

July 14, 2010

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE LOVELL'S AMERICAN CAR
CARE, LLC,

Debtor.

BAP No. WY-09-033

LOVELL'S AMERICAN CAR CARE,
LLC,

Appellant,

v.

WELLS FARGO BANK, N.A.,

Appellee.

Bankr. No. 08-20128
Chapter 11

OPINION*

Appeal from the United States Bankruptcy Court
for the District of Wyoming

Before NUGENT, THURMAN, and SOMERS, Bankruptcy Judges.

THURMAN, Bankruptcy Judge.

The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

The Debtor appeals a Bankruptcy Court dismissal of its Chapter 11

* This unpublished opinion may be cited for its persuasive value, but is not precedential, except under the doctrines of law of the case, claim preclusion, and issue preclusion. 10th Cir. BAP L.R. 8018-6.

bankruptcy case pursuant to 11 U.S.C. § 1112(b).¹ We affirm in part and reverse in part.

I. BACKGROUND

The Debtor, Lovell's American Car Care, LLC ("Debtor"), is a tire store and auto repair shop that was initially operated by Robert and Lisa Rael (the "Raels") as a DBA in Lovell, Wyoming. In August 2007, the Raels organized the business as a Wyoming Limited Liability Company ("LLC"), with themselves its only members. Seven months later, on March 17, 2008, the Debtor filed its petition for Chapter 11 relief. On May 1, 2008, the Raels also filed a personal petition for Chapter 11 relief.²

In October 2005, prior to the Debtor's organization, the Raels obtained three business loans from Shoshone First Bank, which were subsequently acquired by Wells Fargo Bank (hereafter, jointly, "Bank"). The Bank's loans were secured by mortgages on several parcels of real property owned by the Raels, as well as by the inventory, accounts receivable, vehicles, and equipment of both the DBA and PCI, another company owned by the Raels. The Raels notified the Bank when they incorporated the DBA, but the parties did not execute new security agreements. The Debtor continued the DBA's business operations, using DBA assets to do so, though no formal transfer of assets from the Raels to the Debtor was apparently made.

Based on its loans to the Raels, the Bank filed a proof of claim ("POC") in the Debtor's bankruptcy case, in the amount of approximately \$681,000, on July 16, 2007. On May 19, 2008, the United States Trustee filed a motion seeking to dismiss or convert Debtor's case, or to obtain an order directing Debtor to file a

¹ Unless otherwise noted, all further statutory references in this decision will be to the Bankruptcy Code, codified as Title 11 of the United States Code.

² Another business owned by the Raels, Professional Contractors, Inc. ("PCI"), also filed for Chapter 11 relief on the same day.

liquidating plan. Two days later, the Bank joined in that motion. On June 9, 2008, the Bankruptcy Court denied the motion “without prejudice,” stating that “after the debtor has had an opportunity to timely file a disclosure statement and proposed chapter 11 plan pursuant to law, the U.S. Trustee, or any interested party may, take appropriate action.”

On January 9, 2009, the Debtor filed a Motion to File Joint Disclosure Statement and Plan³ with the Rael and PCI bankruptcies, which the Bank opposed on the ground that, because PCI was funding the Debtor’s operations, the Debtor should be liquidated. On February 10, 2009, prior to any ruling on Debtor’s joint administration motion, the Bank filed a motion to dismiss or convert the Debtor’s case, asserting that Wyoming law mandated dissolution of the Debtor and, therefore, Debtor was not able to continue operating as an LLC. The Debtor’s joint administration motion was denied by the Bankruptcy Court on February 17, 2009, on the basis that the pending bankruptcies of the Debtor, the Raels, and PCI were “being substantially intermingled,” leading to the Bank’s allegation that cash from PCI was being used to pay the Debtor’s obligations, and thus, “creating an unfair benefit for some creditors and possible confusion with the Small Business Administration.”⁴ Approximately one week later, the Debtor filed both an objection to the Bank’s POC and its first proposed reorganization plan, under which the Bank would be paid nothing. Two days later, the Debtor also filed an opposition to the Bank’s motion to dismiss or convert its case to one under Chapter 7.

An evidentiary hearing was held on the Bank’s motion to dismiss or convert on March 10, 2009, during which the Bankruptcy Court requested that both parties file simultaneous briefs on the issue of the Bank’s standing to pursue the motion.

³ Appendix to Appellant’s Brief (“App.”) at 36.

⁴ *Minutes of Proceedings, in App.* at 44.

On April 10, 2009, the Bankruptcy Court scheduled an evidentiary hearing on the Debtor's objection to the Bank's claim for August 11, 2009. In the interim, on April 20, 2009, the Debtor's case was dismissed pursuant to the Bank's motion. The Debtor timely filed a motion to alter or amend that order,⁵ which was denied on June 16, 2009, after a hearing on May 20, 2009. The Debtor's notice of appeal ("NOA"), from both the dismissal order and the denial of the motion to amend, was filed on June 25, 2009.

II. APPELLATE JURISDICTION

The Debtor's NOA was timely filed from the order disposing of its timely post-judgment order.⁶ An order dismissing a bankruptcy case is final and appealable, and neither party has elected to have this appeal heard by the district court. Therefore, this Court has appellate jurisdiction over this appeal.⁷

III. ISSUES AND STANDARD OF REVIEW

The Debtor asserts that: 1) the Bankruptcy Court's previous denial of Trustee's motion to dismiss, in which the Bank joined, constituted the "law of the case" that should have precluded the Bank's subsequent motion; 2) the Bank lacked standing to pursue a motion to dismiss the Debtor's bankruptcy; and 3) the purported reason for the dismissal, dissolution of the Debtor, was not supported by state or federal law.

⁵ See Fed. R. Bankr. P. 9023, which makes Fed. R. Civ. P. 59 applicable to bankruptcy proceedings. At the time of the Debtor's motion, Rule 59 required a motion for new trial to be filed within 10 days of entry of the court's order. Later in 2009, the Rule 59 filing deadline was changed to 28 days, and Rule 9023 created its own deadline, in bankruptcy cases, to 14 days, with the difference in times necessitated by the different time periods for the filing of a notice of appeal in a bankruptcy case (Fed. R. Bankr. P. 8002(a); 14 days), as opposed to other civil cases (*e.g.*, Fed. R. App. P. 4(a)(1)(A); 30 days).

⁶ See Fed. R. Bankr. P. 8002(a) and (b)(2) and 9023. At the time of the Debtor's notice of appeal filing, these rules required that a notice of appeal be filed within ten days of entry of an order denying a new trial. The current time deadline for such a notice of appeal is fourteen days.

⁷ 28 U.S.C. § 158(c).

Law of the case and standing are legal doctrines, the applicability of which is reviewed on appeal *de novo*.⁸ A bankruptcy court’s ultimate decision to dismiss a case pursuant to § 1112(b) is reviewed for abuse of discretion. However, an abuse of discretion “may occur when a ruling is premised on an erroneous conclusion of law,” and conclusions of law are reviewed *de novo*.⁹ Here, the Debtor contends that the Bankruptcy Court misapplied federal and state law in concluding that dismissal was warranted, which are legal issues that we will review *de novo*.¹⁰

IV. DISCUSSION

A. Law of the Case

The Debtor contends that the doctrine of law of the case precluded the Bank from filing a new motion to dismiss after its previous one had been denied. Law of the case is a judicially-created equitable doctrine, related to collateral estoppel, which is intended to prevent repeated litigation of issues within the same case.¹¹ Thus, once a court definitively rules on an issue, law of the case prevents all parties from attempting to reargue the merits of that issue. The Tenth Circuit Court of Appeals (“Tenth Circuit”) has “emphasized that exceptions to [law of the case] are rare.”¹²

In this case, the Debtor contends that the Bankruptcy Court should not have

⁸ *Wilmer v. Bd. of County Comm’rs*, 69 F.3d 406, 409 (10th Cir. 1995) (law of case); *Law Co., Inc. v. Mohawk Constr. & Supply Co., Inc.*, 577 F.3d 1164, 1173 (10th Cir. 2009) (standing).

⁹ *In re JE Livestock, Inc.*, 375 B.R. 892, 894 (10th Cir. BAP 2007).

¹⁰ *Id.* Although the Bankruptcy Court’s decision to dismiss rather than convert to Chapter 7 would be reviewed for abuse of discretion, the Debtor apparently does not challenge the dismissal on that basis.

¹¹ 1 *Bus. & Commercial Litig. Fed. Courts* § 13:22.50 (2d ed. 2009).

¹² *Weinman v. Fidelity Capital Appreciation Fund (In re Integra Realty Res., Inc.)*, 354 F.3d 1246, 1259 (10th Cir. 2004).

considered the Bank’s motion to dismiss because a previous motion, made on the same grounds, had been denied. Even assuming, without deciding, that both dismissal motions had the same basis, the law of the case doctrine still does not apply because the first dismissal motion was denied by the Bankruptcy Court “without prejudice.” The United States Supreme Court has described a dismissal without prejudice as a “dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim.”¹³ Thus, an adjudication that is made without prejudice is the opposite of an adjudication on the merits as our circuit has stated.¹⁴ The Bankruptcy Court denied the initial motion in order to allow the Debtor additional time within which to propose a plan.¹⁵ Accordingly, the Debtor’s claim that the law of the case barred the Bank from moving to dismiss or convert is not availing.

B. Standing

The Debtor contends that the Bank is without standing to seek dismissal of this case as the Debtor and the Bank have no privity of contract and the Bank’s lien is not enforceable against the Debtor. Thus, the Debtor asserts that the Bank neither is a creditor of the Debtor, nor has a financial interest in the Debtor’s case and is therefore not a “party in interest” pursuant to §§ 1109(b) and 1112(b)(1).¹⁶ “Party in interest” is not specifically defined in the Bankruptcy Code, although § 1109(b) provides that it includes, among others, a creditor. As correctly noted by the Bankruptcy Court, “[t]he term party in interest is generally understood to

¹³ *Semtek Intern. Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001).

¹⁴ *Styskal v. Weld County Bd. of County Comm’rs*, 365 F.3d 855, 858 (10th Cir. 2004).

¹⁵ *See Order on United States Trustee’s Motion to Dismiss or Convert Case, or for Order Directing Debtor to File a Liquidation Plan*, in App. at 30.

¹⁶ Section 1109(b) gives a right to be heard on any issue to a party in interest; § 1112(b)(1) specifies that a party in interest may request dismissal or conversion.

include all persons whose pecuniary interests are directly affected by the bankruptcy proceedings.”¹⁷

In this case, the Debtor asserts that it gave no security interest to the Bank, and that any collateral upon which the Bank previously held a security interest through the Raels has been dissipated. Nonetheless, the Debtor listed the Bank in its Schedule D as a secured creditor, with a disputed, secured claim in the amount of approximately \$680,000.¹⁸ The Bank filed a POC for approximately the same amount.¹⁹

Although the Raels never formally transferred their tools and equipment to the Debtor, they were used by the Debtor as its own, along with the Raels’ bank accounts, inventory, and accounts receivable, all of which were listed by the Debtor on its balance sheets from the time of its organization. As the actions in this matter all occurred in Wyoming, its laws as to determination of property rights apply.²⁰ Pursuant to Wyoming’s version of the Uniform Commercial Code, a perfected security interest remains on the collateral upon its transfer.²¹ Given

¹⁷ *Order on Wells Fargo Bank’s Motion to Dismiss or Convert* at 3, in App. at 147. *See also In re Alpex Computer Corp.*, 71 F.3d 353, 356 (10th Cir. 1995).

¹⁸ *Schedule D*, in App. at 14.

¹⁹ *POC*, in App. at 31.

²⁰ *Butner v. United States*, 440 U.S. 48, 55 (1979).

²¹ Wyoming Statute Annotated § 34.1-9-315(a)(i) provides that: “A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien[.]” In addition, Wyoming Statute Annotated § 34.1-9-203(d) provides:

A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(i) The security agreement becomes effective to create a security interest in the person’s property; or

(ii) The person becomes generally obligated for the obligations of the
(continued...)

that the Bank has a perfected security interest in collateral that was either transferred to the Debtor, or is being used by the Debtor in the operation of its business, it would be difficult to conclude that the Bank does not have a “pecuniary interest” that will be “directly affected by the bankruptcy proceedings.” Thus, we determine that the Bankruptcy Court correctly determined that the Bank had sufficient standing to file a motion to dismiss the Debtor’s bankruptcy.

C. Dismissal

When the motion to dismiss was initially granted, the Bankruptcy Court’s rationale was based upon an inaccurate fact. The decision states that the Raels filed their petition on May 1, 2008, which is correct, but also states that the Debtor filed its petition on March 10, 2009, which should have been March 17, 2008.²² Within this context, and apparently concluding that the Raels had filed their personal bankruptcy first, the Bankruptcy Court found that the Debtor’s “bankruptcy filing was a nullity and subject to dismissal.”²³ However, in its order denying the Debtor’s post-judgment motion, the Bankruptcy Court agreed that the Debtor’s filing date had been misstated in the previous order and that, as a result, the word “nullity” was inappropriate with respect to the Debtor’s petition. Nonetheless, the Bankruptcy Court ruled that the “correction of the filing date does not change the Court’s analysis.”²⁴

²¹ (...continued)

other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

²² *Order on Wells Fargo Bank’s Motion to Dismiss or Convert* at 2, ¶ 5, in App. at 146.

²³ *Id.* at 151.

²⁴ *Order on Debtor’s Motion to Alter or Amend Order Dismissing Case and to Reinstate Automatic Stay* at 2-3, in App. at 170-71.

The rationale for the dismissal was as follows: Wyoming law provided that an LLC “shall be dissolved . . . upon the . . . bankruptcy . . . of a member,” unless the remaining members consent to continue the business “under a right to do so stated in the articles of organization of the limited liability company.”²⁵ The Debtor’s original articles of organization provided that, upon unanimous agreement of the remaining members, the company could continue to do business after termination of a member’s membership based on, among other things, bankruptcy. This provision is consistent with the Wyoming dissolution statute. On April 28, 2008, three days before the Raels filed their personal bankruptcy petition, they filed amended articles of organization for the Debtor that simply deleted the word “bankruptcy” from the list of events that would terminate membership but could be overcome by the unanimous consent of the remaining members.²⁶ The Bankruptcy Court determined that, interpreted as the Debtor suggested (*i.e.*, bankruptcy of a member does not terminate that person’s membership and therefore is not an event that triggers dissolution), the amendment conflicted with the Wyoming dissolution statute and was therefore ineffective.

The Bankruptcy Court then rejected the Debtor’s contention that a limited liability company’s existence does not end until a certificate of dissolution is issued by the Secretary of State, pursuant to then-Wyoming Statute Annotated

²⁵ Wyo. Stat. Ann. § 17-15-123(a) (repealed July 1, 2010).

²⁶ As originally drafted, the articles listed exactly the same events that could disqualify a member and lead to dissolution of the LLC, as does the statute. This particular provision of the articles is poorly written and difficult to decipher. However, it essentially gives remaining members the right to continue the business after one of the stated events, which is required by the statute. By eliminating bankruptcy as a stated event, the amendment arguably eliminates bankruptcy of a member as an event that the remaining members could overcome, rather than eliminating it as a basis for disqualification of a member. The amendment is effectively a “red herring,” however, because both of the Debtor’s members filed bankruptcy at the same time, leaving no other members to unanimously decide to continue the business.

§ 17-15-128, concluding that though an LLC has an existence until the dissolution certificate is issued, that existence was limited to the business of “winding up.”²⁷ Wyoming law compelled an LLC to file a statement of intent to dissolve “as soon as possible” after the occurrence of a dissolving event, and the Bankruptcy Court found that allowing an LLC to continue in Chapter 11 following such an event would allow it to “circumvent or stall compliance with state law.”²⁸

In *In re Midpoint Development, L.L.C.*, 466 F.3d 1201 (10th Cir. 2006), the Tenth Circuit upheld a bankruptcy court’s dismissal of an Oklahoma LLC’s Chapter 11 petition, where the debtor had filed articles of dissolution several months prior to filing bankruptcy. Both the Bankruptcy Court and the Tenth Circuit rejected the debtor’s argument that an Oklahoma LLC continues to exist for a period of time after its dissolution articles are effective, for the purpose of winding up its affairs. Oklahoma law provided that an Oklahoma LLC comes into existence when its articles of organization are filed with the secretary of state, and the Tenth Circuit interpreted that to mean that the LLC ceases to exist when its articles of organization are cancelled. Oklahoma law also provided that, upon the “effective date” of articles of dissolution, an LLC’s articles of organization are cancelled. The debtor in *Midpoint* had filed articles of dissolution with an immediate effective date, although the Tenth Circuit noted that it could have set the effective date at a time in the future that would have allowed it to finish winding up. The debtor’s failure to do so meant that it ceased to exist prior to the filing of its petition in bankruptcy, and that the petition was therefore a nullity.

The *Midpoint* case is distinguishable from the present case, both because

²⁷ That statute provided, in part, that, “[u]pon the issuance of such certificate of dissolution the existence of the company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided by this act.” Wyo. Stat. Ann. § 17-15-128 (repealed July 1, 2010).

²⁸ *Order on Debtor’s Motion to Alter or Amend Order Dismissing Case and to Reinstate Automatic Stay* at 4, in App. at 172.

Wyoming law differs in some significant respects from Oklahoma's, and because the dissolving event occurred prior to the petition filing in *Midpoint*, but not in the present case. However, the *Midpoint* decision at least infers that an LLC still "exists," for purposes of pursuing bankruptcy relief, during the period in which it is required by state law to wind up its affairs.

Such was the conclusion reached by one bankruptcy court after a thorough review of then-existing case law.²⁹ That court first noted that corporations "are creatures of state law," and that each state "has the power of life or death over its corporations."³⁰ In that case, Illinois law provided that "[d]issolution of a corporation terminates its corporate existence and a dissolved corporation shall not thereafter carry on any business except that necessary to wind up and liquidate its business and affairs," and that dissolution "shall not take away nor impair any civil remedy available to or against such corporation" for a period of five years after dissolution. The *Segno* court concluded that these statutes continued the existence of a dissolved corporation for five years post-dissolution, solely for the purpose of winding up its affairs. During that five-year period, the debtor corporation was subjected to an involuntary Chapter 7 petition, which it had moved to dismiss. In considering the case law existing at that time, the *Segno* court found that "[t]he rule derived from these precedents is that an involuntary or voluntary Chapter 7 petition may be filed against *or by* a dissolved corporation while the dissolved corporation is still in existence."³¹ The court then denied the debtor's motion to dismiss, noting that the debtor "should not be allowed to use

²⁹ *In re Segno Commc'ns, Inc.*, 264 B.R. 501 (Bankr. N.D. Ill. 2001).

³⁰ *Id.* at 507 (internal quotation marks omitted).

³¹ *Id.* at 510 (emphasis added).

its dissolution to shield it from being forced to wind-up in bankruptcy.”³²

Although *Segno* described a number of cases dealing with the issue of a dissolved corporation’s ability to file bankruptcy,³³ there does not appear to be any precedent that directly deals with a fact situation like the one before this Court, which is an LLC that became subject to dissolution by virtue of an event that occurred after its petition had been filed. Nonetheless, most of the legal concepts discussed in the previous cases are applicable here as well, and we have determined that the theory behind the decision in *Segno* is persuasive.

Thus, the Debtor still existed according to Wyoming law as of the date of the petition, as no certificate of dissolution has been entered. On the other hand, by virtue of the Raels’ bankruptcy, the Debtor was required to begin the dissolution process “as soon as possible” after May 1, 2008, which it had not done.³⁴ We agree with the Bankruptcy Court that a company’s failure to comply with such a statutory mandate cannot be allowed to give it more status than it is entitled to have. Nonetheless, the Debtor was not subject to dissolution when it filed its petition and, as no certificate of dissolution had been issued by the Wyoming Secretary of State, remained an existing LLC during all pertinent times in this matter, at least for the purpose of winding up its affairs.³⁵ As such, the Debtor was a “person” for the purpose of filing a Chapter 11 petition when it did so,³⁶ and was therefore eligible to be a “debtor,” pursuant to § 109(b) and (d) at that time. However, once the Raels’ bankruptcy petition was filed, the Debtor’s

³² *Id.* at 511.

³³ *See id.* at 509-10 (discussing cases).

³⁴ Wyo. Stat. Ann. § 17-15-123(b) (repealed July 1, 2010).

³⁵ Wyo. Stat. Ann. § 17-15-128(b) (repealed July 1, 2010) (existence of an LLC shall cease upon issuance of a certificate of dissolution by the secretary of state).

³⁶ § 101(41).

corporate existence was limited by Wyoming law to the “winding up of its business.”³⁷

We review the Bankruptcy Court’s legal conclusions upon which its § 1112(b) dismissal was based *de novo*.³⁸ We conclude that the Bankruptcy Court’s dismissal in this case was based on an erroneous legal conclusion that, under state law, the corporate debtor had ceased to exist. Wyoming law provided for the continued existence of an LLC in the process of dissolution, which would have ended when the process was complete and the secretary of state issued a certificate of dissolution. In this case, a dissolving event occurred, which began the process of dissolution, but the Debtor had not yet been “dissolved.”³⁹ In its order denying the Debtor’s motion to amend, the Bankruptcy Court acknowledged that its order of dismissal included erroneous information to the effect that the Raels had filed for bankruptcy *prior to* the Debtor. Because of that misstatement, the Bankruptcy Court agreed with the Debtor that its bankruptcy filing, having preceded the dissolving event, was not a “nullity,” as previously stated. The court denied the motion to alter or amend, however, stating that the “correction of the

³⁷ Wyo. Stat. Ann. § 17-15-125 (repealed July 1, 2010). This provision detailed an LLC’s status once the company filed a statement of intent to dissolve, as required by Wyoming Statute Annotated § 17-15-123(b) (repealed July 1, 2010), which the Debtor did not do. However, as noted previously, this Court will not accede to a greater corporate status than the Debtor is entitled to have had under state law based simply on its failure to comply with the dictates of those laws. We therefore consider the Debtor to have been in the dissolution process once the Raels’ bankruptcy was filed and, as a result, the Debtor’s existence under Wyoming law was limited to “winding up” its business from that point on.

³⁸ *In re JE Livestock, Inc.*, 375 B.R. 892, 894 (10th Cir. BAP 2007).

³⁹ We do not decide here whether there is any impediment to a state proceeding of dissolution of an LLC that has already filed for bankruptcy when a dissolving event occurs. We also do not decide whether Wyoming or federal law limited the wind-up period.

filing date does not change the Court’s analysis.”⁴⁰ The Court then reiterated that, although its petition may have been appropriately filed, once the Raels filed their petition, the Debtor was “not entitled to avail itself of the Chapter 11 reorganization proceedings *as it is not eligible*,” because “the event of dissolution had occurred.”⁴¹ We disagree. It is clear that the Debtor remained an entity under Wyoming law, and was therefore a “person” for the purposes of proceeding in bankruptcy.

However, there remain undecided issues. In denying the first motion to dismiss, the Bankruptcy Court stated that the Debtor would be given an opportunity to file a disclosure statement and a proposed plan during the exclusionary period, before dismissal would be considered.⁴² The Bank’s second motion, filed eight months later, preceded the filing of the Debtor’s proposed plan by two weeks. The motion was based on § 1112(b)(4)(A), which defines one “cause” for dismissal or conversion as a “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” Given that the Debtor existed, under state law, solely for the purpose of “wind-up,” a successful reorganization is arguably not possible. However, in erroneously concluding that the Debtor was not eligible to proceed in bankruptcy, the Bankruptcy Court neither considered the merits of the Bank’s claim nor allowed the Debtor an opportunity to respond.

⁴⁰ *Order on Debtor’s Motion to Alter or Amend Order Dismissing Case and to Reinstate Automatic Stay* at 2, in App. at 170.

⁴¹ *Id.* at 3, in App. at 171 (emphasis added).

⁴² Pursuant to § 1121(b), the exclusionary period during which only a debtor may file a plan expired on July 15, 2008, or approximately five weeks after the Bankruptcy Court denied the first motion on June 9, 2008. The second motion was not filed until February 10, 2009, eight months after the order, and the Debtor’s proposed plan still had not yet been filed. The plan, which was not provided to this Court as a part of the appellate record, was filed on February 25, 2009.

V. CONCLUSION

Based on the foregoing, the Bankruptcy Court's dismissal of the Debtor's bankruptcy case is REVERSED, and this matter is remanded for reconsideration of the dismissal/conversion motion in accordance with this opinion.⁴³

⁴³ Based on our conclusion that Debtor is eligible for bankruptcy protection, we do not address Debtor's arguments that 1) Wyoming dissolution law is preempted by the Bankruptcy Code; 2) compelled dissolution based on the bankruptcy filings of an LLC's members violates the Bankruptcy Code's "fresh start" policy; and 3) treating corporations and LLC's differently violates the Fifth Amendment's Equal Protection Clause, which appear to be, for the most part, insufficiently briefed and without merit.