**IN THE UNITED STATES BANKRUPTCY COURT**
**WESTERN DISTRICT OF ARKANSAS**
**FAYETTEVILLE DIVISION**

**IN RE: SPECIAL EDUCATION SOLUTIONS, INC.** **No. 5:15-bk-72411**
**Chapter 11**

**ORDER DENYING CONFIRMATION OF CHAPTER 11 PLAN AND DISMISSING CASE**

On September 23, 2015, Special Education Solutions, Inc. [SES or the debtor] filed this small business chapter 11 case. On July 19, 2016, the debtor filed its disclosure statement and plan of liquidation.[1] The Court conditionally approved the disclosure statement on July 22, 2016. On August 25, 2016, the debtor's largest creditor, John McNeill [McNeill], objected to the debtor's disclosure statement and plan of liquidation. The plan and disclosure statement drew no other objections. On October 17, 2016, the Court held a hearing to determine whether the debtor's disclosure statement should be approved and its plan confirmed. Stanley Bond and Emily Henson appeared for the debtor. Donnie Rutledge appeared on behalf of McNeill. Patricia Stanley appeared for the United States Trustee.

Section 1129(a) enumerates sixteen requirements for confirmation of a chapter 11 plan, stating, in part, "[t]he court shall confirm a plan only if all of the following requirements are met . . . ." 11 U.SC. § 1129(a). There is one exception: "[i]n the situation where all elements of § 1129(a) are met, except for subsection (a)(8), that is, when not all impaired classes of creditors vote to accept the plan, then §1129(b) provides that the plan may still be confirmed as long as it does not discriminate unfairly and is fair and equitable." *In re 431 W. Ponce De Leon, LLC*, 515 B.R. 660, 669 (Bankr. N.D. Ga. 2014). The debtor's attorney stated during the October 17 hearing that the debtor sought confirmation of its proposed plan under § 1129(b), acknowledging that the confirmation requirement stated

[1] Taking into account the leap year, July 19, 2016, was the 300th day after the order for relief.

in subsection (a)(8) was not satisfied. The debtor also argued that because it had proposed a plan of liquidation rather than reorganization, the plan need not–and did not–comply with subsection (a)(10), which provides that if a class is impaired under the plan, then at least one impaired class of creditors must affirmatively vote in favor of a plan in order for the plan to be confirmed. When the Court questioned the debtor's contention that (a)(10) was not a confirmation requirement for a plan of liquidation, the debtor's attorney responded that he would like time to provide the Court with a case citation standing for that proposition. Before taking the matter under advisement, the Court gave the debtor's attorney until 5:00 p.m. the following day to provide the Court and opposing counsel with a case citation or other authority for the debtor's assertion that compliance with § 1129(a)(10) is not required if a plan proposes liquidation rather than reorganization.[2] The debtor's attorney reported to the Court that he was unable to find a case–or any other authority–stating that § 1129(a)(10) was not a requirement for confirmation of a plan of liquidation. The Court was likewise unable to locate any authority supporting the debtor's contention. To the contrary, if a plan does not comply with subsection (a)(10), other confirmation requirements need not be addressed. *Id.* at 686-87; *see also In re Ocean Dynamics, LLC*, 2006 WL 1487029, at *2 (Bankr. E.D. La. Mar. 30, 2006) (when plan of liquidation failed to satisfy § 1129(a)(10), confirmation under § 1129(b) was "not an option"); *In re Streger*, 1989 WL 1684552, at *4 (Bankr. S.D. Iowa April 18, 1989) (violation of § 1129(a)(10) made confirmation of liquidating plan "impossible").

Because the debtor does not have an impaired class voting in favor of the plan, the Court finds that the debtor's plan does not comply with § 1129(a)(10) and denies confirmation of the debtor's plan.[3] In a small business case, a plan and disclosure statement must be

[2] The next day, the debtor's attorney sought an extension of the deadline to provide authority. The Court granted a brief extension to 8:00 a.m. the following day.

[3] Because the plan cannot be confirmed, the adequacy of the debtor's disclosure statement is moot.

filed no later than 300 days after the order for relief.[4] 11 U.S.C. § 1121(e)(2). The plan must then be confirmed no later than 45 days after it is filed unless the court extends the time for confirmation in accordance with § 1121(e)(3). 11 U.S.C. § 1129(e). In this case, the 45-day confirmation period was extended upon the debtor's motion to October 17, 2016. Because the Court denies confirmation of the debtor's plan and the debtor is well past the statutory deadline to propose a plan, the debtor's case is dismissed.

IT IS SO ORDERED.

Ben Barry
United States Bankruptcy Judge
Dated: 10/25/2016

cc: Stanley V. Bond and Emily Henson, attorneys for debtor
Donnie Rutledge, attorney for creditor John McNeill
Patricia J. Stanley, attorney for United States Trustee
All parties in interest

[4] A chapter 11 small business debtor is not precluded from filing more than one plan. *See, e.g. In re Crossroads Ford, Inc.*, 453 B.R. 764 (Bankr. D. Neb. 2011). However, each plan must be filed within the 300-day time limit mandated by § 1121(e)(2). For example, if a debtor files a plan within a reasonable period of time–for instance, within the 180-day exclusivity period–then the debtor would have ample time to file another plan in the event the first plan failed to meet the requirements of § 1129(a) and (e) and had to be withdrawn. *See id.* In this case, by waiting until the 300th day to file its plan, the debtor foreclosed the possibility of proposing a confirmable alternative in the event that the Court denied confirmation of its only plan.