

In the United States Bankruptcy Court

for the Northern District of Iowa

BOCKES BROTHERS FARMS INC.
Debtor(s).

Bankruptcy No. 93-60881KW
Chapter 11

On May 25, 1995, the above-captioned matter came on for hearing pursuant to assignment on a Motion to Modify or Correct Court's Order of Dismissal filed by Thomas G. McCuskey, Attorney for the Official Unsecured Creditors' Committee. This case was dismissed by Court Order on April 28, 1995. In the Motion to Modify filed May 8, 1995, the Unsecured Creditors' Committee requests the Court modify its Order of Dismissal to allow for the conclusion of pending fee applications and other administrative matters, pending motions as they may relate to secured or partially secured creditors and any other housekeeping details which may remain.

A resistance to this Motion was filed by Creditor Ag Services of America on May 22, 1995. It asserts that the motion should be denied because: 1) the Committee failed to raise the issue in its resistance to the Motion for Dismissal, 2) the motion is too vague and 3) granting the broad relief requested would in effect vacate the order dismissing the case. Ag Services also argues that any matters which remain can be handled either in State Court or through collateral litigation.

The Committee's Motion to Modify is essentially a motion to amend judgment under Rule 9023. The court has broad discretion in determining whether to grant a motion to alter or amend judgment. Hagerman v. Yukon Energy Corp., 839 F.2d 407, 413 (8th Cir.), cert. denied, 488 U.S. 820 (1988).

"Motions [to alter or amend judgment] serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence. Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of [trial]. . . . Nor should a motion for reconsideration serve as the occasion to tender new legal theories for the first time."

Id. (citations omitted). "A motion to alter or amend judgment cannot be used to raise arguments which could have been raised prior to the issuance of judgment." Id.

Pursuant to § 349(b)(3), an order of dismissal "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." If the order of dismissal is conditional and retains limited jurisdiction, the court may later consider matters such as pending fee applications. In re Mandalay Shores Coop. Hous. Ass'n, 60 B.R. 22, 23 (Bankr. M.D. Fla. 1986). However, where an attorney seeking resolution of a fee application fails to request the court to retain limited jurisdiction, the court has no jurisdiction to consider the application. In re Talandis, 95 B.R. 108, 110 (Bankr. S.D. Iowa 1989) (finding that court had no jurisdiction to consider fee application filed by Attorney Childers one week before dismissal of Chapter 11 case); In re M.O.D., Inc., 170 B.R. 465, 466 (Bankr. M.D. Ala. 1994) (holding that unconditional order of dismissal restricts court's authority to order payment of attorney fees).

Some considerations which could justify a court retaining limited jurisdiction include interests of judicial economy, fairness and convenience to the litigants and the degree of difficulty of the related legal issues involved. In re Tim Wargo & Sons, Inc., 107 B.R. 626, 627 (Bankr. E.D. Ark. 1989). Retention of jurisdiction may not be warranted where most pending matters are solved by dismissal of the main case and others may be resolved efficiently in state court action. In re Nugelt, Inc., 142 B.R. 661, 670 (Bankr. D. Del. 1992).

The Unsecured Creditors' Committee failed to request that the Court retain limited jurisdiction at the time of the Motion to Dismiss. This is a new argument inappropriately asserted in a motion to amend the judgment. The Motion to Modify is extremely open-ended and could theoretically encompass many matters including all the adversary proceedings which were dismissed as a result of this dismissal. There is nothing in this case which warrants retention of jurisdiction such that the Order of Dismissal should be modified to pursue residual litigation or administrative matters.

The Committee has not identified how the interests of judicial economy or fairness and convenience to the litigants will be furthered by a broad retention of jurisdiction. Nor is it evident that the difficulty of the legal issues justifies continuing jurisdiction. The dismissal was properly granted for the reasons set forth in the original record and the dismissal order. The Court concludes that the dismissal need not be modified to retain jurisdiction as requested by the Committee.

WHEREFORE, the Motion to Modify or Correct Court's Order of Dismissal filed by the Unsecured Creditors' Committee is DENIED.

SO ORDERED this 16th day of June, 1995.

Paul J. Kilburg
U.S. Bankruptcy Judge