

UNPUBLISHED OPINION  
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

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In re )  
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TRI-L CORPORATION, d/b/a ) Bankruptcy Case No. 81C-02084  
BEST WESTERN INN OF )  
RICHFIELD, )  
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Debtor. ) MEMORANDUM OPINION

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Appearances: David E. Leta, Hansen & Anderson, Salt Lake City, Utah, for the debtor; Vernon L. Hopkinson, Watkiss & Campbell, Salt Lake City, Utah, for W. LaMonte Robison, chapter 7 trustee; K.L. McIff, Jackson, McIff & Mower, Richfield, Utah, for Valley Builders, Inc.

BACKGROUND

On June 11, 1981, Tri-L Corporation ("debtor") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. This Court subsequently confirmed the debtor's amended plan of reorganization in June 1982.

On March 12, 1985, upon motions filed by Valley Builders, Inc. ("Valley"), Zion Plumbing and Heating, Inc. ("Zion"), and Prudential Savings and Loan ("Prudential"), secured creditors of the debtor, this Court entered an order converting the case to a case under chapter 7. W. LaMonte Robison was appointed trustee.

On September 15, 1986, Valley filed an application for the allowance of legal fees and costs in the amount of \$14,208.75 as a chapter 11 administrative expense claim.

Objections were filed by the debtor and trustee and the matter was heard by the Court on October 23, 1986. After considering the arguments presented, the memoranda filed, the applicable statutes and case law, the Court renders the following decision.

#### DISCUSSION

The treatment of preconversion claims is governed by 11 U.S.C. § 348(d), which provides:

A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112 or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

As the emphasized portion indicates, claims under section 503(b) are expressly excepted from the operation of this section.

In this case, Valley seeks allowance of a claim under sections 503(b)(3)(D) and (4) which arose after confirmation of the debtor's chapter 11 plan but before conversion to chapter 7.

11 U.S.C. § 503(b)(3)(D) and (4) provides in part:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including--

. . .

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by . . .

(D) a creditor . . . in making a substantial contribution in a case under chapter 9 or 11 of this title . . .

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

The debtor contends that the Court did not retain jurisdiction after confirmation of the debtor's plan to allow Valley's claim as an administrative expense. The debtor relies upon In re Tri-L Corp., 65 B.R. 774 (Bkrtcy. D. Utah 1986) wherein this Court wrote "[i]t follows that unless the bankruptcy court could and did not retain jurisdiction [after confirmation] to determine the allowance of professional fees, such fees would not be 'awarded under section 330(a)' and would not constitute an administrative expense excepted from section 348(d)." Id. at

778. The debtor's plan provided for the retention of the Court's jurisdiction to "[f]ix allowances of compensation and other administrative expenses." Id. at 776. Consequently the post-confirmation professional fees of debtor's counsel were allowed as a chapter 11 administrative expense. Id. at 779.

Likewise, the Court is of the opinion that the provision of the debtor's plan reserving the Court's jurisdiction to determine the allowance of "administrative expenses" encompasses Valley's claim.

Alternatively, this Court believes that it has jurisdiction to determine the allowance of Valley's claim by virtue of this pending chapter 7 case. The necessary jurisdiction is provided by those provisions of the Code applicable to the chapter 7 case in the determination of claims made against the estate. Those provisions make no distinction in the Court's jurisdiction to determine preconversion claims based on whether the claims arose before or after confirmation. See sections 348(d), 726(b).

The debtor next argues that the scope of section 503(b)(3)(D) is limited in the allowance of services performed before confirmation. The trustee contends that no estate or case exists after confirmation in which Valley could have made a substantial contribution.

Section 503(b)(3)(D) requires the "making of a substantial contribution in a case." The scope of this section is governed by the interplay of two terms: (1) substantial contribution and (2) case. The Court will discuss these terms in converse order.

The term "case" is not defined by the Bankruptcy Code. Words which are undefined in a statute should be given their common or customary usage. See N. Singer, 2A SUTHERLAND ON STATUTORY CONSTRUCTION § 46.01, at 74 (Sands 4th ed. 1984 Rev.).

This term was also not defined by the former Bankruptcy Act. However, the Advisory Committee's Note to former Rule 101 distinguished the difference between a "case" and "proceeding" as follows:

A proceeding initiated by a petition for an adjudication under the Bankruptcy Act is designated a "bankruptcy case" for the purpose of these rules. The term embraces all controversies determinable by the court of bankruptcy and all the matters of administration arising during the pendency of the case. . . . The word "proceeding" as used in these rules generally refers to a litigated matter arising within a case during the course of administration of an estate.

Appearance of the term "case" throughout subchapter I, Commencement of a Case, of the Bankruptcy Code, leaves no doubt that it carries over the meaning established under former Rule 101. 2 COLLIER ON BANKRUPTCY ¶ 301.03, at 301-3 (15th ed. 1986).

"The term 'bankruptcy case' refers to the entire legal action in bankruptcy. It is the broadest term functionally. All other terms designate steps within the case." Id. at 301-4.

A bankruptcy case is commenced by the filing of a petition for relief under a given chapter of the Code, 11 U.S.C. §§ 301, 302, and 303, and exists until closed by final order of the court. 11 U.S.C. § 350(a); Bankruptcy Rule 3022.

Reference to "in a case" in section 503(b)(3)(D) answers the question of when a substantial contribution must be made. A presumption exists that identical words used twice in the same statute have the same meaning. Gregg v. Manno, 667 F.2d 1116, 1117 (4th Cir. 1981). Nothing about section 503(b)(3)(D) supports changing the meaning of the term "case" from the meaning given in subchapter I or limiting the duration denoted by this term for purposes of allowing or disallowing administrative expenses under this section. Confirmation is just one step within a case. If Congress had intended to limit allowance of section 503(b)(3)(D) claims to preconfirmation services, the term "confirmation," instead of "case," could have been adopted.

Although reference to a case in this section places no limitation on when administrative expenses may arise, allowance still requires the making of a substantial contribution.

The term "substantial contribution" is also not defined by the Bankruptcy Code, but the legislative history provides some

guidance as to its meaning.

The phrase "substantial contribution in the case" is derived from Bankruptcy Act §§ 242 and 243. It does not require a contribution that leads to confirmation of a plan, for in many cases, it will be a substantial contribution if the person involved uncovers facts that would lead to a denial of confirmation, such as fraud in connection with the case.

S. Rep. No. 95-989, 95th Cong., 2nd Sess. 66-67 (1978).

Former sections 242 and 243, as implemented by former Rule 10-215(c)(1)(B), empowered the bankruptcy court to award reasonable compensation and reimburse expenses for creditors' services which benefited the administration of the estate; contributed to a plan which was approved or to the approval of a plan, whether or not confirmed; contributed to a plan which was confirmed or to the confirmation of a plan; or opposed a plan, the confirmation of which was refused. The principal test was the benefit to the debtor's estate. In re Jensen-Farley Pictures, Inc. 47 B.R. 557, 566 (Bkrty. D. Utah 1985) (citing 6A COLLIER ON BANKRUPTCY ¶ 13.02, at 541-42 (14th ed. 1977)).

Two prerequisites must be satisfied before creditors' actions can be considered a "substantial contribution" in a chapter 11 case. "First, the action must be taken with the intent of benefiting the estate generally and not an individual creditor and, second, there must be an actual benefit realized by the estate." 1 NORTON BANKRUPTCY LAW AND PRACTICE § 12.32, at

pt.12-pg.49 (1981). Although the court may consider many factors, the principal test is still benefit to the debtor's estate, the creditors, and stockholders, to the extent relevant. 3 COLLIER ON BANKRUPTCY ¶ 503.04, at 503-38.

The case law under the Code appears to be consistent with the interpretations expressed by the various commentators. This Court in In re Jensen-Farley Pictures, Inc., 47 B.R. at 569 wrote that "[t]he appropriate test under section 503(b) is whether the services substantially contributed to a successful result, that is, an actual and demonstrable benefit to the debtor's estate, the creditors, and to the extent relevant, the stockholders." In In re Richton International Corp., 15 B.R. 854 (Bkrtcy. S.D.N.Y. 1981), the court stated that "[s]ervices which substantially contribute to a case are those which foster and enhance, rather than retard or interrupt the progress of reorganization. . . . Those services which are provided solely for the client-as-creditor, such as services rendered in prosecuting a creditor's claims, are not compensable." Id. at 856. Likewise, in In re J.V. Knitting Service, Inc., 22 B.R. 543, 545 (Bkrtcy. S.D. Fla. 1982), the court found that a creditor's claim for an administrative expense in defeating the debtor's counterclaim "was for the individual benefit of the creditor rather than for the collective benefit of all creditors," and denied the request.



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See also In re Calumet Realty, Co., 34 B.R. 922 (Bkrtcy. E.D. Pa. 1983); In re United Puerto Rican Food Corp., 41 B.R. 565, 574 (Bkrtcy. E.D.N.Y. 1984).

The policy of allowance under section 503(b)(3)(D) is to promote meaningful participation by creditors in the reorganization process. In re Calumet Realty Co., supra at 926.

Use of the term "estate" to describe what must be benefited to make a substantial contribution, lends support to the trustee's argument. At the commencement of a bankruptcy case, an estate is created which comprises all of the legal and equitable interest of the debtor in property. 11 U.S.C. § 542. Although no explicit statutory authority exists, numerous courts have held that the estate terminates at confirmation of a chapter 11 plan of reorganization. In re Frank Meador Buick, 59 B.R. 787, 791 (Bkrtcy. W.D.Va. 1986); In re Baker Medical Co., Inc., 55 B.R. 435 (Bkrtcy. M.D. Ala. 1985); In re Air Center, Inc., 48 B.R. 693 (Bkrtcy. W.D. Okla. 1985); In re Ernest, 45 B.R. 700 (Bkrtcy. D. Minn. 1985); Abbott v. Blackwater Furniture Co., 33 B.R. 399 (W.D.N.D. 1983); In re Westholt Manufacturing, Inc. 20 B.R. 368 (Bkrtcy. D. Kan. 1982), aff'd sub nom. U.S. v. Redman, 36 B.R. 932 (D. Kan. 1984).<sup>1</sup> Consequently, postconfirmation claims are not entitled to administrative expense priority since no

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For contrary view, see Comment, The Status of Attorney Fees During the Post-Conversion/Pre-Conversion Period, 22 Idaho Law Review 381 (1985-1986).

estate exists in which such claims could arise. In re Frank Meador Buick, supra; In re Baker Medical Co., Inc., supra; In re Westholt Manufacturing, Inc., supra.

Whether the estate terminates upon confirmation or not, is not determinative of whether postconfirmation administrative expenses are allowable under sections 503(b)(3)(D) and (4). What has been described as the principal test of allowance under these sections, "benefit to the estate," was also the principal test of allowance of administrative expenses under the former Bankruptcy Act and, under the Act, the estate existed until consummation of the plan and entry of a final decree by the court. 11 U.S.C. § 628 (repealed). In terms of duration, a case under the Code and the estate under the Act are comparable.

The role of the term "substantial contribution" in section 503(b)(3)(D) is to describe what kinds of creditors' actions are compensable. As a case progresses, particularly where a plan has been confirmed, what a creditor can do to make a substantial contribution diminishes.

Valley argues that it made a substantial contribution in the debtor's chapter 11 case after confirmation by moving the Court to convert the case to chapter 7. Valley primarily relies upon the rationale that a substantial contribution is implicitly made when a case is converted under section 1112(b) because conversion is dependent upon a court determination that it is "in the best

interest of creditors." However, a finding that conversion is in the best interest of creditors is not a finding that a substantial contribution has been made. These concepts are distinct.

The party seeking allowance of an administrative expense claim has the burden of proof. Matter of Patch Graphics, 58 B.R. 743, 745 (Bkrtcy. W.D. Wis. 1986). Priority statutes are to be strictly construed to keep administrative expenses at a minimum to preserve the estate for the benefit of all creditors. Id.

In this case, there is not sufficient evidence before the Court to support Valley's claim that its efforts to convert the case were taken with the intent to benefiting anyone else other than itself and that any benefit resulted to the case.

#### CONCLUSION

The jurisdiction of the Court to determine the allowance of postconfirmation, preconversion administrative expenses is found in the provisions of the plan or in the statutory provisions of the Bankruptcy Code relating to the chapter to which the case has been converted.

Whether a preconversion claim is awarded administrative expense priority under sections 503(b)(3)(D) and (4) is dependent upon whether a creditor's actions benefited the case and were

compatible with the policy underlining compensation under the sections, not upon whether the actions were taken before or after confirmation.

In this case, Valley failed to prove that its actions made a substantial contribution to the debtor's case. Therefore, Valley's application for chapter 11 administrative expense priority is denied.

Counsel for the trustee is directed to prepare and submit a judgment in accordance with this memorandum opinion.

DATED this 26 day of June, 1987.

BY THE COURT:

  
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GLEN E. CLARK  
UNITED STATES BANKRUPTCY JUDGE