In the United States Bankruptcy Court

for the Northern District of Iowa

BOYT LIMITED PARTNERSHIP a Delaware Limited Partnership *Debtor(s).*	Bankruptcy No. 96-42688XM Chapter 7
LARRY S. EIDE Trustee *Plaintiff(s)* vs. ABE'S LEATHER MART, LTD. *Defendant(s)*	Adversary No. 97-9145M
LARRY S. EIDE Trustee *Plaintiff(s)* vs. INNOVATION LUGGAGE, INC. *Defendant(s)*	Adversary No. 97-9103M
LARRY S. EIDE Trustee *Plaintiff(s)* vs. LEXINGTON LUGGAGE, LTD. *Defendant(s)*	Adversary No. 97-9105M
LARRY S. EIDE Trustee *Plaintiff(s)* vs. KAHLER, INC. *Defendant(s)*	Adversary No. 97-9104M

ORDER RE: MOTIONS TO JOIN AS PLAINTIFF and MOTIONS TO EXTEND DEADLINES

CIT Group/Credit Finance, Inc. (CIT) requests permission to enter these adversary proceedings as a plaintiff. Telephonic hearings on three of the motions were held on January 24, 1998. I granted defendant's motion to continue the hearing in Eide v. Kahler, Inc. The defendant plans to resist the motion. Resistances were not filed in any other proceeding. Because I determine the motions should be denied, I will rule now on all four motions.

Larry S. Eide appeared for himself in all four hearings. Eric W. Lam appeared for CIT in all of the proceedings. Jeff Dittmar and Stephanie Harris appeared for The Baggerie, Inc. in Eide v. Abe's Leather Mart, Ltd., et al.; Steven Adler appeared for Lexington Luggage, Ltd.; Thomas McCuskey appeared for Innovation Luggage, Inc.; and Peter Meyers and David Nelsen appeared for Kahler, Inc. at the beginning of the continued hearing.

CIT asks to be made a plaintiff in each adversary proceeding. Its motions are based on its present "ownership" of 95% of the accounts receivable which were owned by Boyt Limited Partnership (BOYT) at the outset of the case. As such an owner, CIT contends that it is a real party-in-interest and it should be permitted to participate in these proceedings, each of which was started by the trustee to collect pre-petition accounts from the defendants.

Boyt filed its Chapter 11 petition on October 21, 1996, and it converted to Chapter 7 on November 14, 1996. Boyt had on its books a significant amount of accounts receivable. Larry S. Eide, who was appointed trustee, filed adversaries to collect them. All of the accounts, as well as other assets, were collateral for Boyt's debt to CIT. Eide decided to liquidate the accounts because he thought that CIT would be oversecured and there would be proceeds left for the estate. When he began to doubt this, he considered abandonment of the accounts.

After discussions with CIT, Eide filed a motion for permission to "sell" 95% of the "net collected dollars of each receivable" to CIT (Motion for Authority to Sell, docket no. 143, ¶ 10). CIT would credit bid for these assets reducing its secured claim dollar for dollar under 11 U.S.C. § 363(k). Id. The motion also proposed that if the agreement with CIT were approved, CIT would join each proceeding as a plaintiff. The agreement contemplated that the legal costs and expenses of collection for both Eide and CIT would be subtracted from collections and that the balance would be divided 95% to CIT and 5% to the bankruptcy estate. CIT would release its lien on the estate's 5%.

Their agreement was beneficial to the estate because it provided it with 5% of collected accounts net of costs. Absent this agreement, it was thought to be unlikely that there would be any benefit to the estate from collection. Continued pursuit of the proceedings also would allow the trustee to recover costs already sunk into collection. The agreement also benefitted CIT as abandonment would have forced CIT to proceed anew in its own name in dispersed forums.

Over objections, the trustee's motion to sell was granted. However, I refused to give blanket permission for CIT to join as plaintiff in each adversary, requiring CIT to file a motion in each proceeding. Also, in the order approving the "sale" (docket no. 150), I endeavored to describe the true nature of the transaction between Eide and CIT:

> Although the motion is postured as a sale of accounts (or perhaps more accurately proceeds of accounts), in essence it is an agreement by CIT (1) to permit all of the trustee's costs of collection to be charged to the proceeds of the accounts, and (2) to release its lien against five per cent of the proceeds as a benefit to the estate for its continued administration of the accounts as part of the estate. CIT believes that the collection through bankruptcy will be more economically efficient than its bringing multiple state court suits against the account debtors.

Order, docket no. 150, pp. 2-3.

CIT contends that as it is now an owner of 95% of the accounts, it should have a right to intervene to protect its property. It says its joining the proceedings will also protect defendants from multiple suits,

one of the purposes of the real-party-in-interest rule. Dubuque Stone Products Co. v. Fred L. Gray Co., 356 F.2d 718, 723 (8th Cir. 1966). CIT also seems to argue that absent its formal participation in the proceedings, Eide could settle each proceeding separately to recover on his 5% ownership, leaving CIT to begin separate litigation.

According to Iowa law, "[a]n open account of sums of money due on contract may be assigned." Iowa Code § 539.3. The assignee has a right of action in its own name. Id. If CIT is correct in characterizing its agreement with the trustee as a sale, then there has been a partial assignment of the estate's interest to CIT. An owner of a chose in action may make a partial assignment of its rights. Welch v. Taylor, 218 Iowa 209, 254 N.W. 299, 301 (1934); Wagner v. Farmers Cooperative Elevator Co. (In re Wagner), 144 B.R. 430, 441 (N.D. Iowa 1992).

In the context of partial assignments, the Iowa Supreme Court once said that the assignor and the assignee may join in an action against the debtor, or the assignor may bring its action against the debtor and the assignee to obtain complete adjudication of all claims in one proceeding. Kinart v. Seabury Co., 191 Iowa 937, 183 N.W. 586, 588 (1921). Joinder was required to prevent the splitting of claims and multiple actions against the debtor without its consent. Id.

More recently, the Iowa Supreme Court has held "that if a claim is split, for the purpose of determining the real party in interest the cause will be treated as a single cause of action and the assignor is the proper party to maintain the action." Archibald v. Midwest Paper Stock Co., 158 N.W.2d 739, 742-43 (Iowa 1968). If the assignment is complete, the assignee is the proper party. Id. at 743.

Because the assignment to CIT took place after the filings of the complaints, the joinder of CIT as a plaintiff in each action is governed by Fed.R.Civ.P. 25(c), Fed.R.Bankr.P. 7025. The rule states:

> In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party....

Fed.R.Civ.P. 25(c).

Granting a motion to join under Rule 25(c) is discretionary with the court. Froning's, Inc. v. Johnston Feed Service, Inc., 568 F.2d 108, 110 n.4 (8th Cir. 1978); *but see* Panther Pumps & Equipment Co., Inc. v. Hydrocraft, Inc., 566 F.2d 8, 23 (7th Cir. 1977) (it may be that only the continuance of the original party is discretionary), cert. denied by, Beck v. Morrison Pump Co., Inc., 98 S.Ct. 1887 (1978).

According to one treatise,

> [t]he most significant feature of Rule 25(c) is that it does not require that anything be done after an interest has been transferred. The action may be continued by or against the original party, and the judgment will be binding on his successor in interest even though he is not named. An order of joinder is merely a discretionary determination by the trial court that the transferee's presence would facilitate the conduct of the litigation.

7C Wright, Miller & Kane, Federal Practice and Procedure, § 1958, 555-57.

Under the present circumstances, I do not believe that the addition of CIT as a plaintiff in these actions would facilitate the conduct of the litigation. The trustee has already begun the actions. He has kept the litigation progressing. He has motivation to recover on the entire account debt because the larger the entire recovery, the greater the estate's share of the proceeds. He is free to consult with CIT and its attorneys on settlement. If they disagree, CIT may object to any motion to compromise filed by the trustee. The court must then evaluate the trustee's settlement under the standard four-factor test. Drexel v. Loomis, 35 F.2d 800, 806 (8th Cir. 1929).

The defendants are protected because judgment or settlement of the claim will determine the entire claim and CIT will be bound by the result. Froning's, Inc. v. Johnston Feed Service, Inc., 568 F.2d 108, 110 n.4 (8th Cir. 1978).

On the other hand, joinder of CIT as a plaintiff will add to the costs and reduce the proceeds available to the estate. There is no evidence that joinder will facilitate conduct of the litigation. Indeed, in each case, CIT asks that discovery and other deadlines be extended to accommodate it. Two attorneys will be attempting to try the very same claim. The transfer does not change the nature or amount of the claims. Counsel for CIT argues that with a 95% interest in the outcome, CIT has the greater motivation to pursue the claims and that he has ample time, perhaps more time than Mr. Eide, to work on the case. I have seen no evidence of lack of motivation by the trustee. If time is a problem, the trustee might consider hiring CIT's counsel to pursue the claims. That is permissible if there is no actual conflict of interest between the estate and CIT. 11 U.S.C. § 327(c).

Having considered the benefits and detriments of permitting joinder,

IT IS ORDERED that the motions of CIT to join as a party plaintiff in each of these adversaries are denied.

IT IS ORDERED that CIT's motions to extend deadlines are denied.

SO ORDERED THIS 29 DAY OF JANUARY 1998.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order by U.S. mail to Larry Eide, Eric Lam, Alan Solow, Stephen Enz, Jeff Dittmar and Stephanie Harris, Steven Adler, Thomas McCuskey, Peter Meyers, David Nelsen, and U. S. Trustee.