

UNPUBLISHED OPINION

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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IN RE:) Bankruptcy Nos. 81A-00159
) 81A-00160
) 81A-00161
ARTISTIC TAPE AND LABEL)
PRINTERS, a corporation, dba)
ARTISTIC PRINTING COMPANY;)
The Estate of WILFORD W.)
BENGTZEN, SR., RAMOLA O.)
BENGTZEN, WILFORD W.)
BENGTZEN, JR., and CAROL)
BENGTZEN,)
Debtors.)

ARTISTIC TAPE AND LABEL) Adversary Proceeding No.
PRINTERS, a corporation, dba) 83PA-0458
ARTISTIC PRINTING COMPANY;)
The Estate of WILFORD W.)
BENGTZEN, SR., RAMOLA O.)
BENGTZEN, WILFORD W.)
BENGTZEN, JR., and CAROL)
BENGTZEN,)
Plaintiffs,)

vs.)
) COORDINATED FINANCIAL)
SERVICES,)
Defendant.)

* * * * *
MEMORANDUM OPINION AND ORDER
* * * * *

This case has taken an appellate trip to the United States District Court for the District of Utah, to the United States Court of Appeals for the Tenth Circuit, back to the United States District Court for the District of Utah, and back again to this Court. The

whole process seems to have resulted from a lack of understanding, by plaintiff's counsel, of the procedure in objecting to a proof of claim.

Bankruptcy Rule 7001 designates 10 types of proceedings which may be the subjects of civil proceedings filed in the Bankruptcy Court. All other proceedings must be approached in different ways. An objection to a claim cannot be the subject of a civil proceeding. Bankruptcy Rule 3007 covers the process for objecting to claims and provides that an objection to the allowance of a claim must be in writing, filed with the Court, and delivered to the claimant at least 30 days prior to a hearing on the objection. Only if the objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, does it become a civil proceeding.

The plaintiffs in the above-civil proceeding are Chapter 11 debtors with confirmed plans. The defendant in the civil proceeding filed a proof of claim in the Chapter 11 cases. The Complaint, filed April 22, 1983, alleges the filing of the proof of claim, alleges that no money is owed, and asks the Court to make a determination of the amount owed and award plaintiffs their costs and attorneys fees. It, therefore, states no cause of action except an objection to a proof of claim.

The Complaint was answered and on May 31, 1983, a preliminary pre-trial conference was held before the Clerk of the Bankruptcy Court, out of which an order was entered by the Court on June 2, 1983. That order provided, among other things, that the parties should file a proposed pre-trial order on or before August 23, 1983. It also provided that "failure of plaintiff's counsel to file on time a stipulated pre-trial order, or to file on time a proposed pre-trial order and an explanation as to the failure to stipulate, as described above, shall, unless the Court grants relief for cause shown, result in the dismissal of the Complaint with prejudice." No pre-trial order was filed, and thus the Court entered an order dismissing the case with prejudice on August 25, 1983.

On August 31, 1983, plaintiffs filed a motion to reinstate the Complaint, alleging generally that plaintiffs' counsel had made an error relative to the date on which the pre-trial order should have been filed. Also on August 31, 1983, plaintiffs' counsel mailed notice of a hearing on the motion to reinstate the Complaint, setting the time for hearing for September 7, 1983, at 1:45 p.m. At the the September 7, 1983, hearing, plaintiffs' counsel did not appear, and as a result, the Court entered its order denying and dismissing the motion to reinstate the Complaint. In that order the Court stated that the Complaint did not state a claim upon which relief could be granted, and that such ground was another basis for the denial of the motion to reinstate the Complaint.

On September 29, 1983, plaintiffs filed a motion for relief from order, wherein they asked the Court to vacate the order of September 12, 1983, and for leave to appear at a rescheduled hearing and argue the motion to reinstate the Complaint. The motion was supported by an affidavit of plaintiffs' counsel in which he suggested that his failure to attend the September 7, 1983 hearing, was due to excusable neglect or inadvertence within the meaning of Rule 60(b)(1) Federal Rules of Civil Procedure. At the hearing on November 21, 1983, the Court found that plaintiffs had failed to comply with at least two deadlines set by the Court: the filing of the proposed pre-trial order and of an objection to the proof of claim within 30 days after the execution of the order confirming the plan. The motion was therefore denied.

A notice of appeal was filed on December 5, 1983, appealing to the United States District Court for the District of Utah, the order denying the motion for relief from order.

By order dated January 31, 1984, the United States District Court for the District of Utah dismissed the appeal because of plaintiffs failure to file a designation of record on appeal. That order was appealed to the United States Court of Appeals for the Tenth Circuit. On January 18, 1985, the United States Court of Appeals for the Tenth Circuit reversed the decision of the United

States District Court for the District of Utah suggesting that dismissal was inappropriate, that sanctions against counsel would be appropriate, and remanded the case to the United States District Court for the District of Utah.

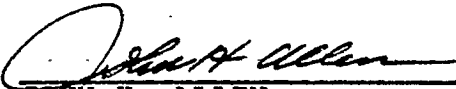
On February 18, 1986, the United States District Court for the District of Utah remanded the case to this Court for proceedings consistent with the opinion of the United States Court of Appeals for the Tenth Circuit.

This Court views the orders of the United States Court of Appeals for the Tenth Circuit and the United States District Court for the District of Utah as requiring this Court to give plaintiffs another opportunity to present their motion to set aside the dismissal of the civil proceeding.

IT IS THEREFORE ORDERED, that plaintiffs may within twenty (20) days from the date of this order file a new motion and schedule a hearing, or schedule a hearing on prior motions, to set aside the order dismissing the civil proceeding with prejudice. In the event that there are no new motions filed or there is no scheduling of a hearing on the existing motions, the Court will consider the dismissal of the civil proceeding to be final and with prejudice. In the event that the new motions are filed and scheduled or existing motions scheduled for hearing, the Court, upon those hearings, will

consider, along with the merits of the dismissal, sanctions as suggested by the United States Court of Appeals for the Tenth Circuit.

DATED this 7 day of April, 1986.



JOHN H. ALLEN
UNITED STATES BANKRUPTCY JUDGE