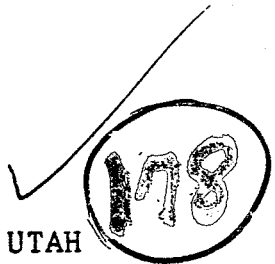


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FACULTY DARGER
CLERK



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED IN UNITED STATES
BANKRUPTCY COURT
DISTRICT OF UTAH

In re:
IRVING FINANCIAL CORPORATION,
Debtor.

IRVING FINANCIAL CORPORATION,
Debtor-Appellant,
v.
HOWARD HARMER, et al.,
Creditors-Appellees .

Bankruptcy No. 82C-02789 19861
Chapter 11
ROBERT M. WILY
CLERK

Appeal No. C-85-1142J
MEMORANDUM OPINION
AND ORDER

On January 27, 1986, the court heard oral arguments on the debtor's appeal from three orders of the bankruptcy court. Those orders confirmed the trustee's compromise of the claims of certain creditors--R. Howard and Cora Beth Harmer, Edward I. and Ann P. Vetter and Dean Christensen. The law firm of Giaouque and Williams also had a claim against the bankruptcy estate, which was derivative of the Harmers' claim. Tamara J. Hauge appeared on behalf of the debtor-appellant; Robert L. Stolebarger appeared on behalf of the trustee, D. Frank Wilkins; Calvin L. Rampton appeared on behalf of Edward I. and Ann P. Vetter; Robert D. Merrill appeared on behalf of Giaouque and Williams; and Dean Christensen appeared pro se.

The debtor's only argument on appeal is that the bankruptcy

26

court did not conduct a thorough enough evaluation of the compromises before approving them. Counsel for the debtor admitted that she was not familiar with the claims themselves.

At the January 27 hearing, the court questioned the debtor's standing to appeal the bankruptcy court's orders. After additional briefing of that issue, the court concluded that there was not enough evidence in the record to determine the debtor's standing. So, by an order dated February 11, 1986, the court ordered the trustee to prepare a roster showing the number and amount of undisputed, unsecured claims against the estate as revealed in the records of the bankruptcy court. The order gave the debtor five days after the trustee filed his roster of claims to respond to it.

On February 26, 1986, the trustee filed an affidavit setting forth his estimate of the total realizable value of the debtor's bankruptcy estate and a roster showing the number and amount of claims against the estate, together with his estimate of the range of liability that the claims presented to the estate. According to the trustee's estimate, the total realizable value of the estate is \$9,235,000, the bulk of which represents the debtor's sixty-one percent undivided interest in the Bel Marin Keys property, which secured the compromised claims at issue in this appeal. The secured claims filed against the estate total \$10,481,300.31, and the unsecured claims total \$91,300,913.12, for a grand total of \$101,782,213.43 in claims against the estate.

The trustee estimated the total liability to the estate on the secured claims to be \$4,104,263.50.¹ The trustee also estimated that the liability to the estate on the unsecured claims would fall within the range of \$8,000,000 to \$12,000,000, assuming that he was successful in litigating certain claims and in compromising others. The actual liability, of course, could be much higher.

Based on these figures, the trustee concluded that the debtor "has no realizable equity in the estate." Affidavit of Trustee, D. Frank Wilkins at 5. The debtor has submitted no pleading, affidavit or other document to challenge the trustee's figures or conclusions.

Of course, this court need not reach the merits of the debtor's argument on appeal if it is clear that the debtor lacks standing to appeal the bankruptcy court's orders.

Under section 39c of the old Bankruptcy Act of 1898, only an "aggrieved person" had standing to appeal. 11 U.S.C. § 67(c) (1976) (repealed 1978). Although this provision was not carried over into the Bankruptcy Code of 1978, appellate courts have adopted the "aggrieved person" standard for appeals under the Code as "a reasonable and practical threshold for standing." Cosmopolitan Aviation Corp. v. New York State Dep't of Transp. (In re Cosmopolitan Aviation Corp.), 763 F.2d 507, 513 (2d Cir.), cert. denied, 106 S. Ct. 593 (1985). See also Palm Springs

¹ This figure assumed that the compromises would be upheld on appeal. It also assumed that the debtor would incur no liability on a secured claim of \$2,600,000 by Bonnevillle California Corporation, which is presently the subject of other litigation.

Owners Ass'n v. Sweetwater (In re Sweetwater), No. C-84-546J, slip op. at 6 (D. Utah Feb. 28, 1985) (adopting the "aggrieved person" test for an appeal from a bankruptcy court order confirming a plan of reorganization). Under the "aggrieved person" standard, standing is limited to those who are "'directly and adversely affected pecuniarily by' the challenged order of the bankruptcy court." Cosmopolitan Aviation Corp., 763 F.2d at 513 (quoting Fondiller v. Robertson (In re Fondiller), 707 F.2d 441, 443 (9th Cir. 1983).

It is obvious from the record that the debtor in this case will not be "directly and adversely affected pecuniarily" by the bankruptcy court's orders approving the compromise of creditors' claims. Although the bankruptcy case is ostensibly a chapter 11 reorganization, because the claims against the estate exceed the estate's realizable value tenfold, as a practical matter there will not be any assets left for the debtor after all claims against the debtor are resolved. Based on his estimates of the total realizable value of the estate and the total liability to the estate of all the claims--secured and unsecured--the trustee concluded that the debtor had "no realizable equity in the estate." The debtor has not challenged that conclusion, so for purposes of this appeal the court may accept it as true. Moreover, it is supported by the trustee's estimates in his affidavit.

Because the debtor stands to gain nothing even if it were to succeed in having the disputed compromises set aside, it is not

an "aggrieved person" and therefore lacks standing to challenge the bankruptcy court's orders on appeal.

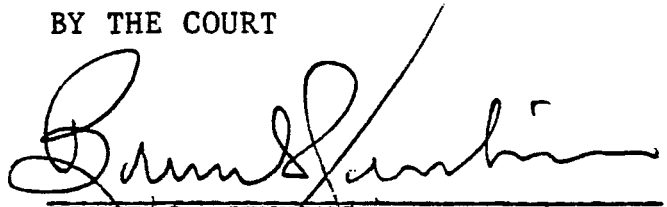
IT IS THEREFORE ORDERED that this appeal be dismissed for lack of standing.

DATED this 26 day of March, 1986.

Copies mailed to counsel 3/27/86: mw

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BY THE COURT



BRUCE S. JENKINS
UNITED STATES DISTRICT JUDGE