

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

<p>In Re:</p> <p>Cummins Family Holdings, LLC,</p> <p>Debtor.</p>	<p>Bankruptcy Case No. 13-40179-JDP</p>
<p>Cummins Family Holdings, LLC,</p> <p>Plaintiff,</p> <p>vs.</p> <p>KeyBank National Association and Land View, Inc.,</p> <p>Defendants.</p>	<p>Adv. Proceeding No. 13-08050-JDP</p>

**SUMMARY ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS WITH PREJUDICE**

On December 19, 2013, the Court conducted a hearing concerning

the motions filed by Defendants KeyBank National Association and Land View, Inc. to dismiss the amended complaint filed by Plaintiff, chapter 12 debtor Cummins Family Holdings, LLC (“Cummins”), under Fed. R. Bankr. P. 7012, which incorporates Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief may be granted. *See* Dkt. Nos. 12, 23, and 28. After due consideration of the parties’ submissions and arguments, and a careful review of the record, the Court concludes the Defendants’ motions should be granted, and that this adversary proceeding should be dismissed with prejudice.

Cummins’ proposed chapter 12 plan, which the parties agreed at the hearing the Court should consider, has previously been confirmed. Though not specifically modified in that plan, Cummins’ amended complaint asks the Court to enjoin Defendants from exercising their state law right to collect their claims from Cummins’ principals, who may otherwise be liable to Defendants as partners, or as guarantors of those claims, while Cummins attempts to pay Defendants’ claims in full through the confirmed plan over the next several years. Defendants object to the

entry of any proposed injunction as improper as a matter of law, and the Court concludes that Defendants' protests are well-founded.

In resolving these motions, the Court has accepted the well-plead allegations of Cummins' amended complaint as true, and construed the facts alleged in the light most favorable to Cummins. It has also considered the terms of Cummins' chapter 12 plan as requested by the parties. After doing so, the Court concludes that, under the facts as alleged, the Court simply lacks the legal authority to grant Plaintiff a post-confirmation injunction as requested pursuant to 11 U.S.C. § 105(a) preventing Defendants from pursuing the non-debtors while Cummins attempts to pay Defendants' claims through its confirmed chapter 12 plan. As the Court interprets the decisions, the Ninth Circuit has so held in a similar, albeit not identical, context. *See Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.)*, 502 F.3d 1086, 1094 (9th Cir. 2007) (noting that a bankruptcy court may only grant an injunction to stay an action against a non-debtor under § 105(a) up to "confirmation of a reorganization plan," and describing such an injunction as the "maximum

injunctive relief” a bankruptcy court may provide under that section); *Am. Hardwoods, Inc. v. Deutsche Credit Corp. (In re Am. Hardwoods, Inc.)*, 885 F.2d 621 (9th Cir. 1989) (holding bankruptcy courts lack authority under § 105(a) to grant an injunction post-confirmation of a debtor’s plan). Although, both *In re Excel Innovations, Inc.* and *In re Am. Hardwoods, Inc.* involved chapter 11 cases, the Court concludes it similarly lacks the authority to enter the relief requested here by Cummins after “confirmation of [its] reorganization plan” under chapter 12. Indeed, the case against this Court’s authority to issue an injunction may be even more clear since, significantly, unlike in chapter 11, in chapter 12, Congress enacted a statutory stay against creditor attempts to collect from a debtor’s co-debtors, but limiting the reach of that stay to debts of the kind held by Defendants. *See* 11 U.S.C. § 1201(a) (limiting the reach of the co-debtor stay in a chapter 12 case to creditors holding claims for consumer, not business, debts). It is therefore unlikely that Congress, which knows how to enact a stay when it desires to do so, intended that individual bankruptcy courts use the general powers to restrain creditors seeking to

collect from co-debtors. *See* 11 U.S.C. § 105(a) (granting the power to a bankruptcy court to enter orders “necessary or appropriate to carry out the provisions of [title 11].”).

Because the Court lacks the legal authority to grant the only relief requested by Plaintiff, it concludes the amended complaint should be dismissed. *See Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008) (stating a court may dismiss a complaint under Rule 12(b)(6) “on a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable theory.”). In addition, because the Court lacks the authority to grant the relief requested, the Court concludes it would be futile to offer Plaintiff any opportunity to further amend its complaint, and therefore, this adversary proceeding should be dismissed with prejudice. *See Mirmehdi v. United States*, 689 F.3d 975, 985 (9th Cir. 2012) (instructing that “a party is not entitled to an opportunity to amend his complaint if any potential amendment would be futile. *See, e.g., May Dep’t Store v. Graphic Process Co.*, 637 F.2d 1211, 1216 (9th Cir. 1980).”).

For the reasons stated above,¹ and for other good cause, **IT IS**

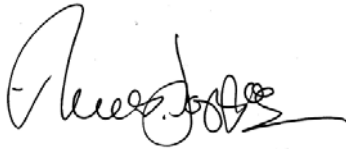
HEREBY ORDERED THAT:

(1) Defendant KeyBank's motion to dismiss Cummins' amended complaint, Dkt. No. 23, is **GRANTED**;

(2) Defendant Land View's motion to dismiss Cummins' amended complaint, Dkt. No. 28, is **GRANTED**; and,

(3) Cummins' amended complaint, Dkt. No. 15, and this adversary proceeding, is **DISMISSED WITH PREJUDICE**.

Dated: December 26, 2013



Honorable Jim D. Pappas
United States Bankruptcy Judge

¹ While the Court concludes its lack of legal authority to grant the injunction requested by Cummins constitutes ample cause to dismiss this action, the Court also doubts, based upon the terms of the confirmed plan, that Plaintiff could ever establish a factual predicate to support such relief. Cummins does not dispute that its confirmed plan contained comprehensive terms modifying Defendants' collection and payment rights, which terms were negotiated with and consented to by Defendants. Cummins is bound by the terms of that confirmed plan. *See* 11 U.S.C. § 1227(a). To seek further restrictions on Defendants' rights, if allowed at all, would likely require modification of Plaintiff's plan. *See* 11 U.S.C. § 1229(a). Moreover, under these facts, the Court is skeptical that the equities favor Cummins.