

IN THE UNITED STATES BANKRUPTCY COURT

74

FOR THE DISTRICT OF UTAH

COUNTER COPY - DO NOT REMOVE - ~~CONFIDENTIAL~~

In re)	Bankruptcy Case No. 80C-02316
)	
L. W. GARDNER COMPANY, a)	
partnership, also dba)	MEMORANDUM AND ORDER ON CONTEMPT
GARDNER LIVESTOCK EXCHANGE,)	SANCTIONS AGAINST L. W. GARDNER
)	AND ALLEGED CONTEMPT OF
Debtor.)	RICHARD F. BOJANOWSKI

INTRODUCTION

This memorandum decision is intended to resolve two issues arising from a hearing held on October 5, 1982 in this matter:

- (1) whether and to what extent sanctions for civil contempt should be imposed against L. W. Gardner, a principal of the debtor, for certain acts, described below, the Court found at the October 5 hearing to constitute a civil contempt, and
- (2) whether Richard F. Bojanowski, debtor's former attorney, committed a civil contempt.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the terms of debtor's confirmed Chapter 11 plan and pursuant to order of this Court, Kenneth A. Rushton was appointed trustee of debtor's estate and directed to conduct a

sale of debtor's cattle. The trustee hired, with the Court's approval, James Koch, of Olympic Cattle Services (Koch) and Gary S. McDonald, of United Livestock Brokers (McDonald) to round up debtor's cattle and conduct the sale. Mr. L. W. Gardner became concerned about the viability of conducting a sale successfully and, on October 1, 1982, filed, in the United States District Court for the District of Utah, a complaint against Koch and McDonald and their companies for the "sole purpose," in his words, "to stop the sale because it was impossible to accomplish it in a businesslike manner."

The complaint requested an injunction against the sale, \$15,000,000.00 in compensatory damages, \$25,000,000.00 in punitive damages, and for costs and attorney's fees, alleging that the sale "is an unconstitutional denial of property without due process of law."¹

The sale of debtor's cattle had been scheduled for October 19. On October 4, 1982, Koch met with L. W. Gardner and other principals of debtor to discuss details of the sale. L. W. Gardner informed Koch that a sheriff would arrive shortly to serve Koch with legal process. The sheriff arrived and served Koch with the complaint which had been filed in the district court. Next, understandably, Koch refused to proceed with the

1

On November 2, 1982, Koch and McDonald moved the district court to dismiss the suit. On December 28, 1982, the motion was granted based on good cause appearing and the failure of L. W. Gardner to respond to the motion to dismiss.

sale. The trustee and Utah Farm Production Credit Association, a creditor, then requested the Court to order L. W. Gardner to appear and show cause why he should not be held in contempt for interfering with the sale and why Richard F. Bojanowski, debtor's former attorney, should not be held in contempt for assisting Mr. Gardner in filing the complaint.

At the October 5 hearing, Mr. Gardner testified that he filed the complaint against Koch and McDonald, assisted by Mr. Bojanowski. According to Mr. Gardner, a Mr. Bradt, an attorney in Texas, had assisted him with the "technical wording" of the complaint, but that it was his own idea to file the complaint. As noted above, Mr. Gardner testified that his sole purpose in filing the complaint was to stop the sale because, in his view, the sale could not be accomplished in a businesslike manner. On examination by Mr. Bojanowski, however, Mr. Gardner said that he felt that his constitutional rights had been violated.

At the same hearing, Mr. Bojanowski testified that he discussed the complaint with Mr. Gardner, that the complaint was typed in his office, and that he showed Mr. Gardner where to file it but that he did not draft the complaint or discuss its propriety with Mr. Gardner. He said he assisted Mr. Gardner as he would have assisted anyone else in need of help. Mr. Bojanowski testified that he suggested to Mr. Gardner that Mr. McDonald and his company be included as defendants.

After hearing the evidence and arguments at the October 5th hearing, the Court found Mr. Gardner in contempt for filing the lawsuit. Mr. Gardner knew of the Court's order permitting the trustee to sell the cattle. He knew that he was required to cooperate. The lawsuit was filed in an attempt to terrorize the trustee's employees and thus to interfere with the sale. The Court ruled that it could not permit groundless actions, such as the lawsuit filed by Mr. Gardner, to proceed against employees of the trustee. To permit such action would, the Court ruled, permit parties to circumvent orders of the Court and interfere with the administration of the estate. The suit filed by Mr. Gardner was meritless on its face. The amounts of damages requested indicate that it was filed in an attempt to frighten the trustee's employees into not performing their duties. This the Court cannot permit.

The Court reserved ruling on the penalty which should be imposed against Mr. Gardner and on whether Mr. Bojanowski should be held in contempt for advising Mr. Gardner to add defendants to his lawsuit.

On October 19, 1982, Mr. Bojanowski filed a memorandum of law addressing the issues taken under advisement.

Subsequently, the sale was completed and the lawsuit was dismissed. See note 1, supra.

This is a matter of civil contempt. The hearing of October 5, 1982, was conducted in order to coerce compliance with

orders of this Court directing that a sale of debtor's cattle be conducted by the trustee. See In re Reed, 11 B.R. 258, 266 (Bkrtcy. D. Utah 1981). After considering the issues still under advisement, the Court has determined that no penalty should now be assessed against Mr. Gardner, provided that he stops interfering with the administration of the estate, and that no finding of contempt should now be made against Mr. Bojanowski.

With respect to the contempt of Mr. Gardner, because the sale has now been accomplished and because no evidence was introduced at the October 5th hearing showing that Mr. Gardner's contemptuous actions caused money damages, the contempt proceeding may now be dismissed. Mr. Gardner was guilty of contempt of orders of this Court. The Court's ruling at the October 5th hearing, so far as appears from the file, was sufficient to induce compliance with those orders. It appears that Mr. Gardner has neither prosecuted his lawsuit against the trustee's employees nor attempted to interfere further with the trustee's performance of his duties.

With respect to Mr. Bojanowski's advice to Mr. Gardner on adding defendants to his improper lawsuit, it is the Court's view that based on Mr. Gardner's testimony, he would have filed the lawsuit even if Mr. Bojanowski had not advised him to add McDonald and his company as defendants and that the lawsuit's effect on the sale would have been the same. Thus, although Mr. Bojanowski arguably should have avoided giving advice to

Mr. Gardner about who should be named as defendants in the suit,
that advice made no practical difference.

IT IS THEREFORE ORDERED that the order to show cause issued
against L. W. Gardner and Richard F. Bojanowski is dismissed.

DATED this 30 day of March, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE