

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
SERGIO GARCIA and) CASE NO. 09-22828 JPK
MARISA GARCIA,) Chapter 11
)
Debtors.)

ORDER ON FEDERAL RULE BANKRUPTCY
PROCEDURE 7052/FEDERAL RULE CIVIL PROCEDURE
52(c) MOTION BY THE DEBTORS AT THE CLOSE OF
THE MOVANTS' CASE ON DISMISSAL OF THE
DEBTORS' CASE

At the close of the movants' case on February 17, 2011, the counsel for the debtors moved for what the court construes as a Judgment on Partial Findings pursuant to Fed.R.Bankr.P. 9014(c)/Fed.R.Bankr.P. 7052/ Fed.R.Civ.P. 52(c). The court ruled that with respect to Sergio Garcia, the motion was denied because the movants had established a *prima facie* case. The debtors' counsel moved separately as to the debtor Marisa Garcia. That motion was denied as well.

This order is the written memorialization of the court's ruling, and constitutes the order on the debtors' motion, supplanting the court's February 7, 2011 in-court ruling.

The case before the court is the joint Chapter 11 case of Sergio Garcia and Marisa Garcia. 11 U.S.C. § 302(a) provides that a joint case is commenced by a single petition by a husband and wife. One case is thus created.

11 U.S.C. § 302(b) provides: "After the commencement of a joint case the court shall determine the extent, if any, to which the debtors' estates shall be consolidated." There has been no determination in this case that the debtors' estates should be consolidated. Fed.R.Bankr.P. 1015(b)(1) provides for joint administration of the estates in a joint husband/wife case. There has been no order of joint administration of the estates of Sergio Garcia and Marisa Garcia.

11 U.S.C. § 11129b)(1) provides for dismissal of a case under stated circumstances. Despite the existence of two separate estates, there is only one case: the joint case of Sergio Garcia and Marisa Garcia. The contested matter arising from the movants' joint motion concerns this joint case: there are not two difference cases to consider.

The debtors' counsel's motion under Rule 52(c) confuses the concepts of joint estates with the concept of a joint case. Marisa Garcia is not the debtor in a separate case, and the fate of both her and Sergio Garcia's joint case under a motion pursuant to 11 U.S.C. § 11129b)(1) is to be determined in relation to the independent conduct of one in relation to the joint case. As husbands' and wives' fates sometimes rise or fall on the individual fortunes or actions of one spouse, so too goes the fate of the joint case of Sergio Garcia and Marisa Garcia.

The court determines that the motion made pursuant to Rule 52(c) on behalf of Marisa Garcia has no sustainable basis: The court determines that the movants have established a *prima facie* case with respect to Sergio Garcia.

Thus, IT IS ORDERED that the motion is denied.

Dated at Hammond, Indiana on March 15, 2011.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
US Trustee
Attorneys of Record