

In the United States Bankruptcy Court

for the Northern District of Iowa

STEVEN RAY HEITSHUSEN
Debtor(s).

Bankruptcy No. L-88-00779C
Chapter 7

ORDER

This matter came on for hearing before the undersigned on April 21, 1994 and May 17, 1994 on Trustee's Final Report & Account. Harold Heitshusen, Inc. ("HHI") objected to the final report and the Internal Revenue Service ("IRS") responded. Debtor Steve Heitshusen filed an objection which the Court sustained by Order filed April 26, 1994 denying William Needler's claim. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

STATEMENT OF FACTS

Debtor filed a Chapter 12 petition on March 13, 1988. On April 9, 1990, Debtor entered into a farm lease with HHI for a term to expire on February 29, 1991 (sic). Debtor defaulted on the lease when he failed to pay \$14,950 due December 1, 1990. He converted his bankruptcy case to Chapter 7 on February 21, 1991, eight days before the lease term expired.

The \$14,950 final payment required by the lease has never been paid. HHI filed a proof of claim on July 6, 1992 asserting a secured claim in that amount based on the lease. The Trustee's final report and account filed March 15, 1994 did not provide for payment of that claim. A balance of \$20,160.93 is available in the estate to pay Debtor's Chapter 12 administrative expenses. The IRS holds a claim of \$15,609.54 which is an allowed administrative expense from Debtor's Chapter 12 case.

HHI asserts that it is entitled to payment under 11 U.S.C. § 503(b)(1)(A). It argues that the lease payment constitutes an actual, necessary expense of preserving Debtor's Chapter 12 estate. HHI also characterizes the debt as a secured claim.

The IRS objects to allowance of HHI's claim as an administrative expense. It argues that HHI has no claim because the right to payment was assigned to its creditor, Farm Credit Bank. The IRS also states that HHI has not properly asserted an administrative expense claim because it filed its claim as a secured claim, not as an administrative expense claim. Finally, the IRS asserts that the payment due under HHI's post-confirmation lease with Debtor is not entitled to administrative expense status because the lease did not benefit the estate.

After HHI leased the farm property to Debtor, it had financial difficulties itself which resulted in discussions with its creditor, Farm Credit Bank, and the possibility of HHI filing a Chapter 7 petition. Farm Credit and HHI reached an agreement whereby HHI deeded its farm land to Farm Credit and repurchased the smaller of the two homes on the property through a real estate contract with a principal balance of \$20,000. Farm Credit was also to receive the \$14,950 lease payment due from Debtor toward payment of HHI's debt. When Debtor defaulted on the payment, Farm Credit increased

the balance due on HHI's contract to \$34,950. Testimony was presented at the hearing in regard to whether HHI assigned the right to Debtor's payment to Farm Credit. No documents were presented evidencing such assignment.

The hearing contained discussion regarding the perfection of HHI's interest under the lease in crops grown on the property in 1990. The IRS stated that HHI's claim is not a secured claim because HHI failed to file a UCC statement perfecting its interest in the crops. HHI has offered no documentary evidence to show it filed a UCC statement. HHI notes that the Trustee's final report of cash receipts and disbursements shows receipt of a payment on 10/29/91 from Chipman Feed & Grain, Inc. in the amount of \$14,950.00 described "rent check for Heitshusen, Inc." In Debtor's schedules filed March 22, 1991, "Harrold Heitshusen" is listed as a creditor holding security through a landlord lien for the "last 1/2 of 1990 cash rent due" in the amount of \$14,950. Flora Heitshusen, Secretary of HHI, testified that Debtor finished harvesting the crops on the subject property in the last two or three days of the lease.

CONCLUSIONS OF LAW

HHI's right to bring claim

The first issue is whether HHI has the right to bring this claim against Debtor's estate in light of its dealings with Farm Credit. HHI asserts that it is entitled to the lease payment although it has agreed to turn the payment over to Farm Credit. Mrs. Heitshusen testified that the lease payment will be used to pay attorney fees and then be applied to reduce HHI's real estate contract debt to Farm Credit. Debtor testified that Farm Credit directed him to pay Farm Credit directly. As previously noted, no documents were presented evidencing the transfer or assignment of HHI's claim to the lease payment to Farm Credit.

Farm Credit has never filed a claim in this case. HHI filed the claim on which the debt is based. Debtor listed HHI as the creditor in schedules filed after conversion to Chapter 7. This occurred subsequent to HHI's negotiations with Farm Credit. There is no evidence beyond Debtor's testimony that Farm Credit was to be paid directly by Debtor. Similar factors were considered relevant in In re Fricker, 115 B.R. 809, 817 (Bankr. E.D. Pa. 1990), which held that even if a creditor collaterally assigns its interest to a third party, the claim continues to belong to the original creditor and not the third party. The Court concludes that the claim for the lease payment belongs to HHI. HHI has the right to pursue the claim against Debtor's estate.

Status as secured claim

At the hearing, HHI continued to assert the secured status of its claim. Landlord liens may arise through statute and through contract. In re Arnold, 88 B.R. 917, 919 (Bankr. N.D. Iowa 1988). A contractual lien must be perfected by compliance with Article 9 filing requirements. In re Waldo, 70 B.R. 16, 18 (Bankr. N.D. Iowa 1986). The trustee may avoid a landlord's unperfected contractual lien in crops. Id.; § 545(2). A landlord also has a statutory lien in crops pursuant to Iowa Code § 570.1 which has no requirements for perfection. Arnold, 88 B.R. at 919. However, such a lien is subject to avoidance under § 545(3) which wholly invalidates statutory liens for rent. Id.

Under § 546(a), the trustee may not commence an action to avoid such liens after the earlier of two years after the trustee's appointment or the time the case is closed or dismissed. More than two years have elapsed since the Trustee was appointed herein. However, case authority suggests that although § 546(a) limits the time for actions commenced by the trustee, the trustee may raise voidability as a

defense to the assertion of a claim against the estate outside the two-year limit. See In re Coan, 96 B.R. 828, 831 (Bankr. N.D. Ill. 1989).

The Trustee has not expressly raised his powers of avoidance under § 545(2) (avoidance of unperfected contractual lien) and § 545(3) (avoidance of statutory lien). However, the IRS and the Trustee have focused on HHI's failure to perfect its contractual lien by filing a UCC statement. The Court will assume that the Trustee considers that HHI's statutory lien is likewise invalid because it is avoidable under § 545. The Court concludes that HHI's secured claim is invalid because 1) its contractual lien is unperfected and avoidable under § 545(2) and 2) its lien arising from Iowa Code § 570.1 is statutory and avoidable under § 545(3).

Form of Proof of Claim

The IRS requests that the Court consider whether HHI's claim to administrative expense priority is sufficiently asserted by the proof of claim designating the claim as secured. The Bankruptcy Code fails to address the procedure and timing requirements for administrative claims. 11 U.S.C. §§ 348(d), 503(a). Cases require administrative claimants to comply with the bar date. In re Johnson, 901 F.2d 513, 518 (6th Cir. 1990). After conversion from Chapter 11 to Chapter 7, creditors with administrative expense claims arising during the Chapter 11 case are required to file proofs of claims. Id.; In re West Johnson Corp., 96 B.R. 182, 185 (Bankr. W.D. Wis. 1988).

The Proof of Claim form, however, is not tailored for use by an administrative expense claimant. The Court notes that Claimant William Needler resourcefully altered the standard Proof of Claim form to indicate that his claim for attorney fees was an administrative claim. The IRS, obviously a repeat player in this forum, has its own form entitled Request for Payment which it filed as a proof of claim.

In cases which have not been converted, a motion for allowance of administrative expense is the only proper vehicle for asserting such a claim; filing a proof of claim would be improper. In re Bicoastal Corp., 147 B.R. 258, 260 (Bankr. M.D. Fla. 1992). However, courts allow such a claim to be asserted by a proof of claim in order to avoid exalting form over substance. In re Mansfield Tire & Rubber Co., 73 B.R. 735, 739 (Bankr. N.D. Ohio 1987); In re Packard Properties, Ltd., 118 B.R. 61, 63 (Bankr. N.D. Tex. 1990). A recent case expressed a concern about sandbagging claimants through requiring a proof of claim for administrative expenses and then forcing such claimants to use forms not suited for that purpose. In re First Century Corp., ___ B.R. ___, 1994 WL 133508, *2 (Bankr. M.D. Pa. Mar. 16, 1994).

The Court concludes that HHI's proof of claim is sufficient to assert a claim for administrative expense priority. The proof of claim, on its face, alerts the Trustee to administrative expense status because of the time at which the debt was incurred in relation to the timing of Debtor's conversion from Chapter 12 to Chapter 7. Although the claim was never disallowed, the Trustee did not provide for the claim in the final report. Therefore, HHI will be permitted to assert the administrative expense status of its claim even though its Proof of Claim was deficient in appropriately designating the claim as such.

Status as administrative expense claim

Finally, the Court must consider whether HHI's claim for its final lease payment has administrative expense status under § 503(b)(1)(A). This section provides administrative expense priority for "the actual, necessary costs and expenses of preserving the estate." Not all postpetition expense is entitled to administrative priority. In re Ramaker, 117 B.R. 959, 962 (Bankr. N.D. Iowa 1990). "Such status

will be granted if the court finds that the debt arises from a transaction with the debtor-in-possession and is 'beneficial to the debtor-in-possession in the operation of the business.'" Id. The claimant must show that other creditors received tangible benefits. In re Bellman Farms, Inc., 140 B.R. 986, 995 (Bankr. D.S.D. 1991). The claimant should not be compensated if the expense solely furthered its own self-interest. Id.

Some cases have held that payments arising from farm leases can be administrative expenses. In re Norton, 112 B.R. 932, 937 (C.D. Ill. 1990), held that a crop share lease landlord was entitled to rent for the number of days the trustee used the farm prior to rejection of the lease in a Chapter 7 case. In re Strause, 40 B.R. 110, 112 (Bankr. W.D. Wis. 1987), stated that the landlord of a rejected lease for pasture and cropland was clearly entitled to use and occupancy costs. Strause held that the test to be applied is benefit to the estate and consequence to all creditors. Id. The principal purpose of granting administrative expense priority is to prevent unjust enrichment of the estate. Id. Some case authority in this district intimates that a farm landlord whose liens had been avoided might have been entitled to payment as an administrative expense claimant. Arnold, 88 B.R. at 919.

Applying these standards, the Court concludes that HHI's claim for the final lease payment is an administrative expense. Debtor testified that he farmed the land during the lease period. He harvested crops although he was unsure of the quantity produced by that particular piece of property. The grain was apparently taken to Chipman Feed & Grain. The Trustee's final report shows receipt of two other payments from Chipman Feed besides the payment in the amount of \$14,950 described as "rent check for Heitshusen, Inc." This indicates that Debtor benefitted from the lease in the operation of his farm business. Therefore, HHI's final lease payment has administrative expense priority. Since all but the final eight days of the lease transpired during Debtor's Chapter 12 case, the entire lease payment due should be treated as a Chapter 12 administrative expense.

WHEREFORE, the Objection to Final Report by Harold Heitshusen, Inc. is SUSTAINED.

FURTHER, approval of the Trustee's Final Report and Account is DENIED.

FURTHER, the Trustee is directed to treat Harold Heitshusen, Inc.'s claim of \$14,950 arising out of the farm lease as an administrative expense claim under § 503(b)(1)(A).

SO ORDERED this 14th day of June, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge