

In the United States Bankruptcy Court

for the Northern District of Iowa

LARKEN HOTELS LIMITED
PARTNERSHIP

Bankruptcy No. 94-10388KC

Debtor(s).

Chapter 11

ORDER RE MOTION FOR RECONSIDERATION

This matter is before the Court on Debtor's Motion for Reconsideration of Court's Order re: Debtor's Motion to Reopen, filed June 13, 1996. Debtor requests that the Court reconsider the portions of the June 3, 1996 Order which bar Debtor from pursuing any cause of action for recovery of the Doubletree Hotel. It bases this request on limitations set by the Court regarding the scope of the hearing on the Motion to Reopen. Upon reconsideration, the Court concedes that the June 3, 1996 Order exceeded the scope of the hearing in some respects. In the interests of fairness to the litigants, the Court hereby grants Debtor's Motion for Reconsideration and modifies the June 3, 1996 Order as follows.

In deciding whether to reopen a case, the Court considers whether it has the authority to grant the underlying relief. The principles of res judicata, equitable estoppel and judicial estoppel laid out in the Order are relevant to the Court's decision regarding reopening the case to allow Debtor to amend schedules and file an adversary proceeding to pursue the Doubletree claim. The limited scope of the hearing, however, prevented the parties from fully litigating these issues.

The Court reiterates that Debtor's Motion to Reopen should be denied. Based on the record as presented, Debtor has not convinced the Court that it has the authority to grant Debtor leave to amend schedules and pursue the Doubletree claim in this Court postconfirmation. The confirmed plan is binding on Debtor and the Pension Fund. It is questionable whether the Court has postconfirmation jurisdiction over a potential asset or claim of a former Chapter 11 debtor.

The Court vacates that portion of its Order on the Motion to Reopen which states that Debtor is barred from pursuing any claim for the Doubletree Hotel. More precisely, the Court finds that Debtor is barred from reopening this Chapter 11 case to pursue the potential Doubletree Hotel claim in this Court. Because of the limited scope of the May 2, 1996, the Court's June 3, 1996 order should not be interpreted to preclude Debtor from pursuing any cause of action for recovery of the Doubletree Hotel in any other jurisdiction.

WHEREFORE, Debtor's Motion for Reconsideration is GRANTED.

FURTHER, Debtor's Motion to Reopen is DENIED.

FURTHER, Debtor is barred from reopening this Chapter 11 case to pursue the potential Doubletree Hotel claim in this Court.

SO ORDERED this 14th day of June, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge