

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

CARL L. JANSMA and JUDY L. JANSMA
Debtors.

Bankruptcy No. 93-51290XS
Chapter 11

DECISION RE: REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE

Sioux County State Bank (BANK) seeks allowance of attorney's fees and expenses for the proceeding in which it sought and obtained the appointment of a chapter 11 trustee. Bank filed its first request on January 11, 1994, and an amended request on January 28. Debtors Carl and Judy Jansma resist the motion as does the chapter 11 trustee, Wil L. Forker. The parties agreed that the matter could be determined on the pleadings and legal briefs without hearing. This is a core proceeding. 11 U.S.C. § 157(b)(2)(A).

Jansmas filed their joint chapter 11 petition on July 28, 1993 (docket no. 1). On August 4, Bank filed "alternative motions" seeking either dismissal of the case or the appointment of a trustee or an examiner. On October 12, 1994, the court issued its decision that a trustee would be appointed. The decision was based on 11 U.S.C. § 1104(a)(1) and the court's finding that there had been fraud and dishonesty in Carl Jansma's pre-petition cattle dealings with Bank.

At the time the bankruptcy was filed, Jansmas showed in their schedules that they owned two parcels of real estate, both fully encumbered by mortgages to the Bank. Debtors also listed various items of personalty, nearly all of which were either claimed as exempt or to which was attached Bank's security interest. There appears from the schedules to be very little property of the estate which is not encumbered by Bank's security interests. Bank's claim is undersecured. The court recently determined, for purposes of plan confirmation, that Bank has a secured claim of \$507,074.55 and an unsecured claim of \$260,404.92. Not including Bank, debtors scheduled approximately \$200,000.00 in other unsecured claims.

Bank seeks allowance of its attorney's fees and expenses under 11 U.S.C. § § 503(b)(3)(D) and 503(b)(4) which permit the court to allow certain administrative expenses to a creditor or its attorneys who make a "substantial contribution" to a chapter 11 case. Bank contends that obtaining the appointment of a trustee was a substantial contribution to the case.

Trustee resists the motion for three reasons: (1) that the time expended by Bank's counsel did not solely relate to the appointment of a trustee; (2) that there is no showing that the efforts of counsel directly benefitted the estate, and (3) because Bank acted in its own interest (docket no. 190). Debtors resist also, arguing that there is no legal basis for the request, and that Bank acted for its own benefit (docket no. 194).

The allowance of expenses for substantial contribution to a case is intended to encourage meaningful creditor participation in the reorganization process, "but not to encourage mushrooming administrative expenses." In re Alert Holdings, Inc., 157 B.R. 753, 757 (Bankr. S.D. N.Y. 1993). The burden is on Bank to show that in obtaining the appointment of a trustee it made a substantial contribution to the case. Compensation should "be strictly limited to those cases in which unusual creditor actions have led to demonstrated benefits to either the creditors as a whole, the debtor or the estate." In re 9085 E. Mineral Office Building, Ltd., 119 B.R. 246, 250 (Bankr. D. Colo. 1990) (emphasis in original).

But "[c]reditors . . . are presumed to act primarily in their own interests, not for the benefit of the estate as a whole." In re Jensen-Farley Pictures, Inc., 47 B.R. 557, 571 (Bankr. D. Utah 1985). A creditor's efforts made solely in its own self-interest are not compensable under 11 U.S.C. § 503. Alert Holdings, Inc., 157 B.R. at 757.

The court finds that in filing and prosecuting its alternative motions, Bank acted and was primarily motivated to act in its self-interest to protect its collateral from loss by fraud or mismanagement. Nearly all of the assets of the estate are secured to Bank. Bank's interest in the collateral would be monitored and protected by either dismissal and the appointment of a state court receiver or by the appointment of a bankruptcy estate trustee. All of Bank's efforts in prosecuting the motions appear geared to that end, not to the end of contributing in the reorganization case. Bank's motion seeking either to have the case dismissed or a trustee appointed was based and tried on the same grounds and factual foundation. Obtaining dismissal of the case would not warrant the award of an administrative claim. The court's granting of the alternative remedy should not fortuitously lead to such an award either.

There has been no showing by Bank that its effort was intended to benefit other creditors or for that matter, that it has done so. There is no doubt, as Bank contends, that the appointment of a trustee was a significant event in the case. That, however, is not the sole test. Bank has not shown that its effort conferred a "significant and demonstrable benefit upon the reorganization process which have not been rendered solely on behalf of" its own interests. Alert Holdings, Inc., 157 B.R. at 757. The court concludes that Bank is not entitled to an administrative claim for legal expenses incurred in its obtaining the appointment of a trustee.

IT IS ORDERED that the request of Sioux County State Bank for allowance of an administrative claim under 11 U.S.C. § 503 is denied.

SO ORDERED ON THIS 16th DAY OF MAY, 1994.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order by U. S. mail to: William Needler, Roger Carter, Wil Forker, 2002 List, Jeff Henderson and U. S. Trustee.