

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
IOWA

IN RE:)

) Chapter 7

WOOD FLOORS IMPORT)

DISTRIBUTOR LLC,) Bankruptcy No. 02-04481

)

Debtors.)

ORDER RE OBJECTIONS TO CLAIMS

This matter came before the undersigned on January 29, 2004. Appearing were John Daufeldt for Debtor, Jeff Taylor for Trustee Renee Hanrahan, Rush Shortley for EcoBuild, and Peter Riley for Aslan Imports and John Mitchell. After hearing evidence and arguments of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

STATEMENT OF THE CASE

This hearing involves objections lodged by Debtor Wood Floors Import Distributor, LLC to three claims: #42 - Aslan Imports, #44 - EcoBuild, and #39 - Mark Scherer. At the beginning of the hearing, the Court was advised by Mr. Taylor that an agreement has been reached regarding Claim #39 asserted by Mark Scherer. The Court therefore directs Mr. Taylor to present a proposed order setting out the agreement for the Court's approval. The claims by Aslan Imports/John Mitchell and EcoBuild remain in dispute.

FINDINGS OF FACT

EcoBuild LLC filed a claim in the total amount of \$17,880.89. Of this amount, it claims \$4,560 is an unsecured priority claim from wages, salaries or commissions. Trustee proposes to treat this as a bifurcated claim, allowing \$4,650 as a priority wage claim and \$13,230.89 as a general unsecured late-filed claim. Debtor does not object to the late-filed unsecured portion of the claim. It objects that of the \$4,650 proposed to be allowed, only \$809.68 is actually owed.

Aslan Imports filed a proof of claim in the total amount of \$32,771.84, with a portion of that being a priority wage claim. Trustee proposes to bifurcate the claim, allowing \$4,650 as a priority wage claim and \$28,121.84 as a general unsecured claim. Debtor objects that Aslan Imports instead actually owes Debtor \$3,918.68 and \$28,667.32, respectively. On Aslan's claim, Debtor offers Exhibits N and Q. On Exhibit Q, the Register is titled "Employee Advances: Note Receivable - John Mitchell." Debtor asserts that John Mitchell, operating under an entity named Aslan Imports, received loans from Debtor in the amounts listed in Exhibit Q, totaling \$28,667.13. Aslan's Exhibit 2 is a copy of a 2001 1099-MISC from Debtor to John Mitchell, Aslan. It reports non-employee compensation of \$5667.32. This is the amount shown on Debtor's Exhibit Q for payments in 2001.

As a matter of background information, the Court notes that Kathryn Mitchell is now owner and chief officer of Debtor Wood Floors. Prior to October 29, 2002, her husband Daniel Mitchell was president and CEO. He created the company. Mr. and Mrs. Mitchell are parties in a pending dissolution of marriage proceeding. John Mitchell of Aslan Imports is Daniel Mitchell's brother. Debtor filed its Chapter 7 bankruptcy petition on December 19, 2002.

Kathryn Mitchell, current owner of Debtor Wood Floors, testified. She states that Exhibit D shows what is owed for commissions on sales EcoBuild made for Debtor. The total is \$809.68. Mrs. Mitchell does the day-to-day accounting for Debtor and believes that amount to be accurate. Upon questioning by counsel for EcoBuild, Mrs. Mitchell repeatedly responded that she had brought no supporting documents regarding the EcoBuild claim to court with her.

EcoBuild offered the testimony of Daniel Mitchell, former president, CEO and operator of Debtor. He testified that generally commissions are 5 percent. EcoBuild and Mr. Mitchell, however, negotiated 6.5 percent commission on certain sales. A statement by Dan Mitchell to this effect is attached to EcoBuild's proof of claim. EcoBuild asserts the 6.5 percent commission was arranged with Mr. Mitchell in early 2001 when he was President. Mr. Mitchell testified that he believes EcoBuild's calculations show the proper amount owing from Debtor.

Kathryn Mitchell also testified on the issue of Aslan Imports' claim. She stated that John Mitchell was a customer who bought material from Debtor. She asserted that he was never an employee or salesman for Debtor and Debtor never had an arrangement for him to receive commissions. Mrs. Mitchell testified that the transfers to John Mitchell were loans, totaling \$28,667.32. She also testified that Exhibit N shows sales to John Mitchell for which he owes Debtor, and not, as Aslan claims, requests from John Mitchell for reimbursements.

The accounting firm of Bergan & Paulsen assisted with Debtor's accounting and tax filing. That firm prepared Debtor's W-2s and 1099s, including the 2001 Form 1099-MISC which is Aslan's Exhibit 2.

Daniel Mitchell also testified for Aslan Imports. He stated that his brother, John Mitchell, did work for Debtor as an independent contractor. He was on a salary of \$2,500 per month and helped Debtor with its website. Daniel Mitchell testified that the claim of Aslan Imports/John Mitchell is for unpaid salary. He also testified that Exhibit N is a statement for reimbursement of John Mitchell's expenses.

CONCLUSIONS OF LAW

A claim filed under 11 U.S.C. § 501 that comports with the procedural requirements of Bankruptcy Rule 3001 is prima facie evidence of the validity and amount of such claim. In re Brown, 82 F.3d 801, 804 (8th Cir. 1996); In re Internet Navigator Inc., 293 B.R. 198, 204 (Bankr. N.D. Iowa), aff'd 301 B.R. 1 (B.A.P. 8th Cir. 2003); Fed. R. Bankr. P. 3001(f). Unless a party in interest objects to the claim it is deemed allowed. 11 U.S.C. § 502(a). If an objection to the claim is made, the court, after notice and a

hearing, must determine the amount of the claim fixed as of the date of the petition. 11 U.S.C. § 502(b).

Bankruptcy Rule 3001(f) places the burden of producing sufficient evidence to rebut the presumption of validity on the objecting party. Brown, 82 F.3d at 804; In re Waterman, 248 B.R. 567, 570 (B.A.P. 8th Cir. 2000). Once this burden of production is met, the ultimate burden of persuasion as to the allowability of the claim resides with the creditor. Raleigh v. Illinois Dep't of Rev., 530 U.S. 15, 26 (2000). In this case, Debtor objects to proofs of claims filed by EcoBuild and Aslan Imports. Debtor bears the initial burden of producing evidence to rebut the presumptive validity of these claims.

ANALYSIS

As to EcoBuild's claim, the amount of the claim in dispute is \$4,650 which Trustee proposes to allow as a priority wage claim. Debtor asserts that the Vendor Balance Detail, Exhibit D, is an accurate reporting of the amounts owing for commissions to EcoBuild for its sale of Debtor's products, totaling \$809.68. Debtor offered no other documents to support its assertion.

EcoBuild attached a spreadsheet to its Proof of Claim detailing a total of \$17,780.89 remaining due from Debtor. EcoBuild asserts several commission payments for a "T & G" order were underpaid and additional invoices for commission payments remain completely unpaid. By a written statement attached to EcoBuild's proof of claim and through testimony in court, Daniel Mitchell supports EcoBuild's position that Debtor underpaid commissions, paying 5 percent rather than 6.5 percent as Debtor agreed. Thus, Debtor's current president denies the former president's assertions regarding the commission rate. The Court notes that these individuals are soon to be divorced.

In these circumstances, the Court must conclude that Debtor has failed to rebut the presumptive validity of EcoBuild's priority wage claim of \$4,650. Debtor failed to present any documents to support the figures set out in Exhibit D. It merely denies that it underpaid EcoBuild. On the other hand, the spreadsheet attached to EcoBuild's proof of claim sets out individual sales, amounts of commission paid and amounts underpaid or not paid at all. Former president Dan Mitchell supports EcoBuild's position. Considering the relationship between him and Debtor and Debtor's current president, the Court is aware that there may be some credibility issues with the testimony of these individuals. However, the Court finds EcoBuild's claim is presumptively valid and Debtor has failed to rebut that presumption. Trustee's proposed treatment of the EcoBuild claim is approved.

As to Aslan Imports' claim, Trustee proposes to allow \$4,650 as a priority wage claim and \$28,121.84 as a general unsecured claim. Debtor's Exhibit N, Customer Balance Detail, itemizes a total of \$3,918.68 owed by Aslan to Debtor. Debtor's Exhibit Q itemizes a "Employee Advances:Note Receivable" totaling \$28,667.32 owed to Debtor. Most of the entries on Exhibit Q are in the amount of \$2,500. The 2001 portion equals \$5,667.32.

Debtor offered no documentation to support the amounts listed on Exhibit N or Q. John Mitchell and Debtor's former president Dan Mitchell both testified that John Mitchell worked for Debtor for compensation of \$2,500 per month.

Aslan's Exhibit 2 is Debtor's Form 1099-MISC showing nonemployee compensation to John Mitchell as Aslan in 2001 which matches Debtor's Exhibit Q amounts for 2001. This totally undermines Debtor's assertion that payments to Aslan were loans rather than compensation.

Aslan has many documents attached to its proof of claim. It categorizes the amounts it claims are owing by Debtor. Debtor presented no evidence to refute these itemizations, other than Exhibits N and Q which are merely printouts from Debtor's accounting records. Again, the court is mindful of the relationships between Debtor, Mrs. Mitchell, John Mitchell and Dan Mitchell when determining credibility of their respective testimony. On this record, the Court concludes that Debtor has failed to rebut the presumptive validity of the claim of Aslan Imports and the claim should be allowed as proposed by Trustee.

WHEREFORE, Debtor's objection to the claims of EcoBuild and Aslan Imports are DENIED.

FURTHER, Trustee's proposed treatment of the EcoBuild claim is approved. This bifurcated claim is allowed in the amount of \$4,650 as a priority wage claim and \$13,230.89 as a general unsecured late-filed claim.

FURTHER, Trustee's proposed treatment of the Aslan Imports claim is approved. This bifurcated claim is allowed in the amount of \$4,650 as a priority wage claim and \$28,121.84 as a general unsecured claim.

SO ORDERED this 12th day of February, 2004.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE