

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

CHARLES A. NORENBERG
Debtor(s).

Bankruptcy No. 96-52422XS
Chapter 13

ORDER RE: DEBTOR'S OBJECTION TO GLIENKE/GRASHOFF CLAIMS and APPLICATION FOR CONTEMPT

Debtor Charles A. Norenberg has filed an application asking the court to hold in contempt the Ray Grashoff Estate, Janet Grashoff, Dale Glienke, Kris Glienke (hereafter Grashoff/Glienke) and Richard Cook. Norenberg also objects to the trustee's claims report which proposes allowance of the claim filed by Grashoff/ Glienke.

Norenberg's chapter 13 plan was confirmed April 7, 1997 (docket nos. 38-40). Grashoff/Glienke filed a proof of claim in the unsecured amount of \$44,653.09. Carol Dunbar, the standing trustee, filed her claims report and recommended allowance of the claim as filed.

Norenberg filed a timely objection to her report (docket no. 44). He objected to the allowance of the Grashoff/Glienke claim and objected also to the allowance of a claim filed by Education Credit Management Corp. He certified that he served it on the trustee and the claimants (docket no. 44). His objection to the trustee's report with service upon the claimants constitutes an objection to their claims.

Norenberg separately filed an application for contempt in which he asks the court to hold Grashoff/Glienke and Cook in contempt for failing to turn over his personal property. He contends that the failure violated the automatic stay and discharge injunction effective in his chapter 7 case (Bankruptcy No. 95-51289XS) which was filed July 12, 1995. He contends also that the withholding of property violates the automatic stay effective in his presently pending chapter 13 case which was filed September 23, 1996.

These matters came before the court on September 23, 1997 in Sioux City. Jeffrey L. Poulson appeared for Grashoff/Glienke; Richard Cook appeared for himself; Charles A. Norenberg appeared for himself; Michael Dunbar appeared briefly for the standing trustee but asked to be and was excused.

At the close of evidence, the court stated oral findings and conclusions and dismissed the application for contempt for lack of sufficient evidence to support holding Grashoff/Glienke in contempt. The court concluded that there was insufficient evidence to find that Grashoff/Glienke (or Cook) were holding any property of the debtor either in July 1995 when the chapter 7 was filed, or in September 1996 when the chapter 13 was filed, or thereafter.

This ruling is without prejudice to Norenberg's filing a claim against these parties for conversion of assets. The court's ruling means merely that there was insufficient evidence to show that Grashoff/Glienke or Cook were holding any property of the debtor at the time of the first bankruptcy or thereafter. There was evidence to indicate that Ray Grashoff and Dale Glienke held some of Norenberg's personal property in December 1994. Dale Glienke testified that prior to the chapter 7 case, they sold concrete forms, that another creditor seized a trailer, and that he does not know what happened to the rest of the property.

As to Norenberg's objection to the Grashoff/Glienke claim, I abstain from hearing Norenberg's objection. I abstain in favor of the state court where Norenberg has pending a mechanic's lien foreclosure action arising from work done for G & G Farms in the construction of hog confinement facilities. A dispute arose over the project. The Grashoff/Glienke claim allegedly arises from the same transaction.

In the decision confirming Norenberg's chapter 13 plan, I stated that if Norenberg proceeded with his foreclosure action, that those named in the suit could assert their claims against Norenberg arising out of the same construction contract. At the time, the court considered Norenberg free to pursue his foreclosure action. I also noted that the state court had jurisdiction to determine whether the Grashoff/Glienke claim had been discharged in Norenberg's chapter 7 case or whether it was excepted from the chapter 7 discharge under 11 U.S.C. § 523(a)(3). I ruled also that, "[i]f the state court determines that such debts were not discharged and that the Estate is entitled to an affirmative recovery against Norenberg, such claim may be asserted as a claim in the chapter 13 case, but the Estate may not execute on the judgment or obtain any judicial or other lien on said judgment without seeking further relief from the bankruptcy court." (Docket nos. 38-39).

Evidence at the trial on contempt indicated that Norenberg was building the facility for G & G Farms, a partnership. Ray Grashoff and Dale Glienke were the partners. Therefore, it is unclear who of Grashoff/Glienke holds claims against Norenberg. That issue will be left to the state court.

The effect of my abstention and of my prior decision on confirmation is to permit the parties to proceed in state court on all claims arising out of the construction contract and related disputes including the alleged conversion of Norenberg's personal property. These disputes include Norenberg's lien foreclosure, the claim or claims against Norenberg, the dischargeability of such claims and Norenberg's claim for conversion.

We failed to conclude matters on Norenberg's objection to the claim of Education Credit Management Corp. The clerk will set that for telephonic preliminary hearing on notice to Norenberg, the trustee and Education Credit Management Corp. Accordingly,

IT IS ORDERED that Charles Norenberg's application for an order holding Grashoff/Glienke and Cook in contempt of court is denied.

IT IS FURTHER ORDERED that the court abstains from determining the allowed unsecured claim of Grashoff/Glienke against the chapter 13 estate. The claim may be determined by the state court as a counterclaim in the mechanic's lien foreclosure action filed by Norenberg. If Norenberg fails to proceed with the foreclosure action and/or that action is dismissed, Grashoff/ Glienke or Norenberg may seek a determination of the Grashoff/ Glienke claim and its dischargeability in the bankruptcy court.

IT IS FURTHER ORDERED that the standing trustee shall make distribution to unsecured creditors under the chapter 13 plan as though the Grashoff/Glienke claim were allowed as filed, but the trustee shall make no distribution on account of the Grashoff/ Glienke claim without further order of the bankruptcy court.

IT IS FURTHER ORDERED that the clerk shall set a preliminary telephonic hearing on Norenberg's objection to the claim filed by Education Credit Management Corp.

IT IS ORDERED that judgment shall enter accordingly.

SO ORDERED THIS 24th DAY OF SEPTEMBER 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 debtor, Jeffrey Poulson, Richard Cook, Education Credit Management Corp., Carol Dunbar, and U.S. Trustee.