In the United States Bankruptcy Court

for the Northern District of Iowa

TRAINS UNLIMITED INCORPORATED
An Iowa Corporation
a/d/b/a Iowa Star Clipper and
d/b/a Michigan Star Clipper
Debtor(s).

Bankruptcy No. L91-00098W

Chapter 11

ORDER RE: OBJECTION TO AMENDED CLAIMS REPORT

The matter before the court is the objection of the National Bank of Waterloo (BANK) to the amended claims report filed by the debtor. Hearing was scheduled for March 10, 1993, in Cedar Rapids. At that time, the parties requested permission to submit the matter on a stipulation of facts and written arguments. Permission was granted. The stipulation was filed April 16, 1993; briefs followed.

Findings

Based upon the stipulation of the parties, the court finds as follows:

1. On January 18, 1991, Trains filed for protection under chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Iowa.
2. An Order was entered by this court on July 6, 1992 confirming The Plan of Reorganization and Amendment thereto effective March 25, 1992.
3. On or about September 24, 1992, Trains, through its attorneys, filed an Amendment to Report on Claims that disallowed the claim of Cedar Valley Railroad ("CVAR") pursuant to Article III, Paragraph 3.14 of Debtor's Plan of Reorganization, which excludes insiders from participation in treatment of allowed unsecured claims.
4. On or about December 9, 1992, The National Bank of Waterloo, by its attorney George D. Keith, filed an objection to Debtor's Amendment to Report on Claims.
5. Frederick S. Tanner ("Tanner") was president, a stockholder and director of Trains and vice president, a stockholder and director of CVAR prior to and up until the time Trains filed for chapter 11 protection. Tanner's office was located in Trains' offices at 501 Sycamore Street, Waterloo, Iowa. Tanner resigned his positions as vice president and director of CVAR on January 21, 1991, and February 4, 1991, respectively.
6. At the time of Trains' chapter 11 filing, John E. Haley was the holder of 24,990 shares of Trains stock, and was a director, secretary, and chairman of the board of directors of Trains. John Haley continued to hold those positions throughout Trains' chapter 11 case until an election of officers and directors was held in September 1992 by new stockholders created under its Plan of Reorganization.
7. Marjorie L. Haley, the wife of John Haley, held 25,010 shares of Trains corporate stock at the time it filed for chapter 11 protection, and was vice president of Trains, a position she held until

the new stockholders elected officers and directors in September 1992. Until approximately August 1991, Marjorie Haley played an active role as manager of the Iowa Star Clipper.

8. As stockholders of Trains John Haley and Marjorie Haley voted in concert to elect members of the corporate board of directors and they voted in regard to amendments to corporate by-laws. Such election results were unanimous.
9. Trains' total outstanding stock at the time of its chapter 11 filing numbered 158,607.5 shares. John Haley's 24,990 Trains shares represent 15.76% of that total number of shares and Marjorie Haley's 25,010 Trains shares represent 15.77%.
10. Before and during the pendency of Trains' chapter 11 case, the relationship of Trains to CVAR was influenced by the involvement of John Haley, who held a large proportion of the outstanding shares of CVAR stock. He also was CVAR's chief operating officer and a director, secretary and chairman of the board.
11. Prior to and until approximately the time that Trains filed for chapter 11 protection, John Haley's sole office was located in Trains' offices at 501 Sycamore Street, Waterloo, Iowa. From that office he managed both CVAR and Trains. His secretary and other Trains personnel performed services for both CVAR and Trains.
12. John Haley and Marjorie Haley founded Trains in 1984. The stated purpose was to operate a dinner train on the tracks of CVAR in order to earn additional income to support CVAR and its freight operations. To that end, a pull-fee schedule was designed to transfer all available funds from Trains to CVAR.
13. A letter from CVAR to Trains dated April 22, 1988 . . . confirms an agreement under which Trains would pay to CVAR a pull fee of $1,000 to $1,325 per run, depending upon the schedule. At an estimated 280 to 300 runs per year, Trains' pull fees under the agreement would have totaled approximately $280,000 to $397,500 annually.
14. A subsequent agreement between CVAR and Trains dated April 1, 1989 . . . reduced the pull fee to $620 per run with an annual minimum of 300 runs, which would have totaled pull fees of approximately $186,000 a year.
15. A later agreement between CVAR and Trains dated November 1, 1989 . . . further reduced Trains' yearly pull fees to a minimum of $141,000.
16. The final and most recent pull-fee agreement executed by CVAR and Trains was dated January 19, 1991. . . . This agreement required that Trains pay $480 per run for any number of runs with no minimum. Although CVAR discontinued operations soon after execution of this agreement, during 1991 Trains completed 166 runs, which would have resulted in pull fees totaling only $96,000.
17. The above-referenced initial pull-fee agreement and successive agreements were executed by CVAR and Trains at the direction of John Haley and with the concurrence of Fred Tanner. Pull fees were set at the maximum rate Trains could pay, but as Trains got into financial difficulty and because of reduced cash flow was unable to pay the pull fees due under a particular agreement, successive agreements were executed to reduce the fees to a level Trains could pay. However, these successive agreements were executed only after Trains was in arrears by significant amounts and the pull-fee reductions they provided for were not made retroactive.
18. John Haley owned more than 50% of the shares of CVAR.

The court takes judicial notice of the following facts. The plan, at paragraph 2.14 states: "CLASS 14 CLAIMS. Class 14 claims shall be all insider claims of any nature, except as specified in paragraphs 2.15 and 2.16 below, but does not include the 'equity interests' of insiders." The proposed treatment of class 14 claims was described in paragraph 3.14 of the plan: "CLASS 14 CLAIMS. The holders of allowed Class 14 claims will receive nothing under this Plan except as expressly provided in paragraphs 3.15 and 3.16 with regard to the post-petition loans of existing shareholders and the

indemnity claim of Frederick S. Tanner (claim #98)." The description and treatment of the class 15 and 16 claims are not relevant to this dispute. The plan does not define "insider claims of any nature."

CVAR did not file a ballot on the plan. CVAR's Proof, filed February 20, 1991, stated that its claim was unsecured and was in the amount of $117,900.52.

Discussion

In amending its claims report on September 24, 1992, the debtor recommended disallowance of the CVAR claim for the reason that pursuant to Article III, paragraph 3.14, insiders were excluded from participation. Bank, a creditor of CVAR which claims a security interest in CVAR's claim against Debtor, objected to the disallowance. Bank's standing is not disputed.

The dispute before the court is not accurately described as one over allowance or disallowance of a claim. Debtor has offered no reason to disallow the claim. The dispute is one over classification. If CVAR's claim is a class 14 claim, then even if allowed, it is entitled to no distribution.

The issue before the court is whether CVAR is an "insider" for purposes of classification and plan treatment. Debtor contends that CVAR is an insider because it is an "affiliate" of the debtor or because it falls within the Bankruptcy Code's broad statutory definition of "insider." Bank contends that CVAR is not an affiliate or otherwise an insider.

CVAR does not fit clearly within the definition of "affiliate" under 11 U.S.C. § 101(2), so as to unquestionably make it an insider within the meaning of 11 U.S.C. § 101(31)(E). Debtor contends that John Haley should be considered to control his wife's 15.77 per cent of the stock of the debtor so that he might be considered in control of more than 20 per cent of the stock of debtor. In support of this contention, Debtor cites various factors relating to the way Mr. and Mrs. Haley have operated the debtor. The court need not consider whether John Haley controls his spouse's stock in order to come to a determination whether CVAR is an insider to the debtor.

Although CVAR does not fit neatly into the list of examples provided for corporate debtors in 11 U.S.C. § 101(31)(B), this does not end the inquiry. The definition of "insider", provided in § 101(31), includes various examples. The use of the term "includes" indicates that the examples are not limiting. 11 U.S.C. § 102(3). "Courts have widely agreed that Congress did not intend to limit the classification of insiders to the statutory definition." Miller v. Schuman (In re Schuman), 81 B.R. 583, 586 (9th Cir. B.A.P. 1987). The legislative history states that an insider is one with "a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm's length with the debtor." S.Rep. No. 95-989, 95th Cong., 2nd Sess. 25 (1978), reprinted in 1978 U.S. Code Cong. & Admin. News, pp. 5787, 5810. It is said that the term "insider" should be applied flexibly to a wide range of parties bearing a close relationship to the debtor. In re Ingleside Associates, 136 B.R. 955, 961 (Bankr. E.D. Pa. 1992).

It appears to the court that the relationship between debtor and CVAR is one calling for a higher degree of scrutiny in examining transactions between them. John Haley, although he owned only 15.76 per cent of the outstanding stock of debtor, was, nonetheless, the Chairman of its Board of Directors and an officer. He had the authority to direct the debtor. He also owned more than 50 per cent of CVAR. John Tanner was president, a stockholder and director of debtor and also an officer and director of CVAR. Were the court examining a payment of the debt to CVAR made by debtor more than 90 days prior to bankruptcy, but less than one year prior, the court would feel justified in regarding CVAR as an insider. Bank has given the court no reason why a different standard should

apply in determining CAVR's classification under the plan despite the fact that there is no preference or any wrongful conduct alleged.

The court concludes that as to the debtor, CAVR is an insider within the meaning of 11 U.S.C. § 101 (31)(B) because John Haley owns more than 50 per cent of the outstanding shares of CVAR and is its chief executive, an officer, director and chairman of the board, and is also the chairman of the board and officer and a shareholder of the debtor.

Additional support for this conclusion is provided by consideration of the pre-filing status of Haley's wife, Marjorie, who was vice president of the debtor and who owned 15.76 per cent of the outstanding shares of the debtor, and by consideration of Tanner's status as an officer, director and shareholder of both corporations.

Because CAVR is an insider, it is, under the confirmed plan, a class 14 creditor and is, therefore, not entitled to any distribution. Allowance or disallowance of the claim is not relevant.

ORDER

IT IS ORDERED that Cedar Valley Railroad Company is a class 14 claimant under the debtor's plan of reorganization confirmed on July 6, 1992, and, therefore, it is not entitled to distribution under the plan. Judgment shall enter accordingly.

SO ORDERED ON THIS 16th DAY OF JULY, 1993.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order and judgment by U. S. mail to: Dan Childers, George Keith