

UNPUBLISHED OPINION

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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IN RE:) Bankruptcy No. 80A-01762
)
 CARL BERT ALBRECHTSEN,)
)
 Debtor.)

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 MEMORANDUM OPINION
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Appearances: John L. Sandberg, Ogden, Utah, for the debtor;
 Weston L. Harris, Watkiss & Campbell, Salt Lake City, Utah, for
 International Harvester Credit Corporation; Judith L. Boulden,
 Boulden & Gillman, Salt Lake City, Utah, for herself as trustee.

FACTUAL AND PROCEDURAL BACKGROUND

On September 12, 1980, Carl Bert Albrechtsen, the debtor, filed a petition for relief under Chapter 13 of the Bankruptcy Code. The debtor was engaged in the commercial trucking business.

International Harvester Credit Corporation ("International Harvester") was listed on the debtor's schedules as a creditor holding a secured claim, its collateral consisting of a 1978 International Harvester Model COF4070B Tractor, and a 1978 International Harvester Model F2554 dump truck.

On December 5, 1980, the Court entered an order approving a stipulation between the debtor, the standing Chapter 13 trustee, and International Harvester respecting the two vehicles. In pertinent part, the stipulation provided that the debtor had no further use for the tractor and that it should be surrendered to International Harvester for disposition in a commercially reasonable manner pursuant to §9-504 of the Uniform Commercial Code. The parties believed that there was no equity in this vehicle. The stipulation further provided that the debtor would retain the dump truck, and agreed to pay to International Harvester the sum of \$24,000.00 in 36 equal monthly installments, beginning on or before December 22, 1980. Interest on the unpaid balance was to be "paid at the rate which was used in calculating the amount owing on the original contract" covering the vehicle.

The debtor's third amended plan was confirmed by order of the court dated December 27, 1980. The stipulation was incorporated by reference in the order of confirmation and made a part thereof.

On or about March 20, 1981, the debtor executed a Refinance Extension Agreement with International Harvester, which provided that the amount financed was \$24,000.00 (the amount set forth in the stipulation), and the finance charge was \$9,121.68. The trustee was not a party to the agreement, and it was not presented to the court for approval. In April, 1984, after having paid International Harvester more than \$23,000.00, the debtor attempted to sell the

vehicle to a third party believing that only \$274.00 remained owing to International Harvester. When the debtor requested a release of the title to the truck, he was informed that the creditor claimed interest due in the amount of \$9,928.17 pursuant to the stipulation and Refinance Extension Agreement. Under protest, the debtor paid International Harvester the amount demanded in order to have the title released.

On May 7, 1984, the debtor filed a motion with this court requesting clarification of the December 5, 1980, order approving the parties' stipulation, and to compel International Harvester to render an accounting of all funds paid to it pursuant to the plan and return the \$9,928.17 paid under protest.

Memoranda were filed by the debtor, the trustee, and International Harvester, and the matter was heard by the court on June 27, 1984. The court, having considered the evidence and arguments presented, as well as the file in this case and upon its own review of the applicable statutes, rules, and other authorities, renders the following decision.

SUMMARY OF THE PARTIES' ARGUMENTS

The parties' basic arguments are as follows: (1) the debtor contends that it believed the \$24,000 figure in the stipulation included any interest which would be due to International Harvester;

(2) the trustee also contends that the \$24,000 figure included the interest and, in any event, an undersecured creditor would be entitled only to a "discount factor" not the 16.74% contract rate; and (3) International Harvester contends that the parties' understood that the \$24,000 figure was principal only, and that interest on the unpaid balance was to be paid at the rate which was used in calculating the amount owing in the original contract.

DISCUSSION

In this proceeding, the court is called upon to consider the effect of a confirmed Chapter 13 plan as it related both to pre- and post-confirmation events.

Initially, the court will examine the stipulation and order of September 5, 1980, approving it.

The reorganization process, whether in Chapter 11 or 13 involves the "turbulent rivalry" of many interests. See In re Alyucan Interstate Corp., 12 B.R. 803, (Bkrtcy. D. Utah 1981) Stipulations are a normal part of the reorganization process and are favored by the court because they show cooperation between creditors and the debtor, reduce litigation costs, and lessen the judicial burden of administering the estate. In re Callister, 15 B.R. 521, 531 (Bkrtcy. D. Utah 1981). Bankruptcy Rule 9019 empowers the bankruptcy judge to approve a compromise or settlement. See also Local Rule 7.

Generally, four criteria will be considered in approving or disapproving a compromise: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation; and (4) the paramount interest of creditors. In re Patel, 43 B.R. 500, 504 (N.D. Ill. 1984).

Stipulations are in the nature of contracts and, as such, ordinary principles of contract interpretation are applicable to interpretation of stipulations. In re Bolton Hall Nursing Home, Inc., 31 B.R. 765 (Bkrtcy. D. Mass. 1983). A stipulation freely entered into by the parties is binding upon them. Matter of B.O.S.S. Partners, Inc., 37 B.R. 348 (Bkrtcy. D. Fla. 1984). In the present case, the order approving the stipulation provided that it would be incorporated in the order confirming the plan and made a part thereof. Neither the plan nor the order of confirmation expressly incorporated the stipulation. The Order of Confirmation made an oblique reference to the stipulation when it referred to the value of the dump truck as \$24,000 "as per stipulation." However, for the purpose of resolving the present dispute, it would be appropriate for the court to consider the stipulation, the order approving it, the debtor's third amended Chapter 13 plan, and the order of confirmation, inasmuch as all of these papers are essentially part of the restructuring of the debtor's relationship with International Harvester under Chapter 13. See Restatement, Second, Contracts §202(2) at 86 (1981). A construction of the agreement in the manner

suggested by the trustee, namely, ignoring the stipulation and the order approving the stipulation and looking solely to the plan and the order of confirmation, would ignore the circumstances to the transaction and the best indication of the intent of the parties.

We must now determine whether the stipulation, as embodied in the four documents, is ambiguous and, if so, the proper manner of resolving the ambiguity.

In the court's view, paragraph 3(a) of the stipulation requires the debtor to pay the contract rate of interest on the unpaid balance of the debt, i.e. 16.74%. The provision expressly refers to the computation of interest at the contract rate, although that rate is not specified in the stipulation.

The appropriate interest rate necessary to provide a secured creditor with a value as of the effective date equal to the allowed amount of its claim is the "discount rate" which the court determines under the circumstances best reflects the present value of the payments proposed to be paid. 11 U.S.C. §1325(a)(5)(B)(ii), See COLLIER ON BANKRUPTCY ¶1325.01(b)(ii) at 1325-38 (15th ed. 1981). Thus, in addition to deferred principal payments aggregating the face amount of the allowed secured claim, the Chapter 13 plan must propose to pay interest on the face amount of the allowed secured claim at the appropriate discount rate over the course of the payment extension period. Id. at 1325-38 through 1325-39.

In this case, it is apparent that the contract rate of interest is significantly greater than the interest rate required by 11 U.S.C. §1325(a)(5)(B)(ii). But the court cannot say the interest rate is so disproportionate to the discount rate as to render the agreement unconscionable, nor is there any evidence of overreaching, undue influence, or gross inequality of bargaining power among the parties. It is not within the province of this court to second-guess the debtor's informed decisions in the exercise of its business judgment or to provide the debtor with relief from an improvident decision four years after it was made and approved.

Therefore, the court, having clarified its order of December 5, 1980, shall deny the debtor's motion insofar as it seeks to compel International Harvester to turnover \$9,928.17, but directs the creditor to furnish the debtor with a detailed accounting of the application of all funds conveyed to it since confirmation of the plan.

DATED this 30 day of August, 1985.



JOHN H. ALLEN
UNITED STATES BANKRUPTCY JUDGE