

# In the United States Bankruptcy Court

## for the Northern District of Iowa

FORT DODGE CREAMERY COMPANY

*Debtor(s).*

Bankruptcy No. X88-01550F

Chapter 7

Contested No. 2143

### **ORDERS re: MOTION TO COMPROMISE; MOTION FOR APPROVAL OF STIPULATION FOR RESOLUTION OF TRUSTEE'S OBJECTION TO SETTLEMENT AGREEMENT; and TRUSTEE'S MOTION TO SELL ESTATE PROPERTY FREE AND CLEAR OF LIENS Contested No. 2143**

The matters before the court arise out of creditors' and trustee's efforts to resolve litigation and disputes pending in this bankruptcy case. On October 1, 1990, trustee served notice of his motion to compromise various controversies, his motion to sell real estate free and clear of liens, an application for allowance of administrative expenses, and a proposed dismissal of the case. Hearing on the motions and applications came before the court on November 15, 1990. The court issued its decision on December 27, 1990. The undersigned ordered that the settlement agreement would be approved subject to certain court-imposed conditions:

- (1) The case in chief shall not be dismissed,
- (2) All court costs shall be paid in full, and
- (3) Plains National Bank, trustee of the Allen R. Loomis trust, shall, as assignee of certain claims of the estate, dismiss with prejudice the following proceedings:

Adversary X89-0158F, Adversary X89-0205F, Adversary X89-0213F, and civil action no. C184-0488 pending in the Iowa District Court for Webster County.

Because the court's conditions altered the agreement, the court gave signatories an opportunity to reject the conditions. A hearing would take place to determine the validity of any rejection. On January 9, 1991, the trustee rejected the conditions on the grounds that the court's retention of the case materially affected the consideration flowing to the trustee and the trustee's-attorney. The trustee contended that retention of the case would impose "considerable additional effort, time, work and expense for the trustee and counsel," and that since such services were not contemplated or foreseeable, he should not be held to the agreement.

Central States Southeast and Southwest Areas Health and Welfare and Pension Funds (CENTRAL STATES) has filed a request for clarification of the settlement agreement. Central States asks that the court, by supplemental order, clarify the claims to be dismissed by Plains National Bank upon assignment by the trustee. Hearing on the trustee's rejection, was scheduled for February 13, 1991 in Fort Dodge. At the hearing, the following appearances were made: Attorney Kurt Wilke on behalf of Allen R. Loomis, estate of A. Robert Loomis, and Rosedale Farms, Inc.; Michael Nelson on behalf of Central States; Neven Mulholland on behalf of First American State Bank; and James Cossitt, trustee. At the commencement of the hearing, the court was advised that the trustee and others had resolved the trustee's objection to the court's conditions. A copy of a settlement was shown to the court; however, it was not filed with the court at the hearing as additional signatures were to be acquired. At the hearing, Central States, Cossitt, First American State Bank,

Rosedale Farms, Inc., estate of A. Robert Loomis, and Allen R. Loomis supported approval of the to-be-filed stipulation. The U. S. Trustee filed a pleading on February 13, 1991 supporting the settlement and advising the court of his position on certain aspects of the settlement. Both the U. S. Trustee and First American State Bank, although supporting the settlement of the trustee's objection, argue that any final payment of Cossitt's fees and expenses await final distribution. Both have indicated, however, that this position does not detract from their overall approval of the agreement and that the court should enter such orders as it deems proper regarding the timing of final payment. At the hearing, Cossitt took the position that if some portion of his attorney's fees must await final distribution of the case, he would still support the settlement.

Subsequent negotiations took place regarding the February 13 stipulation, and thus the stipulation was not filed with the court until February 21, 1991. On that date, trustee Cossitt filed a "Motion for Approval of Stipulation for Resolution of Trustee's Objection to Settlement Agreement." This agreement has been signed by Central States, Cossitt, Allen R. Loomis, estate of A. Robert Loomis, Rosedale Farms, Inc., and Maurice Stark. Iowa Department of Revenue has filed a separate consent to the stipulation as has the U. S. Trustee. First American State Bank has indicated its support of the stipulation.

Settlement of the trustee's objection makes the following changes to the original settlement. It increases from \$46,000.00 to \$55,528.35 the amount the creditors will recommend to the court for the allowance of trustee's fees and expenses and trustee's legal fees and expenses. Creditors will recommend to the court that \$20,000.00 of such fees and expenses be paid at the time of any court order approving the settlement and that the balance be paid within ten days. The stipulation also provides, inter alia, for Cossitt's voluntary resignation as trustee, his release of any further claims against the estate, and his filing of a final report. It also provides for the appointment of a successor trustee who will be bound by the settlement agreement.

The court has examined the motion for approval of stipulation and finds that it is unnecessary that said motion be served on all creditors and parties-in-interest. This is so because the elements of the stipulation do not have an adverse impact on any party signing the original settlement agreement which has not already agreed to the subsequent stipulation.

The court has examined Central States' request for clarification of settlement agreement and finds that hearing on notice to all creditors and parties-in-interest is not necessary to the court's ruling.

The court, having considered its findings and conclusions in its decision of December 27, 1990 and having considered the motion for approval of stipulation,

IT IS ORDERED that Central States' motion for clarification is granted.

IT IS ORDERED that the motion to compromise filed October 1, 1990 as modified by the motion for approval of stipulation for resolution of trustee's objections to the settlement agreement is approved with the following qualifications:

- (1) The case in chief shall not be dismissed,
- (2) All court costs shall be paid in full, and
- (3) Plains National Bank, trustee of the Allen R. Loomis trust, shall, as assignee of certain claims of the estate, dismiss with prejudice the following proceedings:

Adversary X89-0158F, Adversary X89-0205F, Adversary X89-0213F, and civil action no. C184-0488 pending in the Iowa District Court for Webster County.

A dismissal by Plains National Bank of civil action C184-0488 shall include a dismissal of all claims which are the subject of that action and which are the subject of the pending motion for leave to amend.

IT IS FURTHER ORDERED that the trustee's application for authority to sell property free and clear of liens (contested no. 2143) is granted. The trustee, or his successor, may sell free and clear of any lien, any interest of the estate now owned or hereafter acquired in the following real property:

The Northeast Quarter (NE1/4) except the part lying North of the railroad right-of-way, the West half (W1/2) of the Southeast Quarter (SE1/4), the Southwest Quarter (SW1/4), the Northwest Quarter (NW1/4) except the part lying North of the railroad right-of-way, all in Section Fifteen (15), Township Eighty-nine (89), Range Twenty-eight (28), Webster County, Iowa.

IT IS FURTHER ORDERED that the trustee, or his successor, may pay James Cossitt, as attorney for trustee, interim fees and reimbursement of expenses, in the amount of \$20,000.00. Payment of the balance of any legal fees and expenses and payment to Cossitt of trustee's fees and expenses shall await further order by the court.

IT IS FURTHER ORDERED that the parties shall file such pleadings and motions with the court as are necessary to dispose of all or parts of pending litigation as resolved by the approval of the settlement agreement as modified.

IT IS FURTHER ORDERED that the clerk of the bankruptcy court shall serve a copy of this order and resulting judgment on all creditors, parties-in-interest, and those parties requesting notice pursuant to the Rules.

Judgment shall enter accordingly.

SO ORDERED ON THIS 22<sup>nd</sup> DAY OF FEBRUARY, 1991.

William L. Edmonds  
Bankruptcy Judge