

In the United States Bankruptcy Court

for the Northern District of Iowa

CENTER LINE, INC.
Debtor.

Bankruptcy No. X88-00388F
Chapter 11

ORDER RE: APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSES

The matter before the court is an application for allowance of administrative expenses by Victoria L. Herring and her attorney, James Cossitt. A hearing was held on the application and objections thereto on April 13, 1989 in Fort Dodge, Iowa.

The court now issues its ruling which shall constitute findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B).

FINDINGS OF FACT

Center Line, Inc. filed its chapter 11 petition on March 9, 1988.

The court approved the employment of Brinton & Bordwell as attorneys for the Unsecured Creditors Committee on June 28, 1988. On August 12, 1988, a motion to remove Brinton & Bordwell as attorneys for the Unsecured Creditors Committee and to deny the attorneys compensation was filed by attorney James Cossitt on behalf of his client Victoria L. Herring, a creditor in the bankruptcy case. Victoria Herring sought removal of Brinton & Bordwell as attorneys for the Unsecured Creditors Committee because Brinton & Bordwell also represented Allan Printing, Inc. Allan Printing was an equity security holder of the debtor and therefore Herring claims that the entity had an adverse interest in connection with the case. On September 21, 1988, the court entered an order disqualifying Richard Bordwell as attorney for the Unsecured Creditors Committee. Herring and/or her attorney also provided the new attorney for the Committee with information useful in the case.

While Bordwell was attorney for the Unsecured Creditors Committee, he was actively involved in negotiations for the sale of the assets of Center Line. In October, 1988, Heartland Truck Publications, Inc. offered to purchase the intangibles of Center Line for \$100,000.00 and the debtor's accounts receivable for an amount to be determined according to a formula based on the age of each account. The debtor filed a motion to sell property to Heartland Truck Publications, Inc. free and clear of liens and encumbrances on October 24, 1988. The court approved the sale of the debtor's assets to Heartland Truck Publications, Inc. by order of November 21, 1988.

An order appointing David Sergeant as attorney for the Unsecured Creditors Committee was filed on November 14, 1988.

Victoria Herring was listed on the debtor's schedules as an unsecured creditor. Herring was owed attorney fees from the debtor corporation. On or about July 21, 1988, James Cossitt was retained to represent Victoria Herring in this case. Herring assisted her attorney in the chapter 11 proceeding by doing legal research and other legal work.

On November 17, 1988, Victoria Herring filed an application for allowance of administrative expenses. Herring claims that she is entitled to an administrative expense under 11 U.S.C. § 503(b)(3)(D), since she made a substantial contribution to the case. Additionally, Herring requests the court to award her attorney, Cossitt, compensation under 11 U.S.C. § 503(b)(4). An amended application for allowance of administrative expenses was filed on February 8, 1989. The amended application, which includes an itemization of legal services rendered by Cossitt, requests the court to allow reimbursement of \$707.26 for the substantial contribution of Herring and to allow compensation to Cossitt in the amount of \$1,667.45.

Objections to the application and allowance of fees and expenses for Cossitt and Herring were filed by the Unsecured Creditors Committee and the debtor. Additionally, the U. S. Trustee filed comments to the creditor's application for allowance of administrative expenses.

DISCUSSION

The claimant, Victoria Herring, argues that the work performed by her and her attorney James Cossitt in removing Brinton & Bordwell as attorneys for the Unsecured Creditors Committee resulted in a substantial contribution to the chapter 11 case. Therefore, the claimant requests the court to allow administrative expenses for Victoria Herring, pursuant to 11 U.S.C. § 503(b)(3)(D) and reasonable compensation for James Cossitt pursuant to 11 U.S.C. § 503(b)(4). These sections provide as follows:

- b. "After notice and the hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including--
 3. the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subdivision, incurred by--
 - D. a creditor, an indentured trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in the case under chapter 9 or 11 of this title;
 4. reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant."

11 U.S.C. § § 503(b)(3)(D), (b)(4).

The debtor objects to the application for allowance by Cossitt and Herring on three grounds. First, the debtor argues that there is no showing that Victoria Herring made a substantial contribution to the case and therefore there is no basis for the requested reimbursement. Secondly, the debtor argues that the claim of Cossitt is objected to on the basis that a substantial amount of fee charges and expenditures resulted from matters occurring after the hearing to remove the Unsecured Creditors Committee attorney and for matters unrelated to the removal of Bordwell as attorney for the

Unsecured Creditors Committee. The debtor also argues that the removal of Bordwell as attorney for the Unsecured Creditors Committee should not be considered a substantial enough contribution to warrant compensation as administrative expense. The debtor argues that it was the debtor's own efforts that resulted in the sale of the business and the removal of Bordwell as attorney for the Unsecured Creditors Committee only resulted in intangible benefits to the estate.

The Unsecured Creditors Committee argues that Herring has failed to show that her services were substantial and therefore compensation for her services and the services of her attorney should not be allowed as administrative expenses. The Unsecured Creditors Committee also argues that it appears that a lot of the work done by Herring and Cossitt was for preparation of Herring's claim. The Unsecured Creditors Committee admits that the information provided by Cossitt has been helpful in preparing interrogatories and other discovery. However, the Committee argues that the removal of Bordwell does not result in any tangible benefit to the unsecured creditors and therefore there is no substantial contribution.

The committee argues that a fair reading of § § 503(b)(3)(D) and (b)(4) make the allowance of an administrative claim to Herring a prerequisite to the allowance of such a claim for Cossitt.

The U. S. Trustee stated that he had no problem with giving Cossitt compensation for his contributions to the case. The U. S. Trustee's comments primarily related to the amount of expenses that should be granted to the creditor and her attorney.

The term "substantial contribution" is not defined in the Bankruptcy Code. Most courts look at the benefit to the debtor's estate, the creditors, and to extent relevant, the shareholders in determining whether there has been a substantial contribution. In re Russell Transfer, Inc., 59 B.R. 871, 873 (Bankr. W.D. Va. 1986).

Contribution must provide tangible benefits to the bankruptcy estate in order to be a substantial contribution. In re Patch Graphics, 58 B.R. 743, 746 (Bankr. W.D. Wis. 1986). "Services which substantially contribute to a case are those which foster and enhance, rather than retard or interrupt the progress of reorganization." In re White Motor Credit Corp., 50 B.R. 885, 892 (Bankr. N.D. Ohio 1985) (quoting In re Richton International Corp., 15 B.R. 854, 856 (Bankr. S.D. N.Y. 1981)).

Herring argues that all the unsecured creditors benefited from the removal of Bordwell as attorney for the Unsecured Creditors Committee. Basically, Herring's argument is that the value furthered by the removal of the Unsecured Creditors Committee attorney is the proper administration of the chapter 11 case. Herring contends that Bankr. R. 2014 and 11 U.S.C. § 327(a) place a high value on the disinterested person standard and therefore there was a substantial contribution. Herring admits that it is difficult to put a monetary value on the value to the estate that arose from the removal of Bordwell.

The burden of proof in determining whether services are a substantial benefit to the estate is on the claimant and the standard of proof is a preponderance of evidence. In re 1 Potato 2, Inc., 71 B.R. 615, 618 (Bankr. D. Minn. 1987). Herring and Cossitt have failed to prove that there were any tangible benefits to the creditors or debtor as a result of the removal of Bordwell as attorney for the Unsecured Creditors Committee. There is no indication that the creditors will receive a larger dividend, or that unsecured creditors will receive any dividend at all as a result of Herring and Cossitt's actions. There is also no indication that Bordwell was engaging in improper activity or that his removal facilitated the sale of the corporation's assets or the filing of the liquidation plan.

The court recognizes the importance of preserving disinterested representation for the creditors' committee. That does not mean that applicants' efforts in preserving such representation in this case should be compensated from the estate.

"A creditor's attorney must ordinarily look to its own client for payment, unless the creditor's attorney rendered services on behalf of the organization, not merely on behalf of its client's interest, and conferred a significant and demonstrable benefit to the debtor's estate and the creditors." In re General Oil Distributors, Inc., 51 B.R. 794, 806 (Bankr. E.D. N.Y. 1985). It was certainly necessary that Brinton & Bordwell be removed as attorneys for the Unsecured Creditors Committee since they were not disinterested. However, the removal in this case was not of a significant and demonstrable benefit to the debtor's estate and the creditors.

CONCLUSIONS OF LAW

The services of Victoria Herring and James Cossitt were not a substantial contribution to the case and therefore the claims for administrative expenses under 11 U.S.C. § § 503(b)(3)(D) and 503(b)(4) should be disallowed.

ORDER

IT IS ORDERED that the application for allowance of administrative expenses filed by Victoria L. Herring is denied.

SO ORDERED THIS 2nd DAY OF MAY, 1989.

William L. Edmonds
Bankruptcy Judge