UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

In Re:

ZAREMBA GROUP, L.L.C.,	Case No. 18-21887-dob
	Chapter 11
Debtor.	Hon. Daniel S. Opperman

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ENCANA OIL & GAS (USA), INC.'S BRIEF
IN SUPPORT OF ITS MOTION TO DISMISS FOR BAD FAITH FILING

INTRODUCTION

The Debtor in this action, Zaremba Group, LLC ("Debtor"), has filed this petition for bankruptcy in bad faith, for the improper purpose of preventing creditor Encana Oil & Gas (USA) Inc. ("Encana") from collecting on its $1.8 million judgment entered on July 13, 2018. In the months leading up to its bankruptcy filing, and while the underlying case was pending on appeal, the Debtor sought to place its assets outside of Encana's reach and began winding down the business. The Debtor transferred all or substantially all of its assets outside of the company. However, in divesting itself of its assets, the Debtor "overlooked" a certificate of deposit account held in its name at Chemical Bank. Encana subsequently garnished $368,633.56 from this account. Days later, and in a desperate attempt to prevent these funds from being paid toward satisfaction of the Judgment, the Debtor filed its Chapter 11 petition for bankruptcy, initiating these proceedings.

The Debtor's bankruptcy petition was not filed for the purpose of reorganizing. There is virtually no possibility of reorganization and there is no ongoing business to reorganize. The Debtor's motivation in filing its Chapter 11 petition was to avoid payment to Encana. Since this Chapter 11 bankruptcy case was initiated in bad faith, the case should be dismissed, or, in the alternative, converted into a Chapter 7 bankruptcy case by which the estate may be properly administered.

STATEMENT OF FACTS

A. The Underlying Lawsuit and Subsequent Judgment

The Zaremba family held mineral rights to a large amount of drillable land in Michigan, through entities owned by members of the family,[1] including the Debtor in this case. Encana is an energy producer that transports and markets natural gas and oil. On June 29, 2010, a Letter of Intent ("LOI") was executed between Encana and the Debtor, Zaremba Family Farms, LLC ("ZFF"), and Walter Zaremba that expressed their interest in negotiating a future agreement for the leasing of mineral rights. Encana paid a $2,000,000.00 earnest money deposit in order to protect the deal while negotiations continued. In the event that a final agreement was not reached, the Debtor, ZFF, and Walter Zaremba were obligated to return ninety percent of the earnest money. Ultimately, the deal fell through, and no subsequent

[1] Many of the business entities are owned by Walter Zaremba's wife, Yvonne Zaremba, and their children.

agreement was ever reached. Despite this, the Debtor, ZFF, and Walter Zaremba refused to return the $1.8 million, claiming that Encana had waived its right to recoup the entire earnest money deposit.

In June 2012, Encana filed the underlying breach of contract action in the United States District Court for the Western District of Michigan (the "District Court"), against the Debtor, ZFF, and Walter Zaremba. The Debtor, ZFF, and Walter Zaremba filed counter-claims, alleging fraud and antitrust violations. After several years of litigation, only Encana's breach of contract claim and the fraud claim went to trial.

At trial, the Debtor, ZFF, and Walter Zaremba admitted that they had refused to return the $1.8 million, thereby failing to comply with the terms of the LOI. *See Encana Oil & Gas (USA) Inc v Zaremba Family Farms, Inc*., 736 F. App'x 557, 564 (6th Cir., 2018). Instead, they mounted a waiver defense. At the conclusion of the trial, the jury determined that the Debtor, ZFF, and Walter Zaremba had failed to prove their fraud claim, and that, although Encana had proven that they breached the contract Encana had waived its right to recoup the $1.8 million. Encana moved for judgment as a matter of law on its breach of contract claims, which the District Court denied, and Encana subsequently filed its appeal in July 2016.

On appeal, the Sixth Circuit reversed the District Court's denial of Encana's motion for judgment as a matter of law on its breach of contract claim, finding no

valid waiver. *Encana Oil & Gas (USA) Inc v Zaremba Family Farms, Inc.*, 736 F. App'x at 565-67 (6th Cir. 2018). The Sixth Circuit concluded that the "district court should have granted Encana's motion for judgment as a matter of law," and remanded the case "with instructions to enter judgment for Encana." *Id*. at 566, 568.

After the Debtor, ZFF, and Walter Zaremba's motion for rehearing was denied, the District Court entered its judgment on July 13, 2018 in favor of Encana, ordering the Debtor, ZFF, and Walter Zaremba to pay (or "return") $1.8 million. (**Exhibit 6-1**, *Judgment*).

B. The Debtor and ZFF Attempt to Amend the Judgment

On August 6, 2018, the Debtor and ZFF filed their motion requesting that the District Court amend its Judgment so that it is enforceable against Walter Zaremba only, in his individual capacity.[2] (See **Exhibit 6-2**, *Defendants' Motion to Amend the Judgment*). The crux of the Motion to Amend the Judgment was that the Judgment was made in error because the earnest money was deposited into the personal account of Walter Zaremba and, therefore, only Walter Zaremba can "return" the $1.8 million to Encana. The Debtor and ZFF asserted this defense only after the Sixth Circuit had ruled, in May of 2018. The Debtor and ZFF never sought

[2] Since entry of the Judgment, Walter Zaremba has represented, through counsel, that he is uncollectible.

a stay of proceedings as to enforcement of the Judgment, pending the disposition of their tenuous motion.

C. Encana's Efforts to Collect on the Judgment

While the Motion to Amend was pending, Encana began to conduct post-judgment discovery from the Debtor, ZFF, and Walter Zaremba. To this end, on September 7, 2018, Encana served subpoenas and notices of debtor's examinations upon the Defendants, pursuant to Federal Rule of Civil Procedure 69(a)(2). (See **Exhibit 6-3**, *Document Subpoenas*). The Document Subpoenas issued to the Debtor, ZFF, and Walter Zaremba required they produce documents relating to their assets and liabilities from January 1, 2012 to present. *Id*.

In response, the Debtor, ZFF and Walter Zaremba filed a number of baseless objections. (See **Exhibit 6-4**, *Defendants' Objections*). After exhaustive attempts to resolve this issue, the only documents produced in the District Court litigation are the tax returns filed on behalf of Defendants Walter Zaremba and ZFF from 2015 to present.[3] Encana has also sought to secure deposition dates for Walter Zaremba and ZFF, to no avail.

[3] On November 16, 2018, Encana filed a motion to compel Defendants Walter Zaremba and Zaremba Family Farms, Inc.'s production of documents responsive to its September 7, 2018, subpoena. The motion to compel is currently before Judge Maloney in the District Court litigation.

D. Encana's Garnishment of Debtor's Account Prompts This Bankruptcy Filing

On September 25, 2018, Encana garnished $368,633.56 from a bank account owned by the Debtor. (**Exhibit 6-5**, *Garnishee Disclosure*). Days after the garnishment disclosure was received, however, and in a desperate attempt to prevent these funds being paid toward satisfaction of the Judgment while the Motion to Amend was pending, the Debtor filed its Chapter 11 petition for bankruptcy. (**Exhibit 6-6**, *Notice of Bankruptcy Filing*; **Exhibit 6-7**, *341 Hearing Trans*., p. 16:14-17).

With its petition, the Debtor filed its list of 20 largest unsecured creditors, which consists only of the following: (1) Encana, with its claim of $1.8 million; (2) Howard & Howard PLLC, with a claim of $14,633.00; and (3) Sitz Tax, with a claim of $22,761.75. (**Exhibit 6-8**, *Form 204*). Collectively, the claims of the Debtor's unsecured creditors other than Encana amounts to $37,394.75. The single deposit account of the Debtor's that was garnished could have paid these other unsecured creditors many times over, which strongly suggests that this Chapter 11 proceeding is simply a two-party dispute between the Debtor and Encana.

Following the Debtor's bankruptcy filing, the parties initially discussed the possibility of settlement. (**Exhibit 5**, *Affidavit of Kenneth Beams*). However, in order for Encana to obtain a more accurate picture of the Debtor's finances, Encana requested the Debtor first produce financial documents before productive settlement

discussions could occur. (*Id*.). Other than the Debtor's two most recent tax returns, its Statement of Financial Affairs, and its Schedules, no financial documents have been produced. (*Id*.). Additionally, in the two months since the bankruptcy was filed, counsel for Encana has reached out to the Debtor's counsel on several occasions concerning the status of these documents as well as settlement proposals, to no avail. (*Id*.). In fact, to date, Debtor has not proposed a single settlement offer to Encana. (*Id*.).

On October 26, 2018, the District Court ruled on the ZFF's Motion to Amend the Judgment,[4] and entered a Partial Amended Judgment, specifically providing that Defendants Walter Zaremba and ZFF must return the $1.8 million of the earnest money deposit to Encana and noting that matters against the Debtor are stayed pursuant to the filing of its Chapter 11 Bankruptcy petition. (**Exhibit 6-9**, *Partial Amended Judgment*).

E. Debtor Files its Statement of Financial Affairs and Bankruptcy Schedules, Revealing Significant Transfers to Insiders and Related Entities

On November 5, 2018, the Debtor filed its Schedules and Statement of Financial Affairs. The Statement of Financial Affairs shows a number of transfers made to insiders and related entities in the past year. For example, in December 2017, the Debtor sold the mineral rights it owned to related-entity Zaremba

[4] As it relates to Defendants Walter Zaremba and Zaremba Family Farms, Inc.

Properties for $979,532. (**Exhibit 6-10**, *Statement of Financial Affairs*, part 6; **Exhibit 6-7**, pp. 47-48). The proceeds were then promptly transferred to the Zaremba Group Pension Fund. (**Exhibit 6-7**, p. 48; **Exhibit 6-10**, part 6, p. 4). Additionally, the Statement of Financial Affairs shows that on December 27, 2017, a parcel of land worth over $186,000 (the "Franckowiak parcel") was transferred to Yvonne Zaremba. (**Exhibit 6-10**, part 6, p. 4). All of these transfers occurred while the underlying case was pending on appeal.

In addition, the Debtor's Statement of Financial Affairs[5] reveals several transactions to insiders occurring in the months before entry of the Judgment and while the case was pending on appeal. Among these included a distribution in the amount of $2,381,622 to Yvonne Zaremba; a transfer to Yvonne for reimbursement of legal fees in the amount of $801,162.08; and a transfer of $41,750.00 to Zaremba Equipment, Inc. on January 9, 2018. (**Exhibit 6-11**, *Bankruptcy Schedules*, Yvonne Zaremba Member Draws, p. 4; General Ledger, table 1).

F. Testimony From the 341 Hearing

On November 9, 2018, the required meeting of creditors was held, pursuant to 11 U.S.C. 341 ("341 Hearing"). At the 341 Hearing, James Zaremba testified on behalf of the Debtor regarding many of the December 2017 transactions. In response

[5]The Debtor initially filed its Bankruptcy Schedules on November 5, 2018, and subsequently filed Amended Schedules on November 9, 2018.

to the United States Trustee's inquiry into the day-to-day operations of the Debtor, James Zaremba testified, "[t]here's really not daily, day-to-day operations, as there's not much that really needs to be done at the company." (**Exhibit 6-7**, p. 15:19-21). The Debtor's business was generating royalties from leasing its mineral rights. (See *Id*. at 75-76).

In recent years, the Debtor's generated income consisted almost exclusively of royalties from oil and gas leases – the rights to which the Debtor transferred to related entity Zaremba Properties, LLC. (See **Exhibit 6-12**, *2017 Tax Returns*; **Exhibit 6-7**, p. 61:10-14). Virtually all income listed on its 2017 tax returns came from the royalties the Debtor received from the mineral rights. (**Exhibit 6-12**, Schedule K, p. 4). The reason given for these transfers was that the Debtor was in the process of winding down. (**Exhibit 6-7**, pp. 42-44).

Interestingly, James Zaremba testified that he believed the Debtor no longer held assets at the end of 2017, and that he first learned of the certificate of deposit account at Chemical Bank only after Encana garnished the account. (*Id*. at 60-61). Furthermore, he testified that the Debtor filed its chapter 11 bankruptcy petition merely to prevent the garnishment, which would have been used toward satisfaction of the Judgment in this case. (*Id*. at 16:14-17). This testimony leads to the logical conclusion that the Debtor would have transferred the garnished funds at the end of 2017, had its members remembered they existed.

When questioned about the over $2.3 million distribution made to Yvonne Zaremba in December 2017, the Debtor explained it was not the distribution of funds, but, rather, the transfer of a note receivable from another related entity, ORIA, LLC. (*Id*. at 64-65). The note, at year end in 2016, was worth $3,171,507, but by the time of transfer to Yvonne in 2017 a year later, it had been paid down to $2,381,622. (**Exhibit 6-13**, *2016 Tax Returns*, Form 1065 Schedule L; **Exhibit 6-11**, General Ledger, table 1).

Incredibly, the Debtor claimed that the money owed by ORIA to the Debtor under the note was uncollectible. (See **Exhibit 6-7**, pp. 65-66). In fact, ORIA is an active real estate investment corporation and is owned by James Zaremba, along with his two brothers, Frank and John Zaremba. (**Exhibit 6-7**, pp. 32, 65-66). It owns the real estate that Zaremba Equipment, LLC is located on. (*Id.* at 32, 34).[6] It also owns real estate in Livingston Township (a 31-acre property) and other buildings in the industrial park in Gaylord. (*Id.* at 34).

Despite assurances from the Debtor's counsel that documents relating to the ORIA note, the Chemical Bank account, deeds, and other documents supporting and clarifying the movement of assets would be forthcoming, to date the Debtor has only

[6] Zaremba Equipment is an active company and operates in sales of trucks, buses, garden and farming equipment. (**Exhibit 6-7**, p. 29).

provided its 2016 and 2017 tax returns, its Schedules, and its Statement of Financial Affairs. (**Exhibit 6-7**, pp. 24, 36, 66-67, 69, 90-91, 94, 97-98).

ARGUMENT

I. The Bankruptcy Case Must be Dismissed for Cause Because it was Filed in Bad Faith

A. Applicable Legal Standard

On the request of a party in interest, and after notice and hearing, the Court shall convert a case under Chapter 11 to a case under Chapter 7 or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. 28 U.S.C. § 1112(b). Once lack of good faith is raised by a party in interest as cause for dismissal of the case, the debtor bears the burden of proving good faith in the filing. *In re Business Information Co*., 81 B.R. 382, 385 (Bankr. W.D. Penn. 1988).

Bad faith serves as a ground for dismissal of a bankruptcy petition. *In re Laguna Associates, Ltd. Partnership*. 30 F.3d 734, 737 (6th Cir. 1994). Debtors seeking the protection of the bankruptcy court must have real debt, real creditors, and a legitimate purpose; the code must not be used merely to harass creditors. *In re American Property Corp*., 44 Bankr. 180, 182 (Bankr. M.D. Fla. 1984).

Section 1112(b)(4) provides a non-exhaustive list of examples of "cause" for dismissal of a Chapter 11 case. Although a debtor's bad faith is not included in the non-exhaustive list of cause under §1112(b)(4), it is well settled that a debtor's bad

faith constitutes cause for dismissal under 1112(b)(1). *Trident Associates Ltd. Partnership v. Metro Life Insurance Company*, 52 F.3d 127, 130 (6th Cir. 1995).

Whether the debtor filed in good faith is a discretionary determination that turns on the bankruptcy court's evaluation of a multitude of factors. Good faith is an amorphous notion, largely defined by factual inquiry. *In re Laguna Associates*, 30 F.3d at 738. While no single factor is dispositive, courts have found the following factors meaningful in evaluating an organizational debtor's good faith:

i) The debtor has one asset;

ii) The pre-petition conduct of the debtor has been improper;

iii) There are only a few unsecured creditors;

iv) The debtor's property has been posted for foreclosure, and the debtor has been unsuccessful in defending against the foreclosure in state court;

v) The debtor and one creditor have proceeded to a standstill in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford;

vi) The filing of a petition effectively allows the debtor to evade court orders;

vii) The debtor has no ongoing business or employees; and

viii) The lack of possibility of reorganization.

In re Laguna Associates, 30 F.3d at 738.

Additional factors that other courts have considered include: whether the debtor has filed previous bankruptcy petitions; whether the debtor is generating any cash or income; whether there is pressure from non-moving creditors; whether the case is a two-party dispute which can be resolved in pending non-bankruptcy litigation; and whether the debtor was formed immediately prior to the petition. *Primestone Inv. Partners, L.P. v. Vornado PS, L.L.C.*, 272 B.R. 554, 557 (D. Del. 2002).

In detailing these indicia of bad faith, the court must keep in mind that no list is exhaustive of all the conceivable factors which could be relevant when analyzing a particular debtor's good faith. *In re Caldwell*, 851 F.2d 852, 860 (6th Cir. 1992). The court must consider the totality of the circumstances when determining whether a debtor filed in bad faith. *In re Laguna Associates*, 30 F.3d at 738.

B. The Totality of Circumstances Establishes that this Bankruptcy was Filed in Bad Faith

Zaremba Group's bankruptcy filing has many of the hallmarks of bad faith, reflecting the fact that this bankruptcy was filed in bad faith.

1. The Pre-Petition Conduct of the Debtor was Improper

There is no question that the Debtor's conduct pre-petition was improper. While the underlying litigation was on appeal with the Sixth Circuit Court of Appeals, the Debtor took a number of actions designed to render itself uncollectible,

including engaging in a number of highly suspect transfers with insiders that were designed to render the Debtor uncollectible.

For example, the Debtor's Statement of Financial Affairs shows that the Debtor transferred all of its mineral rights to a related entity, Zaremba Properties, on December 31, 2017. At the same time, the Debtor transferred the proceeds from this purported sale to Zaremba Group Pension Fund. These transactions ensured that Zaremba Group's valuable mineral rights and the proceeds from their sale were out of Encana's reach.

Also, at the end of 2017, the Debtor transferred its interest in a promissory note under which a related entity, Oria, LLC, owed the Debtor over $2.3 million. The recipient of this transfer was Yvonne Zaremba. Incredibly, the Debtor testified at the 341 hearing that this note was "uncollectible," despite the fact that over $800,000 was paid off on this note in 2017 and that Oria, LLC has substantial real estate holdings, including valuable commercial property.

The Debtor's Statement of Financial Affairs also shows a transfer of a $186,667.00 parcel of land to Yvonne Zaremba on December 27, 2017. The Debtor did not receive any cash from Yvonne Zaremba for this transfer. Rather, Yvonne's capital account with the company was adjusted.

In short, the Debtor transferred away all its valuable assets at the end of 2017, except for the money contained in its bank account. The only reason the Debtor did

not transfer away its cash is because it forgot that the money existed. As a result, this factor weighs in favor of dismissing this bankruptcy for bad faith.

2. There are Only a Few Unsecured Creditors

The next factor is whether the Debtor only has a few creditors. There is no question in this case that the Debtor does in fact have just a few creditors. In its initial filing, the Debtor listed three creditors – Encana, its attorney and its accountant. The Debtor's Schedule F lists insider James Zaremba as a creditor for $15,000.00 because he paid the Debtor's $15,000.00 retainer to its bankruptcy counsel. Noticeably absent from this list of creditors are any trade creditors, utilities, suppliers, vendors, or other creditors normally listed in an ongoing business. The fact that the Debtor has so few creditors weighs in favor of dismissing this bankruptcy for bad faith.

3. Debtor Has No Ongoing Business to Speak of

The next factor here is that the Debtor has no ongoing business to speak of. In fact, the Debtor testified that it has no daily, day-to-day operations. (See **Exhibit 6-7,** p. 15). This is because the Debtor wound down its business operations at the end of 2017, as it transferred all of its valuable assets to insiders, including its mineral rights to Zaremba Properties and its note receivable to Yvonne Zaremba. Thus, this factor weighs in favor of dismissal.

4. Debtor Has No Realistic Chance at Reorganization

In addition to the fact that the Debtor has no reason to reorganize because it has no ongoing business operations, the Debtor has no chance of actual reorganization. This is because the Debtor has transferred away all of its valuable assets to its members or related entities. The Debtor has no business in existence and no going concern to preserve. In short, there is nothing to reorganize or resuscitate.

In fact, the only assets in this bankruptcy are cash in a bank account and avoidance transfers against insiders of the Debtor, including Yvonne Zaremba, Zaremba Properties, and Zaremba Pension Fund. It is highly unlikely that the Debtor, as the debtor-in-possession, will authorize avoidance actions against its members and companies owned by its members. Outside of bankruptcy, Encana can easily attach the Debtor's money contained in its bank account and it can pursue these avoidance actions against the Debtor's insiders. Thus, this factor weighs in favor of dismissing the Debtor's bankruptcy.

5. This Bankruptcy Is the Result of a Two-Party Dispute

The next factor that weighs in favor of dismissal is the fact that this bankruptcy arose out of a two-party dispute between Encana and the Debtor. In fact, the Debtor admitted under oath that this bankruptcy was filed solely to prevent Encana's garnishment of its bank account while its Motion to Amend was pending. (See

Exhibit 6-7, p. 16). The Debtor was hoping that the District Court would issue an order that would remove Zaremba Family Farms from the Judgment, which would logically mean that Zaremba Group should also be removed from the Judgment.

As set forth above, the District Court has decided the Motion to Amend. In it, the District Court made it clear that Zaremba Family Farms and Zaremba Group should remain liable to Encana. With this issue resolved, there is no reason for the Debtor to remain in bankruptcy.

6. Debtor's Lack of Communication Regarding Settlement

Although not identified by the Sixth Circuit as a factor to consider in determining whether a debtor has acted in bad faith, some bankruptcy courts have found that a Chapter 11 debtor's failure to negotiate with creditors is indicative of a debtor's bad faith. *In re Johnson*, 545 B.R. 83, 129 (Bankr. S.D. Ohio 2016). The commencement of a Chapter 11 proceeding should serve as an invitation to negotiation and charging the debtor with bad faith, in part, because the debtor failed to negotiate with creditors in good faith. *Id*.

At the outset of this bankruptcy, the Debtor, through counsel, indicated a desire to not only settle the matters in this bankruptcy, but also the litigation with Zaremba Family Farms and Walter Zaremba. Encana made it clear that it needed complete financial information regarding the Debtor, Zaremba Family Farms, and Walter Zaremba. After this information was provided, Encana would then be willing

to discuss settlement. Encana further made it clear that it would consider mediation with the Debtor at that point, but only if the Debtor was engaged in good faith settlement discussions prior to agreeing to mediation because these parties already tried to settle this matter on several previous occasions and these settlement attempts were futile.

To date, neither the Debtor, nor Walter Zaremba or Zaremba Family Farms have made a good faith effort to settle this matter. In fact, they still have not provided all the financial information Encana requested be provided. To the contrary, Walter Zaremba and Zaremba Family Farms filed frivolous objections to Encana's document requests, forcing Encana to file a motion to compel. At the same time, Walter Zaremba and Zaremba Family Farms continue fighting the judgment with post-judgment motions. Likewise, in this Chapter 11, the Debtor promised to provide financial information to the Chapter 11 Trustee and Encana relating to a number of the insider transactions listed in its Statement of Financial Affairs. Again, these documents have not been provided because, according to the Debtor, its accountant has been out deer hunting.

Regardless, the withholding of relevant financial information, the transfer of valuable assets to insiders while the appeal was pending, the continued attacks on the Judgment, and the absence of any settlement negotiations demonstrates that the

Debtor (along with the Zarembas) has no desire to reach a settlement with Encana. Under the circumstances, this bankruptcy must be dismissed.

II. Dismissal is in the Best Interests of Creditors and the Estate

Once cause has been established, the Court then considers whether dismissal or conversion is in the best interests of the Debtor's creditors and the estate. *Monroe Bank & Tr. v Pinnock*, 349 BR 493, 497 (ED Mich, 2006) (citing *Rollex Corp. v. Assoc. Materials, Inc*., 14 F.3d 240, 242 (4th Cir.1994)). Several considerations compel the conclusion that dismissal, rather than conversion of this case to Chapter 7, best serves the interests of the Debtor's creditors. Specifically, this case is really a two-party dispute in the guise of a bankruptcy reorganization, there is no realistic chance of reorganization for the Debtor, this bankruptcy was filed solely to prevent Encana's garnishment of the Debtor's Chemical Bank account, Encana is in the best position to effectively and efficiently pursue its rights and remedies, and dismissal will, therefore, maximize recovery for Encana.

The preservation and rehabilitation of an operating business is not at issue in this case. The Debtor has no ongoing business operations, no business to reorganize, and has divested itself of substantially all of its assets. In fact, the Debtor acknowledged that it was in the process of winding down as early as December 2017. (See **Exhibit 6-7**, pp. 42-43). And the case was filed to stop Encana from garnishing

the funds in the Debtor's Chemical Bank account, which the Debtor had overlooked when divesting itself of its assets in December 2017. (See **Exhibit 6-7**, pp. 60-61).

This is a two-party dispute that the Debtor has tried to manipulate into a Chapter 11 reorganization. The only other creditors the Debtor lists are its attorneys and its accountant for their professional fees. (**Exhibit 6-8**, *Form 204*). As such, dismissal of the case is the appropriate remedy where the creditor may effectively resolve the dispute outside of the bankruptcy forum. See *In re Gonic Realty Trust*, 909 F.2d 624, 627 (dismissing Debtor's bankruptcy case when all that remained was a two-party dispute) (1st Cir. 1990); *In re 3 Ram, Inc*., 343 B.R. 113, 119 (E.D. Penn. 2006) (concluding "that there is no reorganization in progress but rather that a two party dispute persists which is not and need not be addressed in the bankruptcy forum").

Moreover, Encana should be permitted to pursue rights and remedies available to collect on the Judgment, which it may effectively do outside of bankruptcy. Encana is in the best position to pursue collections and can effectively pursue avoidance actions. If the bankruptcy case is not dismissed, the Debtor will only continue to incur additional administrative expenses. Dismissal will maximize recovery for the Debtor's creditor, Encana, because the alternative – conversion to Chapter 7, which will necessitate the appointment of a Chapter 7 trustee, who may hire counsel and perhaps a financial advisor – would prove far more expensive and

wasteful than simply dismissing this case. Dismissal will allow Encana to proceed in the District Court litigation and effectively put an end to the deadlock in its collection efforts that the Debtor's bad faith bankruptcy filing has caused.

CONCLUSION

For the foregoing reasons, Encana requests an Order, substantially in the form of **Exhibit 1**, pursuant to sections 105(a) and 1112(b) of the Bankruptcy Code, Bankruptcy Rule 1017(a), and Local Rule 1017-2, dismissing the Chapter 11 Case and granting such other and further relief as the Court otherwise deems necessary or appropriate.

Respectfully submitted,

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