

Reversed
in 44 B.R. 262

69

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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In re)	Bankruptcy Case No. 82M-00329
)	
MIDWEST SERVICE AND SUPPLY)	
CO., INC.,)	
)	ORDER ON MOTIONS FOR NEW TRIAL
Debtor.)	OF CONTEMPT MATTERS.

FACTUAL AND PROCEDURAL BACKGROUND

On July 20, 1982, the court held a hearing on the debtor's request that the United States of America, Defense Logistics Agency (herein, the government), be held in contempt for violating the automatic stay. At that hearing, the court found that the debtor had received, pre-petition, overpayments on a contract with the government and that because the government had reduced the overpayment after the filing of the petition, it had violated the automatic stay. In making its ruling from the bench, the court said

I hold that to the extent that the Government has been able to reduce the indebtedness, the pre-filing indebtedness by \$17,159.00, it has violated the stay. The testimony on this issue is very vague. Mr. Kelly testified that the amount is changed. Counsel argued in closing arguments, counsel for the Government, that the change of course would occur because as items were delivered to it which it had been over paid, the over-payment was taken care of. I hold that this reduction of the over-payment to the Government is a violation of the stay, albeit an unintentional violation in this very complex area,

and I order the Government to within 15 days deliver to the Court and to the debtor as to how and how much this debt has been reduced by the Government since the filing of the petition. The debtor will be given an opportunity within five days after receiving the Government's accounting to contest it or make comments about it. If nothing is received by the Court within that five days, by that I mean a full week period, the Court will take the Government's statement as conclusive.

Transcript of hearing, July 20, 1982, 5-6. Debtor's counsel requested and was granted two weeks for filing objections to the accounting.

The reference to \$17,159.00 was based on debtor's Exhibit 2, a letter to Mr. Carl Capson, debtor's employee, from Dorothy J. Martin, Administrative Contracting Officer for the government in this case, dated February 22, 1982. That letter referred to "a negative payable amount of \$17,159.00" and stated that the debtor was "indebted to the United States Government in the amount of \$17,159.00 under [the] contract." The letter was a post-petition attempt to collect \$17,159.00 from the debtor because it requested the debtor to "remit this amount to the address specified below. If payment is not received within 30 days, interest will be charged from the date of this letter at the rate established by the U. S. Department of the Treasury under Public Law 92-41."

Although the court referred to \$17,159.00, no final finding was made as to the amount by which the government had reduced the overpayment. The government was ordered to provide information

"as to how and how much this debt has been reduced by the Government since the filing of the petition."

On July 30, 1982, the government filed a motion for a new trial. The debtor failed to respond to this motion within the applicable time periods. On October 11, 1982, the court signed an order granting the motion insofar as it requested the court to consider certain legal arguments. The court granted the debtor through October 22, 1982 to file a memorandum responding to those arguments.

On October 26, belatedly, the debtor filed a responsive memorandum to the government's motion for a new trial. The memorandum did not address the government's legal arguments. Instead, ignoring the government's legal arguments, it requested a new hearing for the presentation of evidence.

On October 26, the debtor also filed its own motion for a new trial, arguing that the court made a mistake by finding a "violation of the stay for a post-petition reduction of \$17,159.00 by the government in the pre-petition overpayments" while at the same time it "excused \$123,693.34 of post-petition additional recoupments against the debtor by the government for setoffs on what appears to be the same type of transaction." In addition, debtor argued that it had obtained new evidence, that the court did not understand the evidence or the contract, and that the court erroneously denied attorney's fees for an attorney

who worked with debtor's bankruptcy counsel in preparation for the July 20 hearing.

Subsequently, the government's counsel objected to debtor's motion for a new trial on grounds that it was untimely, factually inaccurate, and legally mistaken.

Next, debtor's counsel submitted a proposed order on the court's July 20th ruling.

On November 22, the court held a telephone conference with counsel for the debtor and the government. Counsel for the debtor was to file a brief by November 29.

On November 29, debtor filed a "Reply to Response of U. S. Government on Debtor's Motion for New Trial." In this document, the debtor argued that its motion for a new trial was timely and meritorius.

On December 2, the government filed objections to the form of debtor's proposed order on the July 20th hearing.

On December 9, the government filed an "Affidavit Against Factual Allegations in Debtor's Reply to Response of the United States of America on Debtor's Motion For New Trial."

On November 29, belatedly, the government filed its accounting. The debtor has filed no objections to the accounting. The accounting shows that after the filing of debtor's petition, the government reduced the amount of pre-petition overpayments on its contract with debtor by \$95,871.00. Under the court's July 20

ruling from the bench, this is the amount by which the government reduced the overpayment in violation of the automatic stay.

Three matters are now before the court: first, the entry of the order based on the court's ruling of July 20th; second, disposition of the government's legal arguments raised in its July 30th motion which was granted by the court's October 11th order; and third, disposition of the debtor's motion for a new trial.

TERMS OF THE ORDER BASED ON THE JULY 20TH HEARING

An order based on the July 20th hearing is made herein containing the following terms: (1) The government is found to be in contempt for violating the automatic stay by reducing the amount of its pre-petition debt in the nature of an overpayment by \$49,708.00, the amount shown by the government's accounting to have been reduced between February 9, 1982 and July 20, 1982. (2) The debtor is awarded \$2,000 for attorney's fees.

DISPOSITION OF THE MOTIONS FOR A NEW TRIAL

The motions and memoranda of the parties demonstrate that if the parties wish to litigate issues surrounding the contracts between the debtor and the government, the court should invoke the provisions of Rule 914 of the Bankruptcy Rules of Procedure

and direct that all or part of the rules for civil proceedings will apply. The parties have been unable to agree on even the most basic terms of the contracts. The unusual and complex string of pleadings now on file have made it extremely difficult to sort out the various positions of the parties. Discovery may aid the parties. An additional factor complicating these proceedings is the fact of the February 4, 1983 conversion of this case to a case under Chapter 7. It is now for the Chapter 7 trustee to determine whether he wishes to enter into litigation regarding the contracts or whether he wishes to take some other action.

Moreover, the government's accounting itself shows that even after the court's July 20th ruling from the bench, the government continued to reduce overpayments. The debtor has alleged that it wishes to present new evidence.

ACCORDINGLY, IT IS ORDERED THAT

(1) The court's order based on the July 20th hearing is as follows: The government is found to be in contempt for violating the automatic stay by reducing the amount of its pre-petition debt in the nature of an overpayment by \$49,708.00, the amount shown by the government's accounting to have been reduced between February 9, 1982 and July 20, 1982. The debtor is awarded \$2,000 for attorney's fees.

(2) The debtor's arguments respecting the attorneys fees of Mr. Snuffer are without merit and no further argument on this matter will be heard.

(3) All of the remaining issues raised by the motions and memoranda now before the court, including whether the government should be ordered to pay to the debtor the \$49,708.00 and the \$2,000 awarded based on the July 20th hearing and including all remaining issues surrounding these contracts are issues between the trustee and the government.

(4) The trustee and the government are directed to file, by March 29, 1983, either a stipulation resolving all of the issues with notice to creditors and a request for the court's approval or, in the alternative, a proposed procedural format for resolving the issues.

DATED this 8 day of March, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE