

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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UNPUBLISHED OPINION

IN RE:

) Bankruptcy No. 82A-03165

SCHOFIELD GREENHOUSE,)

Debtor.)

UNPUBLISHED OPINION

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MEMORANDUM OPINION

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The Court, after notice and hearing, took under advisement the application for interim compensation filed by Michael Deamer, attorney for the debtor. No objections to the allowance of interim compensation were filed, and no objections have been made concerning the quality of services performed by Mr. Deamer for the debtor. However, because the record shows the possibility of a conflict of interest, the Court has reviewed the case, and renders this opinion.

The debtor, Schofield Greenhouse, is a general partnership. Kenneth W. Johnson, the debtor in case number 82M-03221, and Beatrice R. Schofield, the debtor in case number 82M-03222, are general partners of Schofield Greenhouse. Mr. Deamer is the attorney of record for all three debtors. An order was signed by the Court on April 11, 1983, allowing joint administration of these three estates.

In reaching a conclusion on the question of whether there is a conflict of interest in representing the three estates, it is important to keep in mind the distinction between joint administration and consolidation. One has important substantive effects, while the other is a matter of procedural convenience.

Consolidation has the substantial effect. It involves treating two or more separate estates as one. The assets and liabilities are put together, and any inter-entity debts and credits are eliminated. In a sense, consolidation is like the disregard of corporate entities known as piercing the corporate veil.

Joint administration is a purely administrative matter. It means that a single trustee administers two or more separate estates, and the assets and liabilities are not merged. Jointly administered estates may share a single docket, use combined notices to creditors, and employ other administrative means that may aid in expediting cases and rendering the process less costly.

Section 327(a) of the Bankruptcy Code provides for the appointment of one or more attorneys for the debtor that do not hold or represent an adverse interest to the estate and that are disinterested. This Court has recently held, in the case of In

re Wasatch Factoring, Inc., Bankruptcy Case No. 82A-03165, that if an attorney represents the debtor, as well as a principal of that debtor, the attorney is not a disinterested person and does represent an interest adverse to the estate. The instant case poses a similar question in dealing with a general partnership.

In the view of the Court, it does not appear that the general partnership - partner relationship and the corporation -principal relationship are significantly different in the context of a conflict of interest determination. In representing the partnership debtor, as well as two partner-debtors, the attorney has placed himself in a position where he may be required to take a course of action that prejudices the rights of one of his clients. While in most instances, because of the individual liability of general partners, the interests will be the same, there will be instances where the interests conflict, especially between the general partners as they try to avoid their liability and leave it up to the other partners. The Bankruptcy Code itself suggests ways in which conflicts could arise between a partnership and its partners, and between partners. Section 101(25)(c) of the Code defines an "insider" as including a general partner in the debtor and general partner of the debtor. The status of an "insider" gives rise to extensions of liability under the Code. The definition of "insolvent" in §101(26) includes certain of each general partner's separate

property. Conflicts could arise in making a determination of solvency. Section 303(a)(3) provides that fewer than all the general partners may file an involuntary petition against the partnership. Section 502(a) gives the creditor of a partner in a partnership that is a debtor in a case under Chapter 7 the right to object to a proof of claim. This is an indirect, but real potential conflict. Section 548(b) gives the trustee of a partnership debtor the right to avoid transfers to general partners. Section 723 gives the trustee rights to recover funds from partners in the event of a deficiency in the estate from which to pay claims, and suggests the trustee should pursue non-debtor partners first. Section 1141 provides that the confirmation of a plan cuts off certain rights of general partners.

The Court, therefore, rules that if the attorney represents the partnership debtor, as well as one or more general partners of that debtor, the attorney is not a disinterested person and does represent an interest adverse to the estate. Section 328(c) provides that the Court may deny allowance of compensation and reimbursement of expenses under these circumstances.

IT IS THEREFORE ORDERED, that the pending application for compensation by Michael Deamer is denied.

DATED this 19 day of October, 1984.



JOHN H. ALLEN
UNITED STATES BANKRUPTCY JUDGE