

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

DONALD JAMES FOREMAN
Debtor.

Bankruptcy No. 94-50433XS
Chapter 7

ORDER RE: TRUSTEE'S MOTION TO COMPROMISE ADVERSARY PROCEEDING 96-5006XS

The matter before the court is the trustee's motion to compromise adversary proceeding 96-5006XS--Forker vs. Wagner Livestock Sales Company. Wil L. Forker, trustee, served notice of the motion on all creditors and parties-in-interest. Only Norwest Bank Iowa, N.A. filed objection. Hearing was held April 29, 1997 in Sioux City. The trustee appeared in person and by his attorney Donald H. Molstad. David L. Reinschmidt and A. Frank Baron appeared for Wagner Livestock Sales Company; Jeffrey R. Mohrhauser appeared for Norwest.

Prior to the day of the hearing, Norwest, the trustee and Wagner Livestock reached an agreement resolving Norwest's objection to the compromise. It was submitted to the court by stipulation (docket no. 36) at the hearing. The effect of the stipulation was to prevent either Wagner Livestock or Norwest from using the trustee's settlement to either of their advantage in separate litigation between the two. Also, Wagner waives any claims in the bankruptcy. I find and conclude that notice to creditors of the Norwest/Wagner stipulation is not necessary before the court may rule on the trustee's motion as affected by the stipulation.

The trustee has filed an adversary proceeding against Wagner Livestock seeking the avoidance and recovery of three allegedly preferential payments totaling \$1,102,883. Wagner received the payments from the debtor within 90 days of debtor's bankruptcy filing. Wagner Livestock disputes the insolvency of the debtor and raises affirmative defenses under 11 U.S.C. §§ 547(c)(1) (substantially contemporaneous exchange) and 547(c)(2) (ordinary course of business payment).

The trustee requests approval of his compromise with Wagner Livestock. He has agreed to accept \$50,000 in full settlement of his preference claims. Under the additional stipulation between Norwest and Wagner Livestock, Wagner Livestock would waive any claims under 11 U.S.C. § 502(h). Wagner Livestock would also waive any other claims.

No creditors object to the settlement. It is supported by Norwest which, in dollar amount, holds the majority of claims filed in the case.

The court is obligated to evaluate the proposed settlement to determine if it is in the best interest of the estate. Drexel Burnham Lambert, Inc. v. Flight Transportation Corp. (In re Flight Transportation Corp. Securities Litigation), 730 F.2d 1128, 1138 (8th Cir. 1984), cert. denied, 105 S.Ct. 1169 (1985).

The court must consider (1) the trustee's probability of success on the merits, (2) the difficulties, if any, that might be encountered in collecting a judgment, (3) the complexity of the litigation and the attendant expense, inconvenience and delay, and (4) the "paramount interest of the creditors and a proper deference to their reasonable views. . . ." Drexel v. Loomis, 35 F.2d 800, 806 (8th Cir. 1929).

I have considered the proposed settlement in light of the above factors and, on balance, find that it is in the best interest of the estate. As to the merits, I find that the trustee has a high likelihood of success. I find that to be so in spite of the discovery dispute pending in the case. Based on the discussion at the hearing and my research on the law, I consider that the defendant would not likely prevail on the affirmative defenses. Alone, this factor does not favor settlement, nor does the court's consideration of the complexity of the litigation and its expense and delay. Although the issues are not simple and some delay would be occasioned by continued litigation and any appeals, the complexity, expense, delay and inconvenience are not inordinate in comparison to the likely recovery.

On balance, the two factors which militate in favor of approval are deference to the opinions of creditors and difficulties with collection. The trustee has obtained a verified financial statement from the defendant. The net worth of the defendant is likely less than \$300,000, much less than the uncompromised amounts of the transfers.

Last and most importantly, no creditors have objected. Twelve claims have been filed. All appear to be commercial claims, many in large amounts, amounts significant enough to provide the incentive to object to unreasonable settlement. The settlement is supported by Norwest which appears to hold the majority in dollar amount of filed claims.

I find the settlement is not unreasonable and should be approved. Accordingly,

IT IS ORDERED that the trustee's motion to compromise filed March 24, 1997 (docket no. 98) as affected by the Stipulation filed April 29, 1997 (docket no. 103) is approved. Judgment shall enter accordingly.

SO ORDERED THIS 1st DAY OF MAY 1997.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U.S. mail to: Wil Forker, Don Molstad, David Reinschmidt, A. Frank Baron, Jeff Mohrhauser, A. J. Stoik, Scott Perrenoud and U.S. Trustee.