S.C. section 1930 have been paid. This does not mean that it is appropriate to close the case upon "substantial consummation." If it did, it would conflict with the statutory and national rule requirement that the case be "fully administered," given that those two phrases are not substantively synonymous. Read properly, the Local Rule merely sets the earliest date after which a motion for a final decree (the issuance of which is governed by the statute and national rule) can be filed. In fact, Debtors do not here argue otherwise.

Movants candidly acknowledged that the principle motivation in seeking to close the cases is to terminate liability for fees payable to the UST, such fees being no longer payable after a case is closed. Like any other expense of doing business, ways of avoiding expenditures are properly the subject of prudent management review and action where appropriate. Saving that particular expense, however, is more a result of a full administration of a bankruptcy case than it is a basis for determining whether or not such has occurred. Furthermore, in the context of Debtors' multimillion dollar business, the amount (an estimated $5,000 per quarter) is relatively

insignificant.

Movants' also argue that nothing is lost by closing the case now because under section 350(b) and Federal Rule of Bankruptcy Procedure 5010 the cases can be reopened in the event the Court of Appeals reverses or remands the Confirmation Order. While that is true, reopening requires a motion by an interested party with an opportunity to respond and object (possibly bringing into play the equitable mootness issue raised and decided in the District Court), an issue that the appellate court may or may not deal with. It is best not to precipitate those issues prior to the time that the Court of Appeals makes its decision. The ramifications of the appellate court decision should be before the Court before these cases are closed. What would also be avoided is any possible effect of the closing of the cases on the issues before the Court of Appeals. Finally, if relevant, one can easily predict that the costs of reopening the case and dealing with any objections thereto might easily exceed the amounts of UST fees that would be saved by closing the case now.

For the foregoing reasons the Motion is denied.

Dated: June 24, 2005

Honorable Walter Shapero
United States Bankruptcy Judge

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FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
SLI, INC., *et al.*,	)	Case No. 02-12608 (WS)
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ORDER DENYING MOTION OF THE REORGANIZED DEBTORS FOR FINAL DECREE CLOSING CERTAIN CASES OF THE REORGANIZED DEBTORS

For the reasons set forth in the Court's Memorandum Opinion of this date, the Motion of the Reorganized Debtors for Final Decree Closing Certain Cases of the Reorganized Debtors [Docket No. 1113] is DENIED.

Date: June 24, 2005

Honorable Walter Shapero
United States Bankruptcy Judge