

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

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IN RE DONDY, INC. (aka Widow McCoy's)	)	MEMORANDUM OPINION AND ORDER PERMITTING DUAL REPRESENTATION
and	)	BANKRUPTCY CASE NOS. 86A-02236 and 86A-02237 Chapter 11
IN RE ANITA LERAE WRIGHT Debtors.	)	CONSOLIDATED DISTRICT COURT NO. C86-0825A (District Court No. C86-0827J)

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This case concerns the consolidated bankruptcies of Dondy, Inc. and its sole shareholder, Anita LeRae Wright. The Bankruptcy Court denied the application of Rulon T. Burton & Associates to serve as attorneys for both Ms. Wright, the individual debtor, and Dondy, Inc., the debtor in possession, because of potential conflicts in representation.

Substantial confusion over the proper resolution of the legal issues involved in this case existed at the time this appeal was filed. This confusion prompted the Utah District Court to hear en banc a similar appeal from a Bankruptcy Court decision in the case of In re Roberts, 46 B.R. 815 (Bkrctcy D. Utah 1985). Since the Roberts case addressed legal and factual issues nearly identical to those in this case, this court issued an order deferring judgment pending resolution of the Roberts appeal.

The Bankruptcy Court cited three potential conflicts in representation. First, Dondy Inc. is owned entirely by Anita LeRae Wright. Second, Anita LeRae Wright is a creditor of Dondy Inc. And third, Anita LeRae Wright is obligated to assume, pay in full, indemnify and hold harmless the previous owner of Dondy, Inc., Judy Foote, from suits by creditors of Dondy and from the corporate obligation of Dondy Inc. to First Security Leasing Company. Burton & Associates has appealed from the denial of its application.

11 U.S.C.A. §327(a) provides that the trustee may employ an attorney who is disinterested and does not hold or represent an interest adverse to the estate. Section 327(c) states, however, that an attorney is not disqualified for employment solely because he represents a creditor, unless there is an objection by another creditor, in which case the court shall deny employment only if there is an actual conflict of interest. It is established that any reference to the trustee in §327 applies equally to a debtor-in-possession such as exists in this case. In re Warrior Drilling & Engineering Co., Inc., 18 B.R. 684, 692 (U.S. Dist. Ct. N.D. Ala. 1981)

Since there has been no objection by any creditor, the only issues are the §327(a) questions of whether Burton & Associates remained disinterested and whether they represented an interest adverse to the estate.

Since Burton & Associates stands in no close relationship to either Dondy or Anita Wright, such as an officer, director, employee, security holder or investment banker, there is no

suggestion that it is not disinterested as that term is defined at 11 U.S.C.A. s101(13).

The inquiry therefore becomes whether the law firm, by representing Anita Wright, would represent an interest adverse to the Dondy estate. The Roberts decision squarely held, however, that simultaneous representation of both a debtor-corporation and its sole owners does not constitute a conflict of interest.

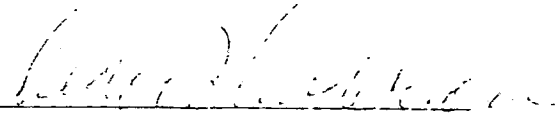
In Roberts, a law firm represented both Roberts, Inc., a plumbing and heating business and members of the Roberts family who were the sole owners of the company. The Bankruptcy Court had found conflicts of interest in that, inter alia, members of the Roberts family were officers and directors of Roberts, Inc., the company was a creditor of Larry Roberts and Barbara Roberts, his wife, was a creditor of the company. The en banc opinion explained that the debtors' right to counsel of their choice, the financial burden of obtaining separate counsel and the administrative convenience of consolidated counsel all supported a decision to permit employment of the same law firm to represent both the debtor corporation and its sole owners.

As noted, the facts of the present case are nearly identical to those in Roberts. Burton & Associates is a disinterested entity and its representation of Anita Wright does not constitute representation of an adverse interest since Ms. Wright is Dondy's sole owner. By clear statutory directive, the fact that she is also a creditor of Dondy does not require separate counsel as long as no other creditor objects.

IT IS HEREBY ORDERED, therefore:

1. That the ruling of the Bankruptcy Court is reversed, and
2. That Rulon T. Burton & Associates is permitted to serve as counsel for both Anita LeRae Wright and Dondy, Inc.

DATED this 20 day of June, 1987.



ALDON J. ANDERSON  
Senior United States District Judge