

In the United States Bankruptcy Court

for the Northern District of Iowa

ROBERT E. BRYANT and
REBECCA L. BRYANT

Bankruptcy No. X85-02501S

Debtor(s).

Chapter 11

ORDER RE: ATTORNEY FEES OF METROPOLITAN LIFE INSURANCE COMPANY

Debtors seek a determination that Metropolitan Life Insurance Company (METROPOLITAN) is not entitled to charge debtors with legal fees incurred during the course of this chapter 11 case. Hearing was held on November 7, 1989 in Sioux City, Iowa. The court now issues this ruling which includes findings and conclusions as required by Bankr.R. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

FINDINGS OF FACT

Robert and Rebecca Bryant filed their chapter 11 case on December 3, 1985. On February 3, 1988, the court confirmed their third amended plan of reorganization.⁽¹⁾ Metropolitan's claim was described as that secured claim "arising before or after the filing of the petition." (Plan, page 1.) Metropolitan and debtors negotiated the following plan treatment of Metropolitan's claim:

As of December 3, 1985, Metropolitan's claim was \$70,866.10. Metropolitan shall retain its first mortgage on real estate owned by the Debtors. Metropolitan shall be paid interest at the rate of 11% from the date of filing of Petition to August 24, 1987. Thereafter, the debt of Metropolitan shall be amortized over a period of ten (10) years with interest at 9%. Yearly payments to commence August 24, 1988 of the Plan.

Debtors filed their claims report on January 25, 1988. They recommended allowance of Metropolitan's claim (defendant's Exhibit A) in the amount of \$70,866.10. Metropolitan was served with a copy of the claims report and did not object. The deadline for objections was March 10, 1988. Because of other objections to the report, it was not approved by the court until August 18, 1988.

At the time of the filing of the bankruptcy case, the real estate mortgaged to Metropolitan had a value of between \$80,000.00 and \$120,000.00. There are no allegations by debtors that during the course of the chapter 11 case, the value of the property dropped below the amount of indebtedness, or that the debt has ever exceeded the value of the property. The court finds that at all relevant times, to and including the date of this hearing, metropolitan has held an allowed secured claim. 11 U.S.C. § 506 (a).

Bryant contacted the West Des Moines office of Metropolitan in July, 1989 inquiring about the possibility of changing the annual payment date on debtors' plan payments to Metropolitan.

Metropolitan responded by letter (exhibit 17) that it would not approve such a change.⁽²⁾ Included in the letter was a request for the payment of legal fees incurred in connection with the bankruptcy:

In addition to the annual payment of \$11,042.36, which is to be applied to interest and principal due August 24, we would also appreciate your reimbursing us for the attorney's fees incurred in connection with the bankruptcy. This amount, together with delayed interest from the date paid, until August 24, 1989, is \$3,964.88. Should this amount not be paid with the August 24 interest and principal, we will add this sum to the principal balance outstanding where it will accrue interest until paid.

The letter asserted that Metropolitan was entitled to legal fees by the terms of its note and mortgage because it was an "oversecured creditor." An attachment to the letter of July 11, 1989 displayed the dates and amounts of Metropolitan's payments of its legal fees plus charges to Bryants for interest on each such payment. The attachment provided the following information:

Bankruptcy fees pd. 2-11-86	1.50
Del. Int. 2-11-86/8-24-89	.95
Legal fees pd. 9-22-86	48.00
Del. Int. 9-22-86/8-24-89	25.23
Legal fees pd. 1-5-87	672.60
Del. Int. 1-5-87/8-24-89	318.76
Legal fees pd. 5-5-87	580.31
Del. Int. 5-5-87/8-24-89	240.68
Legal fees pd. 8-14-87	606.52
Del. Int. 8-14-87/8-24-89	221.34
Legal fees pd. 10-17-87	200.00
Del. Int. 10-27-87/8-24-89	65.69
Legal fee pd. 2-1-88	472.00
Del. Int. 2-1-88/8-24-89	132.44
Legal fees pd. 5-1-88	208.00
Del. Int. 5-1-88/8-24-89	49.24
Legal fees pd. 7-26-88	8.44
Del. Int. 7-26-88/8-24-89	1.64
Legal fees pd. 9-23-88	48.00
Del. Int. 9-23-88/8-24-89	7.93
Legal fees pd. 12-14-88	49.44
Del. Int. 12-14-88/8-24-89	6.17
TOTAL	\$3,964.88

Metropolitan bases its demand for legal fees on this paragraph of its real estate mortgage:

If any action or proceeding be commenced by any person other than the second party [Metropolitan], to which action or proceeding the second party is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the second party for the expense of any such litigation to prosecute or defend the rights and lien created by this mortgage, including reasonable counsel fees, shall be paid by the first party, together with interest thereon at the rate of 7 percent per annum, and any such sum and interest shall be a lien on said premises prior to any right, title or interest in or claim upon the premises attaching or accruing subsequent to the lien of this mortgage, and shall be added to the principal amount intended to be secured by this mortgage and the accompanying note. The clause shall apply in condemnation in bankruptcy proceedings as well as all others.

During the course of the hearing on debtors' motion, there was some dispute as to whether Metropolitan had ever raised the issue of legal fees prior to confirmation of the plan. Notwithstanding what may have been discussed between the attorneys in oral conversations or correspondence, the evidence (defendant's exhibit F) does indicate that Metropolitan mentioned legal fees in a March 13, 1987 objection to an earlier plan proposal and in a December 8, 1986 objection to an amended disclosure statement (defendant's exhibit C), it mentioned "costs".

DISCUSSION

Metropolitan contends that because it is an "oversecured creditor," it may, pursuant to its mortgage and without bankruptcy court intervention, now charge to Bryants legal fees which it incurred during the course of the bankruptcy case. Metropolitan further states that if the court determines that its bankruptcy legal fees and expenses may be part of its secured claim, it is willing to submit those charges to the court to determine whether they are reasonable.

Debtors contend, however, that Metropolitan may not charge those expenses to the debtors absent bankruptcy court approval and that since Metropolitan took no action during the proceedings on confirmation or on claims, it may not now raise the issue of whether Metropolitan's legal expenses are part of its secured claim.

The allowability of legal fees as part of a secured claim is governed by 11 U.S.C. S 506(b).⁽³⁾

The dispute between the parties relates to when and how a creditor entitled to legal fees under 11 U.S.C. § 506(b) may charge those to the debtor as part of its allowed secured claim. Debtors do not dispute that if timely claimed, such fees could be allowable.

It is the majority view that the enforceability of an attorney's fee agreement as part of an allowed secured claim is governed by federal rather than state law. Unsecured Creditors' Committee v. Walter E. Heller & Company Southeast, Inc. (In re K. H. Stephenson Supply Company), 768 F.2d 580, 583 (4th Cir. 1985). Accord Joseph F. Sanson Investment Co. v. 268 Limited (In re 268 Limited), 789 F.2d 674, 676-677 (9th Cir. 1986); Blackburn-Bliss Trust v. Hudson Shipbuilders, Inc. (In re Hudson Shipbuilders, Inc.), 794 F.2d 1051, 1056-1058 (5th Cir. 1986).

In order for a creditor to collect legal fees as part of its allowed secured claim, it must meet three Code requirements:

1. The claimant's underlying agreement must provide for such fees;

2. The value of the collateral must exceed the debt including such fees, and
3. Requested fees must be reasonable.

11 U.S.C. S 506(b), In re Reposa, 94 B.R. 257, 259-260 (Bankr. D.R.I. 1988).

It is undisputed by the parties, and this court has found, that the value of the mortgaged property at all times exceeded Bryants' debt to Metropolitan. Debtors' plan provided for the accrual of interest on the Metropolitan debt from the date of the filing to the date of confirmation. This court also concludes that the mortgage provision in question is sufficient to permit the taxation of covered legal fees as part of Metropolitan's allowed secured claim. In re W. S. Sheppley & Company, 62 B.R. 279 (Bankr. N.D. Iowa 1986).

Contrary to the position of Metropolitan, however, its claim for legal fees must be presented to the bankruptcy court for determination. Fessenden v. Maine Savings Bank (In re Nield), 95 B.R. 259, 260 (Bankr. D. Me. 1989).

This court need not determine, for the purposes of this proceeding, all of the procedural methods by which such a claim might be brought before the court. However, this court must decide whether the court's order and judgment as to confirmation or the court's order approving the claims report bars Metropolitan from asserting any or all post-petition claims for legal fees, or whether Metropolitan might make its claim at any time after these events. Bryants contend that either the confirmation order or the claims report order should serve to cut off Metropolitan's right to seek legal fees as part of its secured claim. Metropolitan, however, believes that by the attachment of its note and mortgage to its proof of claim, it impliedly raised in a timely fashion its claim for legal fees and that these fees may be charged to the debtors at any time.

This court has found no authority on the issue of whether there is a statute of limitations or other deadline for asserting a claim to legal fees as part of an allowed secured claim. The parties have cited none. Moreover, the parties have cited no authority as to whether the issue sub judice should be considered to be one of res judicata/claim preclusion or one of collateral or direct estoppel/issue preclusion.

Metropolitan's claim for legal fees as part of its allowed secured claim could have been raised by objecting to debtors' proposed plan or by objecting to debtors' claims report. Neither was done. Nor did Metropolitan avail itself of the opportunity to raise the section 506(b) legal fee issue by separate motion of any kind. The issue now arises some nineteen months after confirmation.

Debtors' plan treatment of Metropolitan provided for payment in full of the debt at the time of filing plus post-filing interest. It made no mention of the payment of legal fees or costs.

"The doctrine of res judicata applies with respect to all matters embraced by a plan of reorganization confirmed by a final order of the bankruptcy court." In re Galerie Des Monnaies of Geneva, Ltd., 55 B.R. 253, 257 (Bankr. S.D. N.Y. 1985) affirmed 62 B.R. 224 (S.D. N.Y. 1986).

Arguably, however, Metropolitan still could have raised the legal fee issue as an objection to debtors' report on claims. The deadline for such objection was March 10, 1988. The plan itself provided for the retention of jurisdiction in order that the court might resolve "disputes relating to the claims which have been filed and allowed." (Plan, Article VIII, paragraph 2.)

Based upon the foregoing, the court concludes that Metropolitan's right to claim certain legal fees as part of its allowed secured claim is barred by the court's judgment of confirmation and by its subsequent approval of the claims report on August 18, 1988. If Metropolitan desired to add post-petition legal fees to its allowed claim, it should have raised that issue prior to the court's determination of claims. This is so at least as to those legal fees incurred by Metropolitan prior to the bar date for objecting to the claims report which was March 10, 1988.

CONCLUSIONS OF LAW

The court, therefore, concludes that Metropolitan is barred from collecting legal fees from the debtors as to any legal fees incurred by the debtors to and including March 10, 1988.

Subsequent legal fees might be collectable as part of the mortgaged debt. These may include legal fees for Metropolitan's representation at the November 7, 1989 hearing, at least as it related to the modification of the confirmed plan.

ORDER

IT IS ORDERED that Metropolitan Life Insurance Company is barred from collecting from debtors as part of its allowed secured claim legal fees incurred during the chapter 11 bankruptcy case to and including March 10, 1988.

IT IS FURTHER ORDERED that Metropolitan Life Insurance Company may file a motion for the allowance of its claim for legal fees incurred pursuant to its mortgage subsequent to March 10, 1988.

SO ORDERED ON THIS 9th DAY OF NOVEMBER, 1989.

William L. Edmonds
Chief Bankruptcy Judge

1. Debtors' third plan was filed December 3, 1987 and was amended on January 20, 1988 and on January 21, 1988. Neither of the amendments related to Metropolitan Life Insurance Company. Judgment confirming the amended plan was entered February 3, 1988 and a nunc pro tunc order was entered February 12, 1988 which corrected the court's order of February 3, 1988 as to the dates of the amendments included in the confirmed plan.

2. A portion of the pending motion was filed to request the court to approve an "immaterial modification" to the plan forcing a change in the payment date upon Metropolitan. Prior to trial, however, the parties were able to work out a consensual modification of the annual payment date.

3. Section 506(b) states: "To the extent that an allowed secured claim is secured by property the value of which, after any' recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose."