

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

In re: BRIGHT GREEN CORPORATION, a
Delaware corporation,

No. 25-10195-j11

Debtor.

**ORDER DENYING UNITED STATES TRUSTEE'S
MOTION TO DISMISS OR CONVERT**

THIS MATTER is before the Court on the Motion to Dismiss for Lack of Insurance and Failure to Provide Documentation to the United States Trustee (“Motion to Dismiss or Convert” – [Doc. 49](#)) filed by the United States Trustee (“UST”).¹ The Court held a final evidentiary hearing on the Motion to Dismiss or Convert on June 9, 2025. Because the UST did not satisfy its burden of establishing “cause” to dismiss or convert under [11 U.S.C. § 1112\(b\)](#)² based on the limited ground asserted in the Motion to Dismiss or Convert that remained at issue at the final hearing, the Court will deny the Motion to Dismiss or Convert.

PROCEDURAL HISTORY

Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code on February 22, 2025.³ Debtor owns certain real property and improvements located at 1033 George Hanosh Blvd. in Grants, New Mexico (the “Property”). Debtor intends to use the Property to grow plants used to manufacture Schedule II through V controlled substances, including opium and cocaine, which requires authorization from the Drug Enforcement Agency (“DEA”). The UST filed the Motion to Dismiss or Convert on April 8, 2025, asserting that Debtor’s chapter 11 bankruptcy case should be dismissed or converted to chapter 7 based on the following: 1) Debtor failed to

¹ Even though the title of the Motion to Dismiss or Convert only requests dismissal, the prayer for relief requests dismissal or conversion of this chapter 11 case to chapter 7.

² References to “Section,” “§” or “§§” refer to sections of title 11 of the United States Code, 11 U.S.C.

³ [Doc. 1](#).

insure the full value of its Property and failed to provide proof of adequate insurance to the UST; and 2) Debtor failed to provide the UST with documentation relating to authorization from the DEA for Debtor to produce and distribute Schedule II through V controlled substances, including cocaine and opium.⁴

Debtor obtained liability insurance and casualty insurance and filed proof of its casualty insurance by the extended deadline fixed by the Court.⁵ No objections to the adequacy of the casualty insurance or the eligibility of the insurer to issue the policy were timely filed by the Court-ordered deadline, which resolved the lack of adequate insurance issue raised in the Motion to Dismiss or Convert.⁶

In its response to the Motion to Dismiss or Convert,⁷ Debtor asserted, among other things, that Debtor produced all documentation relating to any DEA authorization that it had within its possession, custody, and control, but that it did not have within its possession, custody, or control, any document that qualifies as an authorization from the DEA to produce and distribute Schedule II through V controlled substances, including cocaine and opium (“DEA Cocaine and Opium Authorization”). Creditor John Fikany, filed a concurrence in the Motion to Dismiss or Convert.⁸ The Concurrence asserted as an additional ground for “cause” under

⁴ [Doc. 49](#).

⁵ See Order Resulting from Emergency Hearing on Debtor’s Emergency Motion to Reconsider May 2, 2025 Order ([Doc. 80](#)), fixing an extended deadline of May 12, 2025, for Debtor to file proof of casualty insurance; Documents Submitted in Compliance with Order ([Doc. 83](#)).

⁶ See Order Setting Final Hearing on Adequacy of Insurance and Fixing Related Requirements ([Doc. 95](#)), fixing a deadline of May 21, 2025, for Debtor to file a complete copy of its casualty insurance policy for the Property and a deadline of May 26, 2025, for Debtor to file a statement describing the insurer’s eligibility to issue the insurance policy, and fixing an objection deadline of June 2, 2025; Documents Submitted in Compliance with Order Setting Final Hearing on Adequacy of Insurance and Fixing Related Requirements ([Doc. 103](#)).

⁷ See Response in Opposition to Motion to Dismiss for Lack of Insurance and Failure to Provide Documentation to the United States Trustee (“Response” – [Doc. 55](#))

⁸ See John Fikany’s Concurrence in United States Trustee’s Motion to Dismiss for Lack of Insurance and Failure to Provide Documentation (“Concurrence” – [Doc. 53](#)).

§ 1112(b) that Debtor filed this chapter 11 bankruptcy case in bad faith.⁹ The Court determined that Mr. Fikany would need to file his own motion to dismiss or convert if he wanted to raise additional grounds as “cause” for dismissal or conversion.

The Court held a final, evidentiary hearing on the Motion to Dismiss or Convert on June 9, 2025. The only remaining basis for dismissal or conversion at the final hearing was the Debtor’s alleged failure to produce the DEA Cocaine and Opium Authorization to the UST. At the conclusion of the hearing, Debtor indicated that it may decide not to oppose dismissal of this chapter 11 bankruptcy case and the UST and Mr. Fikany stated they did not oppose dismissal on that basis. As a result, the Court fixed a deadline of noon on June 11, 2025, for Debtor to file a notice that it does not oppose the Court granting the Motion to Dismiss or Convert and dismissing the case.¹⁰

Debtor timely filed a Notice of Non-Opposition to Relief Requested in Motion to Dismiss for Lack of Insurance and Failure to Provide Documentation to United States Trustee (“Notice of Non-Opposition” – [Doc. 127](#)). The Notice of Non-Opposition included a statement that Debtor continues to dispute the grounds for dismissal asserted by the UST, and that the potential to pursue bankruptcy reorganization in Delaware has factored into its decision not to oppose dismissal without prejudice to Debtor filing another bankruptcy case because the “Debtor

⁹ *Id.*

¹⁰ See Notice and Order Regarding Intent to Enter Order Granting Relief from the Automatic Stay ([Doc. 126](#)) providing that the Court would enter an order granting Mr. Fikany’s pending motion for relief from stay to allow Mr. Fikany to proceed in a state court action titled, *Bright Green Corporation v. John Fikany*, D-1333-CV-2020-00231 (the “State Court Action”) unless Debtor filed a notice that it does not oppose the Court granting the Motion to Dismiss or Convert by June 11, 2025, and that the Court will not decide the Motion to Dismiss or Convert prior to June 18, 2025, unless the Debtor filed a notice that it does not oppose the Court Granting the Motion to Dismiss or Convert by June 17, 2025. The Court entered a Memorandum Opinion and an order granting Mr. Fikany’s motion for relief from stay on June 12, 2025. ([Doc. 131](#) and [Doc. 132](#)). Debtor removed the State Court Action to this Court, initiating Adversary Proceeding No. 25-1010-j. The Court granted a motion for abstention and remand in Adversary Proceeding No. 25-1010-j, which remanded the removed State Court Action back to state court. See Adversary Proceeding No. 25-1010-j ([Doc. 41](#) and [Doc. 142](#)).

believes that Delaware may have a greater selection of legal counsel and a better regulatory climate for reorganizations than New Mexico.” *Id.* Mr. Fikany filed a response to the Notice of Non-Opposition, opposing dismissal and pointing out that Debtor now seeks dismissal on grounds different than those in the Motion to Dismiss or Convert, and is, in essence, requesting approval of a voluntary dismissal of the Debtor’s chapter 11 case so that it can refile in Delaware without filing its own motion to dismiss this bankruptcy case together with notice and an opportunity to object to all creditors and parties in interest.¹¹ Mr. Fikany’s Response to Notice of Non-Opposition included a request for the Court to impose refiling restrictions to preclude Debtor from filing a subsequent bankruptcy case in Delaware.¹² Debtor then filed an Amended Notice of Non-Opposition to Relief Requested in Motion to Dismiss for Lack of Insurance and Failure to Provide Documentation to United States Trustee (“Amended Notice” – [Doc. 136](#)), in which the Debtor simply states that it “does not oppose the relief” requested in the Motion to Dismiss or Convert. Mr. Fikany filed a response to the Amended Notice, which included a request to impose a refiling restriction on the Debtor for 180 days pursuant to §§ 105(a), 349(a), and 109(g).¹³ Alternatively, Mr. Fikany requests the Court to deny the Motion to Dismiss or Convert and stated he does not oppose placing this bankruptcy case on hold pending full resolution of the State Court Action as the Court had suggested as a possibility.¹⁴

¹¹ See John Fikany’s (i) Response to Debtor’s Notice of Non-Opposition to Relief Requested in Motion [to] Dismiss for Lack of Insurance and Failure to Provide Documentation to United States Trustee [[Docket No. 127](#)], (ii) Objection to Dismissal, and (iii) Request for Immediate Hearing (“Response to Notice of Non-Opposition” – [Doc. 128](#)).

¹² *Id.*

¹³ See John Fikany’s Response to Debtor’s Amended Notice of Non-Opposition to Relief Requested in Motion [to] Dismiss for Lack of Insurance and Failure to Provide Documentation to United States Trustee [[Docket No. 136](#)] and Additional Request that the Court Consider Alternative Conditions of Dismissal ([Doc. 137](#)).

¹⁴ *Id.*

FACTS

Debtor's original business plan was to obtain authorization from the DEA to cultivate cannabis and other scheduled drugs at its Property. In February of 2024, Debtor decided to pivot away from cannabis, and instead cultivate and distribute other plant-based controlled substances, including opium and cocaine. Opium and cocaine are Schedule II – V plant-based controlled substances. Debtor submitted an application to the DEA to obtain authorizations to grow Schedule II – V plant-based controlled substances.

At the meeting of creditors held April 3, 2025, John Stockwell testified on behalf of the Debtor that the DEA had authorized Debtor to grow plants used to produce Schedule II – V controlled substances, such as opium and cocaine for distribution as medicine.¹⁵ The UST requested documentation of that authority at the meeting of creditors.¹⁶ Later in the meeting of creditors, the UST again asked to confirm that the Debtor has approval from the DEA to manufacture Schedule II – V controlled substances.¹⁷ In response, Mr. Stockwell testified:

¹⁵ See Transcript of Continued First Meeting of Creditors ("Transcript" - Exhibit 4):

Mr. Pena: All right. Well, let's talk about poppy and opium. Is it your testimony that [Debtor] is authorized as we sit here today to grow poppy for purposes of distribution as API [Active Pharmaceutical Ingredient] to pharmaceutical companies?

Mr. Stockwell: It is.

Page 26, lines 4 – 10.

Mr. Pena: So, your testimony is that the DEA has authorized [Debtor] to grow the API associated with opium and with cocaine for further distribution as medicine. Is that your testimony?

Mr. Stockwell: Along with probably other – plenty other plants, maybe 25 other plants.

Page, 27, lines 12 – 19.

Mr. Pena: And that authority is reflected in a document that you've provided to your attorney to provide to me, correct?

Mr. Stockwell: Correct.

Page 28, lines 3 – 7.

¹⁶ See Transcript, p. 28, lines 24 – 25, and p. 29, lines 1 – 3:

Mr. Pena: Mr. Hardman [Debtor's counsel], please produce to me before the end of the day any letters or authorizations from the DEA specifically authorizing [Debtor] to produce and distribute either API associated with cocaine or opium, please.

¹⁷ See Transcript, p. 49, lines 15 – 21:

I believe that the DEA is more specific and did name what was on the II through V and further requirements would be, you know, who are the customers you are going to ship it to and, I was just copied on a letter from the DEA a few days ago that they're looking for some further information regarding this, like when the start date is, you know, and how we're going to proceed.

Transcript, page 49, lines 22 – 25, and page 50, lines 1 – 4.

Mr. Fikany's counsel similarly asked a follow up question at the meeting of creditors:

I'm not sure I understood the testimony, Mr. Stockwell, but I – I think what you testified was that you have – or excuse me – the Debtor has all of the approvals it needs to start producing the API. I mean, there's – you're ready to go. Am I understanding that correctly or is there still some more bureaucracy – bureaucratic hoops you've got jump through?

Transcript, page 121, lines 18 – 25, and page 122, line 1.

In response, Mr. Stockwell testified:

Well, just to – just to make that distinction that – the Board of Pharmacy has signed off subject to the DEA. The DEA has and will do a final inspection because one of the things that [Debtor] did . . . since last fall is they made ready the facility, you know, to pivot out of the cannabis and into the controlled substances.

Transcript, page 122, lines 3 – 9.

Debtor produced to the UST all documentation in its possession, custody or control relating to a DEA authorization or application for authorization from the DEA to produce and manufacture Schedule II through V controlled substances, including the following:¹⁸

Debtor's DEA 225 Registration Application to Bulk Manufacture Controlled Substances for Federal Research;¹⁹

Debtor's Licenses and Renewals;²⁰

Mr. Pena: And so, you have approval from the DEA similar to the memorandum of agreement that you had on marijuana and THC to manufacture these other controlled substances on Schedules II through V, is that your testimony, Mr. Stockwell?

¹⁸ Debtor produced Exhibits 1 – 32 which were admitted into evidence at the final hearing, to the UST in response to its request for documentation relating to any DEA authorizations.

¹⁹ Exhibit 16.

²⁰ Exhibit 19.

Press release regarding Debtor obtaining authorization from the board of pharmacy and the DEA for Schedules I and II controlled substances;²¹

Letter dated February 28, 2024 from Debtor to DEA;²²

2024 DEA Registration – Schedule I and II Bulk Manufacturing, Executive Summary;²³

Licenses and Renewals, August 6, 2024;²⁴

Security and Compliance Plan;²⁵

DEA Memorandum of Agreement;²⁶ and

New Mexico Controlled Substance License Application to Bulk Manufacture Controlled Substances for Federal Research.²⁷

None of these documents is a DEA Cocaine and Opium Authorization. The DEA Memorandum Agreement is for the bulk manufacture of Schedule I controlled substances: marihuana, marihuana extract, and tetrahydrocannabinols (THC).²⁸ The DEA Memorandum Agreement is unsigned.²⁹

At the final hearing, when asked whether Debtor has obtained DEA authorization to grow poppies to produce opium, Mr. Stockwell testified that the Debtor is fully authorized and could begin planting as quick as next month. When asked a second time, Mr. Stockwell testified that Debtor obtained that authorization as of last week, subject to one additional requirement to make an application for an import license, but that the DEA has agreed to everything else. Ms.

²¹ Exhibit 21.

²² Exhibit 22.

²³ Exhibit 23.

²⁴ Exhibit 25.

²⁵ Exhibit 28

²⁶ Exhibit 31.

²⁷ Exhibit 32.

²⁸ Exhibit 31.

²⁹ *Id.*

Stockwell likewise testified that the only thing left to obtain from the DEA is an authorization to import.

Based on the evidence admitted at the final hearing, the Court finds that Debtor does not have a DEA Cocaine and Opium Authorization. There is at least one additional item, which may be an import authorization, that Debtor must obtain from the DEA before it might obtain authorization to grow plant-based controlled substances used to manufacture and produce opium and cocaine.

DISCUSSION

The Notice of Non-Opposition is the functional equivalent of a request for dismissal by the Debtor without prejudice so the Debtor may file another chapter 11 case in Delaware. A chapter 11 debtor does not have an absolute right to dismissal of its chapter 11 case. Based on the Notice of Non-Opposition, Mr. Fikany no longer consents to the Court dismissing the case. To seek dismissal, the Debtor must file its own motion to dismiss, to which parties in interest would have the opportunity to object. The Court, therefore, will rule on the Motion to Dismiss or Convert on its merits.

The only ground for dismissal or conversion that remains at issue is the UST's assertion that Debtor failed to provide documentation of its DEA Cocaine and Opium Authorization. This is a limited issue. Mr. Fikany's allegation that "cause" for dismissal or conversion exists based on Debtor's alleged bad faith in filing this chapter 11 bankruptcy case is not at issue because it was raised in Mr. Fikany's Concurrence and not by separate motion with notice and an opportunity to object. Thus, the Court will only address the Debtor's alleged failure to provide documentation of its DEA Cocaine and Opium Authorization to determine whether "cause" exists for dismissal or conversion of this case to chapter 7.

Dismissal or conversion of a chapter 11 case is governed by [11 U.S.C. § 1112\(b\)](#), which provides, in relevant part:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

[11 U.S.C. § 1112\(b\)](#).

Whether “cause” exists under § 1112(b) to convert or dismiss a chapter 11 case is a threshold issue. *In re Sunnyland Farms, Inc.*, [517 B.R. 263, 266](#) (Bankr. D.N.M. 2014); *In re Robinson*, [628 B.R. 168, 174-75](#) (Bankr. D. Kan. 2021) (same); *In re Melendez Concrete Inc.*, No. 11-09-12334 JA, 2009 WL 2997920, at *3 (Bankr. D.N.M. Sept. 15, 2009) (same). Section 1112(b)(4) enumerates a non-exhaustive list of what constitutes “cause” for dismissal or conversion. *See Frieouf v. United States (In re Frieouf)*, [938 F.2d 1099, 1102](#) (10th Cir. 1991) (“Section 1112(b) provides a nonexhaustive list of grounds upon which a bankruptcy court may dismiss a Chapter 11 case for ‘cause.’”). The party requesting dismissal or conversion bears the burden of proving “cause” by a preponderance of the evidence. *Sunnyland Farms*, [517 B.R. at 266](#) (citing *In re ARS Analytical, LLC*, [433 B.R. 848, 861](#) (Bankr. D.N.M. 2010)); *In re Whetten*, [473 B.R. 380, 382](#) (Bankr. D. Colo. 2012) (the preponderance of the evidence standard applies to proving “cause” for dismissal or conversion under [11 U.S.C. § 1112\(b\)](#) (citing *ARS Analytical*, [433 B.R. at 861](#))); *In re Corley Nissan, LLC*, [656 B.R. 856, 865](#) (Bankr. D.N.M. 2024) (“[T]he party requesting dismissal or conversion bears the burden of demonstrating ‘cause.’”). Thus, if the moving party fails to establish “cause,” the Court’s inquiry ends, and the Motion to Dismiss or Convert will be denied.

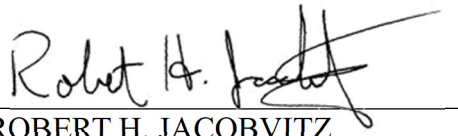
The UST asserts that Debtor failed to provide it with documentation of its DEA Cocaine and Opium Authorization after Debtor's representative testified at the continued meeting of creditors that Debtor had obtained authorization from the DEA to produce and distribute Schedule II through V controlled substances, including opium or cocaine. The "failure timely to provide information or attend meetings reasonably requested by the United States trustee" is "cause" for dismissal or conversion. [11 U.S.C. § 1112\(b\)\(4\)\(H\)](#). Such failure to provide information reasonably requested by the UST does not need to be "unexcused" to nevertheless constitute "cause." *In re Turkey Leg Hut & Co. LLC*, [665 B.R. 129, 140](#) (Bankr. S.D. Tex. 2024) (citing *Andover Covered Bridge, LLC v. Harrington (In re Andover Covered Bridge, LLC)*, [553 B.R. 162, 173-74](#) (1st Cir. BAP 2016)).

It was reasonable for the UST to request documentation of the DEA Cocaine and Opium Authorization that Debtor's representative at the meeting of creditors indicated the Debtor had obtained. Indeed, at the final hearing, John Stockwell continued to testify that Debtor had obtained authorization from the DEA to grow Schedule II through V plant-based controlled substances, including plants used to produce and manufacture cocaine and opium. But when pressed, Mr. Stockwell clarified that, in fact, Debtor has yet to obtain final authorization from the DEA. Debtor provided the UST with all documentation in its possession, custody, and control that related in any way to authorizations from the DEA, but did not produce the DEA Cocaine and Opium Authorization because it does not yet have that authorization. All of the documentation relating to authorization from the DEA that Debtor provided to the UST was admitted into evidence at the final hearing on the Motion to Dismiss or Convert.

Debtor's failure to provide the DEA Cocaine and Opium Authorization to the UST is not "cause" under § 1112(b)(4)(H) for dismissal or conversion under § 1112(b). Debtor cannot

produce documentation that does not exist. On the sole remaining limited ground for dismissal based on Debtor's failure to provide documents reasonably requested by the UST, the Court concludes that the UST has not met its burden of proving by a preponderance of the evidence that "cause" exists to dismiss or convert Debtor's chapter 11 case.

WHEREFORE, IT IS HEREBY ORDERED that the Motion to Dismiss or Convert is DENIED.


ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: June 26, 2025

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