

In the United States Bankruptcy Court

for the Northern District of Iowa

STRAYER SEED FARMS INC.
Debtor(s).

Bankruptcy No. 95-62081-KW
Chapter 7

ORDER RE OBJECTION TO TRUSTEE'S CLAIM REPORT

This matter came before the undersigned on April 28, 1999 on Objection to Trustee's Claim Report. Japan AgriTech Co., Ltd. was represented by attorney John Titler. Habbo Fokkena appeared as Chapter 7 Trustee. After the presentation of evidence and argument, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (B).

STATEMENT OF THE CASE

Creditor Japan AgriTech Co. objects to disallowance of its claim. Trustee's Claims Report proposes no payment as the claim was tardily filed. Japan AgriTech asserts its correspondence with Trustee evidences an informal proof of claim. It also argues the notice setting the claims deadline was ambiguous and insufficient.

FINDINGS OF FACT

Debtor filed a Chapter 11 petition on October 24, 1995. At that time, a notice was sent to creditors stating it was not necessary to file a proof of claim. The case was converted to Chapter 7 on May 3, 1996. On June 10, 1996, the Bankruptcy Clerk of Court sent creditors a notice setting a deadline for filing claims of September 9, 1996. The notice states that "claims may be filed in this case at the address appearing below, **ON OR BEFORE SEPTEMBER 9, 1996.**" As Japan AgriTech points out, the Bankruptcy Clerk now uses a different form for giving creditors notice of the claims deadline.

In May and June, 1996, Trustee corresponded with Japan AgriTech, concerning an agreement for the sale and purchase of beans. On June 6, 1996, Trustee sent all creditors a letter soliciting information regarding the amounts of their claims and directing them to file claims. Attorney Benny B. Waggoner responded to this letter on behalf of Japan AgriTech on August 7, 1996, stating the total owed is \$137,358.17 and requesting a claim form. See Exhibit 5. In response, Trustee forwarded Mr. Waggoner a new claim form blank. Japan AgriTech did not file its claim until November 18, 1996, more than two months after the claims deadline. Japan AgriTech recently amended the amount of its claim to \$60,000 on April 27, 1999.

CONCLUSIONS OF LAW

In certain cases, informal proofs of claim may be amended and allowed as timely filed claims. In re Phillips, 166 B.R. 129, 131 (Bankr. S.D. Iowa 1994). If a timely record, formal or informal, discloses an assertion of a claim against the estate and an intention to share in its assets, there is a basis for allowing amendment by filing a formal proof of claim. In re Haugen Constr. Serv., Inc., 876 F.2d 681, 682 (8th Cir. 1989); In re Donovan Wire & Iron Co., 822 F.2d 38, 39 (8th Cir. 1987). "A valid informal claim need not be filed with the bankruptcy court." Haugen Constr., 876 F.2d at 682.

Great liberality in permitting amendments of claims in bankruptcy proceedings is proper. Id. An informal claim, however, cannot be so vague as to require the trustee to be a mind reader. In re Irvine, 105 B.R. 502, 504 (D. Minn. 1989). "The law requires that at a minimum, an informal claim must contain a written assertion of a claim against the estate." Id.

This Court has recognized the practice of liberally allowing amendments to informal proofs of claims in In re Steinke, No. 93-51968XS, slip op. at 8-9 (Bankr. N.D. Iowa Nov. 27, 1996). The Court stated:

The purpose of allowing post-deadline amendments to timely informal claims seems to be to protect those creditors who have made a timely but technically faulty assertion of a claim against the estate. Perhaps the creditor sent the claim to the trustee, rather than file it with the clerk, or it sent a letter, rather than a claims form. Perhaps the creditor omitted a supportive attachment. Authorities indicating the trend in allowing liberality in amendment "permit amendments to correct defects of form, or to supply greater particularity in the allegations of fact from which the claim arises, or to make a formal proof of claim based upon facts which, within the statutory period, had already been brought to the notice of the trustee by some informal writing or some pleading in the bankruptcy proceedings."

The recognition of informal claims is not without limits. The informal claim must be in writing. It must explicitly state the nature and amount of a claim asserted against the estate. It must show an intent to share in the estate's assets.

Id.(citations omitted).

In Haugen Construction, the Eighth Circuit found the creditor had made an informal proof of claim by sending a letter to the U.S. Trustee, the acting trustee, stating the debtor owed the creditor \$800,000 and the creditor wanted a trustee appointed to pursue the matter. 876 F.2d at 682. In In re Hess, 148 B.R. 570, 571 (Bankr. E.D. Ark. 1992), a creditor sent the trustee a letter stating it was the owner of an unsecured note and requested information on filing a formal claim. The court found the letter constituted an informal proof of claim. Id.

Based on the foregoing, the Court concludes the letter dated August 7, 1996 from Japan AgriTech's counsel to Trustee constitutes an amendable informal proof of claim. This informal claim is in writing. It states the amount owed is \$137,358.17. It indicates an intent to share in the estate's assets by requesting a copy of a formal proof of claim. Trustee received this informal proof of claim before the deadline of September 9, 1996. The August 7, 1996 letter meets all the requirements of an informal proof of claim. Therefore, Japan AgriTech is entitled to share in the assets of the estate. In light of this conclusion, the Court will not address the issue of the sufficiency of the Clerk's notice of the claims deadline.

WHEREFORE, the Objection to Trustee's Claim Report by Japan AgriTech Co., Ltd. is SUSTAINED.

FURTHER, Japan AgriTech's formal proof of claim is allowed as an amendment to its timely informal proof of claim.

SO ORDERED this 25th day of May, 1999.

Paul J. Kilburg
U.S. Bankruptcy Judge