

ORIGINAL

UNITED STATES BANKRUPTCY COURT
Southern District of Alabama

RECEIVED FPSC

07 APR 16 AM 9:15

Bankruptcy Proceeding No.: 07-10324
Chapter: 11
Judge: MARGARET A. MAHONEY

COMMISSION
CLERK

070000

In Re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):
Trinsic, Inc. Trinsic Communications, Inc.
100 Brookwood Road 100 Brookwood Road
Atmore, AL 36502 Atmore, AL 36502

NOTICE OF HEARING

A hearing will be held in Courtroom 2 of the U. S. Bankruptcy Court, 201 St. Louis St., Mobile, AL on:

Date: 4/24/07

Time: 08:30 AM

Matter:

291 – Motion to Convert Case to Chapter 7. Fee Amount \$25 Filed by Touch 1 Communications, Inc., Trinsic Communications, Inc., Trinsic, Inc., Z-Tel Consumer Services, LLC, Z-Tel Network Services, Inc. (Strickland, Christopher)

A MOTION WILL BE DISMISSED BY THE COURT IF THE MOVANT DOES NOT APPEAR AT THIS HEARING OR NOTIFY THE COURT AT LEAST ONE (1) DAY IN ADVANCE OF ANY AGREEMENT REACHED WITH ALL OTHER AFFECTED PARTIES BY CONTACTING ANTOINETTE BROOKS AT <antoinette_brooks@alsb.uscourts.gov>. MOVANT'S COUNSEL MUST REPRESENT TO THE COURT THAT ALL AFFECTED PARTIES HAVE BEEN NOTIFIED OF, AND CONSENT TO, THE AGREEMENT.

Dated: 4/10/07

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC _____

OTH Nonnye

GERALDINE S. LESTER
CLERK OF COURT

BY ANTOINETTE BROOKS
DEPUTY CLERK

DOCUMENT NUMBER - DATE

03206 APR 16 05

FPSC-COMMISSION CLERK

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
MOBILE DIVISION

DISTRIBUTION CENTER
07 APR 16 AM 7:37

IN RE:)
)
TRINSIC, INC.,)
TRINSIC COMMUNICATIONS, INC.,)
TOUCH 1 COMMUNICATIONS, INC.,)
Z-TEL NETWORK SERVICES, INC., and)
Z-TEL CONSUMER SERVICES, LLC)
)
Debtors.)
)
CASES NO. 07-10324
(Jointly Administered)
CHAPTER 11
JUDGE MAHONEY

MOTION TO CONVERT CASE
TO PROCEEDING UNDER CHAPTER 7 OF THE BANKRUPTCY CODE AND
REQUEST FOR EXPEDITED HEARING THEREUPON

COME NOW Trinsic, Inc., Trinsic Communications, Inc., Touch 1 Communications, Inc., Z-Tel Network Services, Inc. and Z-Tel Consumer Services, LLC (collectively, the "Debtors"), as Debtors and Debtors in Possession in the above-captioned cases, and pursuant to under Section 1112(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"), seek the entry of an order converting each of the above-styled bankruptcy cases (the "Bankruptcy Cases") to proceedings under Chapter 7 of the Bankruptcy Code, respectfully showing the Court as follows:

BACKGROUND

1. On February 7, 2007 (the "Petition Date"), the Debtors filed with this Court their voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code,

DOCUMENT NUMBER-DATE
03206 APR 16 6
FPSC-COMMISSION CLERK

the Debtors continue to operate their businesses and manage their property as debtors in possession.

2. An official committee of unsecured creditors (the "Creditors' Committee") has been appointed in these cases.

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. On March 23, 2007, the Court entered its Order (1) Approving Sale of Substantially All of Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances; (2) Approving Assumption and Assignment of Certain Contracts and Leases; and (3) Granting Related Relief (Docket Entry No. 244) (the "Sale Order"), pursuant to which the Debtors conducted an initial sale closing on March 26, 2007 ("Initial Closing") that effectuated the transfer of all of the Debtors' accounts receivable and certain other assets in exchange for \$12.5 Million in cash, under the terms of that certain Asset Purchase Agreement, as modified by that certain Addendum No. 1 to Asset Purchase Agreement, each executed by the parties and filed with the Court on March 21, 2007 (Docket Entry No. 237) (together with any and all addenda, exhibits and schedules thereto, as amended from time to time, collectively, the "Asset Purchase Agreement").¹ Under the foregoing Court-approved sale and the related Asset Purchase Agreement, a Final Closing will be conducted on or before seventy-five (75) days after the Initial Closing, at which time, among other things, the Debtors' customer lines and certain executory contract rights will be transferred and assigned to the Purchaser, in exchange for an additional \$13 Million in cash, which funds are currently held in escrow. While the Debtors continue to hold *de jure* and *de facto* control

over their business operations, pending consummation of the Final Closing, the Purchaser has assumed day-to-day management of the Business, including the Purchased Assets, all in accordance with the Management Services Agreement (the "MSA" and together with all other documents executed in connection with the Asset Purchase Agreement, the "Transaction Documents") as approved by this Court in the Sale Order.

5. The Debtors will have no material assets or operations following consummation of their pending asset sales, other than: (a) cash; (b) their interests under the Transaction Documents and Second Escrow Amount; (c) litigation claims arising under Chapter 5 of the Bankruptcy Code; and (d) claims reconciliation, related objections and/or counterclaims, which may include litigation of various claims by and against Thermo Credit, LLC (the "Thermo Disputes").²

6. Although the Debtors continue to own and control certain assets pending the Final Closing, these assets are managed by the Purchaser under the MSA. Therefore, so long as a Chapter 7 trustee assumes all liabilities and obligations under the Transaction Documents on behalf of the estates, a Chapter 7 trustee and the estates would continue to receive all benefits under the Transaction Documents.

7. Pursuant to an order entered by the Court following an evidentiary hearing conducted on April 2, 2007, the commencement or continuation of any and all litigation-related activities pertaining to the Thermo Disputes has been suspended, pending further order and direction as to the most efficient means by which these bankruptcy cases can and should be administered.

1 Defined terms used herein and not otherwise defined shall have the meaning ascribed to such term by the Asset Purchase Agreement.

2 In addition to the pending consummation of the Asset Purchase Agreement, the Debtors are also in the process of divesting their VoIP business, pursuant to the terms of a sale transaction that was entered into and

ARGUMENT AND CITATIONS OF AUTHORITY

8. Under Section 1112(a) of the Bankruptcy Code, a debtor: “may convert a case under this chapter to a case under chapter 7 of this title unless-- (1) the debtor is not a debtor in possession; (2) the case originally was commenced as an involuntary case under this chapter; or (3) the case was converted to a case under this chapter other than on the debtor's request.” See generally 11 U.S.C. § 1112(a); see also H.R.Rep. No. 595, 95th Cong., 1st Sess. 405 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 117 (1978) (“This section brings together all of the conversion and dismissal rules for Chapter 11 cases. *Subsection(a)* gives the debtor an absolute right to convert a voluntarily commenced chapter 11 case in which the debtor remains in possession to a liquidation case.”) (emphasis added).

9. None of the exclusionary provisions of subsections (a)(1) through (a)(3) apply in this case, such that the Debtors’ entitlement to seek conversion under Section 1112(a) remains inviolate.³

substantially consummated prior to commencement of their bankruptcy cases, subject to regulatory approval.

³ The text of Section 1112(a), and its creation as a supplement to the general right of any party to seek conversion under Section 1112(b), clearly indicate that a Chapter 11 debtor holds an absolute right of conversion, subject only to the exclusionary conditions set forth therein, and subject further to the Court’s generalized power to prevent acts of fraud. See id; see also In re Marill Alarm Systems, Inc., 100 B.R. 606 (Bankr. S.D. Fla. 1989) (“Under 11 U.S.C. § 1112(a) a debtor has an absolute right to convert a case under chapter 11 to a case under chapter 7”); see further Marrama v. Citizens Bank of Massachusetts, 127 S.Ct. 1105, 1107-1112 (2007) (holding, in the context of evaluating a Debtor’s absolute right to convert from Chapter 7 to Chapter 13 pursuant to Code Section 706, that such absolute right is otherwise subject to the Court’s inherent power to prevent fraud). In this case, no fraudulent misconduct attends the Debtors’ pursuit of conversion as a more efficient vehicle for administering their limited post-sale affairs, and the entitlement conferred upon them to seek conversion under Section 1112(a) consequently should not be disturbed. Cf id. Even if the “for cause” standard set forth within Section 1112(b) were somehow taken into account, however, the Debtors believe, and hereby respectfully submit, that the considerations set forth herein more than satisfy that standard.

10. After deliberate and thoughtful consideration, the Debtors have concluded, and hereby respectfully submit, that the most efficient means by which to administer their limited remaining affairs lies within the confines of a Chapter 7 liquidation, supervised by a unified and independent fiduciary. In particular, conversion is warranted by, among other considerations: (a) the relative lack of necessity for a Chapter 11 plan at this juncture; (b) the significant costs attending the processes of formulating, noticing, balloting and approving any such plan and disclosure statement; (c) the avoidance of substantial, potentially duplicative, administrative expenses through the continued involvement of multiple professionals representing the Debtors and various other case constituencies on a going forward basis; and (d) the limited nature of the remaining assets and affairs to be administered in these cases, all of which can be handled with equal competence and greater efficiency by a single, Chapter 7 trustee.

11. After conferring in the matter, the Debtors also understand and believe that the Purchaser is willing to consent to a conversion of the Debtors' bankruptcy cases as provided for herein, provided that the order providing for such conversion clearly obligates and binds the ensuing Chapter 7 estate and any Trustee thereof to comply with and fully perform each and every remaining obligation of the Debtors under the Transaction Documents, including the payment of any and all liabilities that are or become due from Sellers thereunder, the performance of any and all duties related to the assumption and assignment of executory contracts and administration of employees, and compliance with the related, prior orders of this Court, in a form acceptable to Purchaser. The Debtors agree, and hereby respectfully submit, that the inclusion of such provisions within the Order

granting this Motion is both appropriate and necessary under the circumstances, such that without these assurances the effectiveness of the Final Closing, payment of the Final Purchase Price and full consummation of the sale may be unduly hindered and delayed.

REQUEST FOR EXPEDITED HEARING

12. So as to protect against the consequences of any intervening uncertainty relative to the status of these cases during the pendency of this Motion, in order to allow the Chapter 7 Trustee immediately to assume responsibility for the various open matters in the case, and so as to avoid precipitous duplication of tasks by the existing Chapter 11 professionals, the Debtors believe and respectfully submit that an expedited scheduling and disposition of this Motion is in the best interests of their estates.

13. As such, the Debtors hereby request an expedited hearing with respect to this Motion. See generally FED. R. BANKR. P. 2002(a)(4) & 9006(c); see further In re Sunflower Racing, Inc., 226 B.R. 665, 671-72 (D. Kan. 1998) (collecting cases, and affirming reduction of notice periods on conversion/dismissal request as circumstances dictate).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Debtors pray the Court enter orders: (i) scheduling an expedited hearing upon this Motion; (ii) immediately converting the Bankruptcy Cases to proceedings under Chapter 7; (iii) obligating and binding the ensuing Chapter 7 estate and any Trustee thereof to comply with and fully perform each and every remaining obligation of the Debtors under the Transaction Documents, including the payment of certain liabilities, performing duties related to the assumption and assignment of executory contracts and administration of employees and the related, prior orders of this Court; and (iv) granting such other relief as is just and proper.

Respectfully submitted this 9th day of April, 2007

/s/ Christopher S. Strickland
Christopher S. Strickland
GA Bar No. 687277
LEVINE, BLOCK & STRICKLAND LLP
945 E. Paces Ferry Road
2270 Resurgens Plaza
Atlanta, GA 30326
Tel: 404-231-4567
Fax: 404-231-4005
Email: cstrickland@lbslaw.net

-and-

Donald M. Wright
Alabama Bar No. WRI021
SIROTE & PERMUTT
2311 Highland Avenue South
P.O. 55727
Birmingham, Alabama 35255-5727
Tel: 205-930-5100
Fax: 205-930-5101
Email: dwright@sirote.com

*Attorneys for the Debtors
and Debtors in Possession*