

Appeal History:

aff'd, No. [C89-2048](#) (N.D. Iowa, January 3, 1989)(Hanson, J.)

In the United States Bankruptcy Court

for the Northern District of Iowa

GARY L. RICHARDSON and PHYLLIS J.
RICHARDSON

Bankruptcy No. X87-01132M

Debtors.

MICHAEL DUNBAR, Trustee
Plaintiff

Adversary No. 87-0240M

vs.

ASSOCIATES IN SURGERY, P. C.
and GARY L. RICHARDSON

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW and ORDER RE: DETERMINATION OF VALUE OF PROFESSIONAL CORPORATION SHARES

The matter before the court is an adversary proceeding brought by the case trustee for a determination of the value of debtor Gary Richardson's shares in the defendant Associates in Surgery, P.C. and an order compelling turnover of that amount. Trustee also seeks an avoidance of the transfers of the shares of stock which by operation of law. He seeks such avoidance under 11 U.S.C. §§548 and 549.

Trial was held on December 13, 1988 in Fort Dodge, Iowa. The court now issues the following decision which shall constitute findings of fact and conclusions of law as required by Bankr. R. 7052.

This is a core proceeding under 28 U.S.C. §157(b)(2)(E), H) and (O).

FINDINGS OF FACT

At the commencement of trial, as part of the "pre-trial statement," the parties listed certain "statements of uncontested facts." The court adopts these statements as findings of fact and sets them out verbatim as follows:

Associates In Surgery, P.C. is a professional corporation incorporated on May 1, 1973, and is governed by Chapter 496C of the Code of Iowa.

Dr. Gary Richardson filed Chapter 7 Bankruptcy in United States Bankruptcy Court for the Northern District of Iowa on May 11, 1987.

At the time of filing, the shareholders of the corporation were Dr. Gary L. Richardson owning 30 shares of stock and Dr. Clarkson L. Kelly, Jr. owning 30 shares of stock in the professional corporation.

The shareholders had no buy & sell agreement of any kind.

The stock of Dr. Gary L. Richardson was transferred to the professional corporation pursuant to Section 496C.14 of the Code of Iowa on its books at the close of the day of May 11, 1987.

The corporation employed Douglas A. Saunders, an independent certified public accountant, to calculate the book value of Dr. Richardson's shares as of the end of the month immediately preceding the filing of the bankruptcy which was April 30, 1987.

Douglas A. Saunders calculated that the book value of the corporation without taking into account the work in process and uncollected accounts receivable was \$3,223.00 on April 30, 1987; the gross value of the accounts receivable was \$418,394.68 and of work in process was \$45,135.08.

The accountant offset the work in process by 9.2 percent for estimated bad debts of \$4,152.43 and by \$9,562.48 which was owed to an employee of the corporation, Dr. R. Johnson for a net of \$31,420.15.

The accountant offset the accounts receivable by \$67,595.08 owed to employee, Dr. R. Johnson, collection agency charges of \$44,376.86, bad debt write-offs of \$84,320.48 for a net value of \$222,102.26.

The accountant calculated that the corporation income tax on the accounts receivable and work in process using blended rates for the projected reduction for

corporation rates after April 30, 1987, but not taking into account the net operating loss of \$30,415.00 is \$74,729.00 for federal and \$19,140.00 for state for a total of \$93,869.00.

The accountant calculated the book value of Dr. Gary L. Richardson's 50 percent interest in the corporation at \$82,757.31 by adding the book value of \$3,223.00, accounts receivable of \$222,102.26, work in process of \$31,420.15, an overpayment to R. Johnson of \$30.00, an expected refund of corporate income tax of \$3,624.00 and subtracting a sum owed to Dr. R. Johnson for overpayment of overhead of \$1,015.79 and corporation taxes of \$93,369.00 for a balance of \$165,514.62 and then dividing by 2.

The professional corporation has made the following payments for the stock of Gary L. Richardson to date: (1) 10 percent within 90 days as required by 496C.14 in the sum of \$8,275.73; and, (2) 1/3 of the balance of \$74,481.58 in the sum of \$24,827.20 plus 6 percent interest in May, 1988.

The corporation has now collected the bulk of the accounts receivables and work in process outstanding as of April 30, 1987; these collections after deducting collection expenses total \$292,847.35 as of May 31, 1988. An additional \$7,182.35 has been collected up to the present date for a grand total of \$300,029.70. The projected collections made by Douglas A. Saunders in May of 1988 before payment to Dr. R. Johnson was \$330,679.97.

That the employment agreement in effect as of April 30, 1987, between Dr. R. Johnson and the corporation provides that he be paid surgical fees less expenses, the employment agreement in effect as of April 30, 1987, between Dr. Richardson and the corporation provides that he be paid \$18,000.00 per month, and the employment agreement in effect as of April 30, 1987, between Dr. Kelly and the corporation provides that he be paid \$18,000.00 per month. There were no written agreements requiring the payment of any bonuses.

ADDITIONAL FINDINGS OF FACT

Douglas A. Saunders (SAUNDERS) is a certified public accountant (CPA) practicing in Charles City, Iowa. He attended Hamilton Business School in Mason City, Iowa and thereafter completed an apprenticeship with a certified public accountant. He passed the final section of his certified public accountant exam in 1965. Since 1965, he has been a partner in Burke, Saunders & Co. His primary practice involves taxes. Many of his clients are farm corporations. Saunders was

employed by Associates in Surgery, P. C. (ASSOCIATES') to value Dr. Richardson's (RICHARDSON) shares pursuant to Iowa Code §496C.14(1). He was given no guidelines or specific instructions beyond that assignment.

Saunders testified that neither he nor his partner have or have had any direct or indirect financial interest in Associates. He also testified he was neither a trustee nor an executor of an estate which did have such an interest. Saunders said he had no jointly held business investment with the P.C. and was not an officer, director or shareholder of it.

Saunders has done the tax returns for the professional corporation since 1978. Also since that date, he has helped P.C. with its tax planning. He assists in the preparation of the corporation's payroll tax returns, both quarterly and year-end, and has had input to the P.C.'s general bookkeeping procedures. Saunders also prepares Dr. Kelly's tax returns.

In making his calculations as to the book value of Richardson's shares in Associates under Iowa Code §496C.14(1), Saunders attempted to apply generally accepted accounting principles (GAAP). He determined the book value of the shares and then made adjustments to that book value to take into consideration work in process and accounts receivable.

Saunders' final computation of the value of Richardson's shares was \$82,757.31 as shown on plaintiff's Exhibit 31. Saunders considered the deduction for "estimated corporate federal and state income taxes" to be an allowance against accounts receivable.

Saunders made the adjustment for deferred income taxes based on his assumption that the accounts receivable considered in the calculation would be collected in the year following and because he believed that under a "matching" concept there should be consideration of the tax consequences of the accounts receivable shown on the calculation. The matching concept is that revenues and the corresponding expenses should be recognized in the same accounting period. Saunders did not consider potential payments of bonuses and salaries to the doctors in reducing the income tax estimate. Further, Saunders did not apply to the income tax estimate a net operating loss of the company in the amount of \$30,415.00.

The method of accounting used by the corporation was a modified cash basis. The modification to cash basis accounting was that there were allowances for

depreciation of certain depreciable assets. Under the modified cash basis, normally a share valuation would not consider accounts receivable or work in process. Under the modified cash basis, however, there would also be no allowance for deferred taxes, accounts payable or bonuses and salaries.

CPA John J. Craig, a Des Moines partner with Arthur Young & Co., testified for defendant that it would be preferable to make the calculation under Iowa Code §496C.14(1) on an accrual accounting basis. He supported the "matching" argument of Saunders, but calculated the deferred taxes by somewhat different rates, and applied the NOL of the company. His estimate of corporate federal and state taxes was \$91,139.00. He supported an allocation of estimated state and federal taxes under generally acceptable accounting principles. His determination was based on the opinion of the Accounting Principles Board (APB) No. 11 and the matching concept.

Craig testified that if you ignored the matching concept, a financial statement would not be in accordance with GAAP.

Craig testified that the regular method of accounting of the P.C., modified cash basis, would not require consideration of accounts receivable or deferred tax liability.

Ron Abraham testified for plaintiff as to whether the 496C.14(1) calculation done by Saunders was done in accordance with the regular method of accounting used by the corporation uniformly and consistently applied. Abraham is a certified public accountant, formerly with Ernst & Whinney. He has an undergraduate degree and MBA (1971) from the University of Wisconsin. He is an assistant professor of accounting at University of Northern Iowa. Abraham testified that if deferred taxes were permitted, the NOL must be used.

Abraham testified that if one were to assume that the calculation under 496C.14(1) were to be made in accordance with generally accepted accounting principles, one would need to consider deferred income taxes. Those deferred taxes were recognized in the calculation. However, it would also be necessary to recognize NOL.

CONCLUSIONS OF LAW and DISCUSSION

I.

The first issue raised by Associates is that Saunders' calculation is conclusive on the parties pursuant to the following language in Iowa Code §496C.14(1):

"Any final determination of book value made in good faith by any independent certified public accountant or firm of certified public accountants employed by the corporation for the purpose shall be conclusive on all persons."

Trustee argues, based on testimony elicited from Mr. Abraham, that the calculations done by Saunders were not in "good faith" within the meaning of this statute.

Associates argues that Saunders is an "independent certified public accountant" relying on Iowa Admin. Code 193A, 11.2(2), 11.3(1). The Rules of Professional Conduct for Public Accountants provide examples of when "independence" will be considered to be impaired. Iowa Admin. Code 193A, 11.3(1). There is no indication that Saunders held any financial interest or investment in Associates or acted as a trustee for the enterprise. There is also no indication that Saunders had obtained any loans from Associates or served as an officer or director. The list contained in section 11.3(1'), however, is not intended to be all-inclusive.

This court has reservations on the issue of whether Saunders is an "independent" certified public accountant for purposes of Iowa Code §496C.14(1). Saunders' continuous relationship with the P.C. casts some doubt upon whether he is "independent." Saunders has served as a tax bookkeeping adviser for the P.C. since 1978, and has also been Dr. Kelly's tax preparers.

Perhaps an "independent certified public accountant" was intended by the Iowa legislature to be a CPA who has had no previous client relationship with the professional corporation or its shareholders. However, the parties in this case have stipulated that Saunders is an "independent certified public accountant," and the court will not interfere with that stipulation.

II.

Since the parties have agreed that Saunders was an independent certified public accountant, the value calculated by Saunders is conclusive unless the trustee establishes that the determination of book value was not made in good faith.

The trustee has failed to establish that Saunders' calculation of book value was not done in "good faith." The fact that another CPA may have calculated book value in a different manner does not necessarily mean Saunders' calculation was not done in "good faith."

"Good faith" is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage Black's Law Dictionary.

There is no specific definition or formula for determining whether a person has acted in "good faith." For purposes of the Uniform Commercial Code, good faith is defined in the Iowa Code as honesty in fact in the conduct or transaction concerned." Iowa Code §554.1201(19).

The evidence establishes that Saunders calculated the book value in accordance with an honest belief of how he thought Iowa Code §496C.14(1) should be interpreted. Saunders testified that based upon

General Accepted Accounting Principles (GAAP) and his experience as a CPA, the matching, concept in accounting required that the deferred tax liability on those accounts receivable be recognized.

Also disputed between the parties is whether deferred tax liability arising from the consideration of accounts receivable should be considered as part of the calculation of the shares' book value.

The trustee's expert, Abraham, testified that if deferred tax liability was taken into consideration, then the CPA would also be required to consider salaries and bonuses and the P.C.'s Net Operating Loss (NOL). If salaries and bonuses were considered, the deferred tax liability would be lower and therefore would result in an increased book value. The plaintiff argues that the P.C. has consistently paid bonuses to the shareholder in the past in order to eliminate any tax liability to the P.C. The plaintiff also argues that the NOL of \$30,415.00 should be used to offset any deferred tax liability of the P.C.

The defendants argue that there is no shareholder agreement, by-laws or other requirement that P.C. income must be distributed as bonuses to the shareholders. Saunders stated it was his professional opinion that potential salaries and bonuses should not be considered because there was no shareholder requirement to pay bonuses. The defendants also argue that Saunders' position with referenced to the NOL is reasonable because of the difficulty in projecting the entire tax picture for the corporation for the following year. Saunders stated that the NOL might be offset by other income of the corporation, instead of income generated by the work in process and accounts receivable. Since Saunders was unable to establish which income the NOL would be offset against, he believed that the NOL should not be considered in the calculation.

The language of Iowa Code §496C.14 does not specifically state that the deferred tax liability on accounts receivable and work-in-process should be considered in the calculation of book value. That Code section gives only the following guidance as to the calculation of the share value:

1. The purchase price for shares shall be their book value as of the end of the month immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the corporation, uniformly and consistently applied. Adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable.

It appears conceded among the experts, however, that the calculation of book value of the shares in question under the P.C.'s modified cash basis method of accounting, uniformly and consistently applied, would not take into account either accounts receivable and work in process or deferred tax liability on those assets. Defendant's expert, Craig and Saunders, complain that the statute is not clear. Abraham argues that it is clear, although perhaps not ideal, and references neither GAAP nor deferred tax liability.

This court's interpretation of the statute is that the deferred tax liability should not have been considered by the CPA in the calculation of book value. If it is considered, NOL should offset it. However, in light of the fact that there are no interpretations of the statute to guide the CPA, the consideration of deferred tax liability was not clearly unreasonable. Abraham and Craig both stated that, in the absence of Iowa Code §496C.14, General Accepted Accounting Principles would require the CPA to consider deferred tax liabilities in calculating the book value.

As long as the CPA's calculation was done in good faith and is not clearly unreasonable, the court should not substitute its judgment. It is clear that a determination of value made by an "independent certified public accountant" and in "good faith" is conclusive on all persons.

The legislature appeared to be trying to provide some certainty in the valuation of shares if the articles, by-laws or shareholder agreements did not otherwise provide for a different purchase price. In all likelihood, one of the purposes of the statute was to provide for a timely and efficient valuation of professional corporation shares without protracted disputes and the necessity of a judicial intervention.

In this case, even three CPAs cannot agree on the proper method for calculating the value. This court declines to say that one of them, Saunders, was in bad faith and pick the figures of another. The court disagrees with the valuation outcome, but cannot say it is the result of bad faith.

As to the trustee's allegations under 11 U.S.C. §§548 and 549, the court does not see the necessity to set aside the transfer required by Iowa Code §496C.14 as long as the consideration to the trustee as of April 30, 1987 is paid pursuant to §496C.14(2)-(7).

CONCLUSIONS

1. Douglas A. Saunders, CPA, was an "independent certified public accountant" and made a determination of book value in good faith within the meaning of Iowa Code §496C.14(1) and therefore his calculation of the book value of the Richardson shares is conclusive upon the bankruptcy case trustee, Michael Dunbar.
2. The April 30, 1987 value of Richardson's shares in Associates under Iowa Code §496C.14(1) was \$82,747.31.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the book value of the thirty shares of the debtor in Associates in Surgery, P.C. as of April 30, 1987 is \$82,757.31.

IT IS FURTHER ORDERED that trustee's motion to set aside the transfer of the stock to corporation which occurred by operation of Iowa Code §496C.14 pursuant to 11 U.S.C. §548 and §549 is denied. Judgment shall enter accordingly.

SO ORDERED ON THIS 8th DAY OF MARCH, 1989.

William L. Edmonds
Bankruptcy Judge

In the United States District Court

for the Northern District of Iowa

Eastern Division

GARY L. RICHARDSON and PHYLLIS J.
RICHARDSON

(Bankruptcy No. 87-01132M)

Debtors

(Adversary No. 87-0240M)

MICHAEL DUNBAR, Trustee
Plaintiff/Appellant

vs.

ASSOCIATES IN SURGERY, P.C.
Defendant/Appellee.

ORDER NO. C 89-2048

This matter is before the court on appellant Michael Dunbar, Trustee's appeal, filed July 24, 1989, from a decision of the bankruptcy court,2 entered May 16, 1989, denying appellant's motion for a new trial or alteration or amendment of judgment, and from the bankruptcy court's decision, entered March 8, 1989, establishing the book value of debtor's shares in Associates in Surgery, P.C., as of April 30, 1987, at \$82,757-31.3 Appellee Associates in Surgery, P.C. resists the appellant's appeal and urges this court to affirm the bankruptcy court. Both sides have filed briefs outlining their arguments.

I. Standard of Review

Bankruptcy Rule 8013 provides:

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence,,shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Conclusions of law are reviewed de novo.

II. Facts

The parties agreed to certain "statements of uncontested facts." Associates in Surgery, P.C. is a professional corporation whose shareholders were Dr. Gary L. Richardson and Dr. Clarkson L. Kelly, Jr., each owning 30 shares of stock. Upon Dr. Richardson's filing of a Chapter 7 bankruptcy petition on May 1, 1987, the stock of Dr. Richardson was transferred to the professional corporation pursuant to Iowa Code §496C.14. Douglas A. Saunders, an independent certified public accountant, was employed by the professional corporation to calculate the book value of Dr. Richardson's shares. The accountant's calculations are set forth in the bankruptcy judge's order of March 8, 1989, at 2-3. See also exhibits 30, 31. Mr. Saunders began with total capital of \$3,223.00, added \$257,176.41 to reflect accounts receivable (with a valuation allowance for bad debts) and work in process, and then subtracted \$1,015.79 to reflect one liability and \$93,869.00 in estimated federal and state income taxes. See exhibit 31. The accountant calculated the book value of Dr. Richardson's 30 shares at \$82,757.31.

The bankruptcy judge made additional findings of fact in his order of March 8, 1989. The bankruptcy judge found that Mr. Saunders has no direct or indirect financial interest in the corporation. Mr. Saunders has done the tax returns for the corporation since 1978 and has also assisted the corporation in other accounting matters. The bankruptcy judge also found that in making his book value calculations, "Saunders attempted to apply generally accepted accounting principles." Order of March 8, 1989, at 5. The bankruptcy judge concluded:

1. Douglas A. Saunders, CPA, was an "independent certified public accountant" and made a determination of book value in good faith within the meaning of Iowa Code §496C.14(1) and therefore his calculation of the book value of the Richardson shares is conclusive upon the bankruptcy case trustee, Michael Dunbar.
2. The April 30, 1987 value of Richardson's shares in Associates under Iowa Code 496C.14(1) was \$82,747.31.

Order of March 8, 1989, at 12.

III. Issues

Plaintiff/appellant's statement of the issues, filed June 6, 1989, in the bankruptcy court lists seven issues for review. Plaintiff/appellant's brief, filed September 6, 1989, sets forth two issues as follows:

The bankruptcy court erred in concluding that an accountant performing the calculation required by §496C.14, Code of Iowa (1989) acted in good faith where the calculation strays beyond the express language of the statute.

Trial court's finding of good faith is unsupported by a record showing that the accountant made numerous substantial errors, changed his rationale for the tax deferral calculation, and erred [sic] in the tax rates applied, failure to use net operating loss from prior years, as well as the original rationale for the deferred tax computation as a valuation allowance.

Plaintiff/appellant's brief and arguments on appeal to the district court, filed September 6, 1989, at 5, 10 (emphasis omitted). Defendant/appellee views the two issues for review as follows:

1. Did the trial error [sic] in finding that Section 496C.14(1) of the Iowa Code requires a showing that an independent certified public accountant valuing stock did not act in good faith as a condition precedent to attacking his value if the value was made in good faith?
2. Did one trial court err in finding as a matter of fact that Douglas Saunders was an independent certified public account [sic] hired by the corporation for the purpose of valuing the stock and that his valuation was made in "good faith"?

Appellee's brief and argument on appeal to the district court, filed October 23, 1989, at 1.

This case involves the interpretation of Iowa Code 496C.14. There is no case law or legislative history which would aid in the interpretation of this statute. Basically, this section provides that upon the occurrence of certain triggering events, which includes the filing of a bankruptcy petition by a shareholder, a professional corporation must purchase the shares held by such shareholder. The purchased shares are transferred to the corporation as of the close of business on the date of the event requiring purchase. The statute sets forth several procedures to be followed unless the articles of incorporation, bylaws, or a shareholder agreement provide otherwise. The parties agree that the relevant articles of incorporation, bylaws, and shareholder agreements do not provide otherwise. The primary portion of the statute at issue here is Iowa Code S 496C.14(1), which provides:

The purchase price for shares shall be their book value as of the end of the month immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional corporation in accordance with the regular methods of accounting used by the corporation, uniformly and consistently applied. Adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable. Any final determination of book value made in good faith by any independent certified public accountant or firm of certified public accountants employed by the corporation for the purpose shall be conclusive on all persons.

Plaintiff/appellant essentially argues that the calculations made by Mr. Saunders are not in accordance with this statutory provision and, consequently, that Mr. Saunders' determination of book value was not made in good faith, and that his determination of book value should therefore not now be conclusive. The definition and legal requirements of the words "good faith" as used in the statute are questions of law which this court examines de novo. The bankruptcy judge's finding that Mr. Saunders acted in good faith is a factual determination which will not be overturned unless it is clearly erroneous.

IV. Discussion

The court first notes that the parties stipulated that Mr. Saunders is a "independent certified public accountant." As the bankruptcy judge stated, "judicial admissions are conclusive on their makers." State Farm Mut. Auto Ins. Co. v. Worthington, 405 F.2d 683, 686 (8th Cir. 1968). Order of the bankruptcy court, filed May 17, 1989, at 2. The bankruptcy court did, however, express its reservation regarding Mr. Saunders' independence. See order of bankruptcy court, filed March 8, 1989, at 8. This court agrees with the bankruptcy court that, since the parties have stipulated to Mr. Saunders' independence, his independence should not be questioned in this proceeding.

Plaintiff/appellant argues that Mr. Saunders made several mistakes in his calculations; primarily, that Mr. Saunders' allowance for income tax consequences was improper and not authorized by the statute. Plaintiff/appellant further argues that, assuming the statute allows for the consideration of the income tax consequences of including accounts receivable and work in progress, Mr. Saunders should also should have considered expenses, i.e., that the normal practice of the P.C. was to pay out salary and bonuses to the shareholders in amounts sufficient to reduce the P.C.'s taxable income to zero. Plaintiff also argues that Mr. Saunders should have offset the P.C.'s tax loss carryforward of \$30,415 against his deferred tax estimate and that the federal tax rate used by Mr. Saunders (39%) was incorrect. The bankruptcy court stated:

It appears conceded among the experts, however, that the calculation of book value of the shares in question under the P.C.'s modified cash basis method of accounting, uniformly

and consistently applied, would not take into account either accounts receivable and work in process or deferred tax liability on those assets

This court's interpretation of the statute is that the deferred tax liability should not have been considered by the CPA in the calculation of book value. If it is considered, NOL should offset it. However, in light of the fact that there are no interpretations of the statute to guide the CPA, the consideration of deferred tax liability was not clearly unreasonable. Abraham [plaintiff's expert] and Craig [defendant's expert] both stated that, in the absence of Iowa Code §496C.14, General Accepted Accounting Principles would require the CPA to consider deferred tax liabilities in calculating the book value.

Order of March 8, 1989, at 11. The statute merely says that "adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable." It does not specify how such adjustments should be made. This court agrees with the bankruptcy judge that, given the vague language of the statute, "the consideration of deferred tax liability was not clearly unreasonable."

It is unnecessary for this court to consider the precise accounting method required by the statute, in particular whether any adjustment for income tax consequences should be made. The statute specifically states that "any final determination of book value made in good faith . . . shall be conclusive." (Emphasis added.) The bankruptcy court specifically found that:

"Good faith" is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage Black's Law Dictionary.

There is no specific definition or formula for determining whether a person has acted in "good faith." For purposes of the Uniform Commercial Code, good faith is defined in the Iowa Code as "honesty in fact in the conduct or transaction concerned." Iowa Code 554.1201(19). [See also Iowa Code §562A.6, the Uniform Landlord/Tenant Act.]

The evidence establishes that Saunders calculated the book value in accordance with an honest belief of how he thought Iowa Code §496C.14(l) should be interpreted. Saunders testified that based upon General Accepted Accounting Principles (GAAP) and his experience as a CPA, the matching concept in accounting required that the deferred tax liability on those accounts receivable be recognized.

Order of March 8, 1989, at 9.

Plaintiff-appellant argues that the term "good faith" should be interpreted similarly to those words as used in the Truth in Lending Act (codified at 15 U.S.C. §1601, et seq.), at 15 U.S.C. 1640(f) ("No provision of this section [and others enumerated] . . . imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the [Federal Reserve] Board. . . ."). Plaintiff-appellant cites Franklin v. First Money, Inc., 599 F.2d 615 (5th Cir. 1979), and Valencia v. Anderson Bros. Ford, Inc., 617 F.2d 1278 (7th Cir.), rev'd on other grounds, 452 U.S. 205 (1980). The Franklin court stated that the defendant there was "not entitled to assert a good faith defense in the face of the clear language of the statutory provision." Franklin, 599 F.2d at 618. However, the statute involved in this case is far from clear and this court agrees with the bankruptcy judge that Mr. Saunders' interpretation was "not clearly unreasonable."

The court adopts the bankruptcy court's definition of good faith. There is no evidence that Mr. Saunders, in performing his calculations, acted with any improper motive. Plaintiff-appellant does not argue that he acted with such motive. This court holds that the bankruptcy judge's finding that Mr. Saunders acted in good faith is not clearly erroneous.⁵ and thus will affirm the

ORDER

Accordingly, It Is Ordered:

The orders of the bankruptcy court, entered March 8, 1989, and May 17, 1989, are hereby affirmed.

Done and Ordered this 3rd day of January 1989.

David R. Hansen, Judge

UNITED STATES DISTRICT COURT

1 Gary L. Richardson was a defendant in the bankruptcy proceeding Adversary No. 87-0240M. He has not participated in this appeal.

2 The Honorable William L. Edmonds, Bankruptcy Judge.

3 The bankruptcy court also denied the Trustee's motion to set aside the transfer of stock to the professional corporation. This portion of the-ruling does not seem to be contested.

4 Plaintiff/appellant also argues that Mr. Sanders made several mathematical errors in his initial estimates of book value submitted to the Trustee. However,-these errors appear to have been corrected. See exhibit 35.

5 This court would also reach the same conclusion on a de novo review standard.

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