

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK97-80026
)
JENNIFER MEISNER,) CH. 13
)
DEBTOR)

MEMORANDUM

Hearing was held on July 18, 1997, on a Motion to Approve Compromise and on Trustee's Motion to Reconsider and Motion for Extension of Time for Plan Filing Deadline. Appearances: Douglas Quinn for the debtor, Jerry Jensen for the U.S. Trustee, Kathleen Laughlin as Chapter 13 Trustee and Henry Carriger for the USA-Internal Revenue Service. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A).

Background

The Debtor, Jennifer Meisner (hereafter "Debtor") filed the present Chapter 13 case on January 7, 1997. Previously, the Debtor filed a Chapter 13 case, which Judge Minahan, United States Bankruptcy Judge for the District of Nebraska, found was filed in bad faith. The Debtor converted that case to a Chapter 11, and it was dismissed for failure to make required payments. According to the Debtor's schedules, the Debtor's sole source of income is royalty payments awarded in her divorce. The royalties pertain to her ex-husband's status as a member of the musical group "The Eagles". The Debtor's schedules state that in 1994, 1995, and 1996 the Debtor received total royalty payments of \$131,755.00, \$143,693.00, and \$170,150.00 respectively. The Debtor, after receiving several extensions of time, has failed to file a Chapter 13 plan and she has not remitted any payment to the Chapter 13 Trustee since the commencement of this case.

The Debtor has proposed a Fed. Bankr. P. 9019 compromise/settlement to pay the creditors, including the IRS and Nebraska Department of Revenue, over an extended period of time exceeding 5 years. Such payments would be made by a disbursing agent and would begin after approval of the agreement and dismissal of the Chapter 13 case. The Debtor requests approval of the compromise agreement; an order to the

payor of her royalty income to disburse according to the agreement; an order retaining partial jurisdiction in this court; and a finding of cause under 11 U.S.C. § 349.

The Debtor's motion raises the following four issues: (A) is the proposed compromise agreement within the scope of Fed. Bankr. R. 9019, (B) may this Court retain jurisdiction after dismissal, (C) is 11 U.S.C. § 349 applicable and, if so, does the requisite cause exist to make certain agreements binding notwithstanding dismissal, and (D) practical issues with the "disbursing agent".

Discussion

A. General Concerns. The Debtor's motion appears to be beyond the scope of Fed. Bankr. R. 9019. The United States Supreme Court addressed the issue of compromise under the Bankruptcy Act, and former Rule 919 which is similar to current Rule 9019. Fed. Bankr. R. 9019 advisory committee's note. In Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed. 2d 1 (1968) the Supreme Court stated that, "[c]ompromises are 'a normal part of the process of reorganization.'" Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130, 60 S.Ct. 1, 14, 84 L.Ed. 110 (1939). In administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts." Id. at 424. The Court further stated that, "[t]he fact that courts do not ordinarily scrutinize the merits of compromises involved in suits between individual litigants cannot affect the duty of a bankruptcy court to determine that a proposed **compromise forming part of a reorganization plan** is fair and equitable. In re Chicago Rapid Transit Co., 196 F.2d 484 (C.A.7th Cir. 1952)." Id. (emphasis supplied). It appears that the Supreme Court would interpret Rule 9019 to allow the bankruptcy court to approve settlement and/or compromise of individual claims or groups of claims in order to facilitate the implementation of a plan. In this case, the Debtor does not seek to compromise or settle any claim in the bankruptcy case. Instead, she is attempting to create a settlement or compromise of all the claims against the Debtor under a detailed plan of distribution, to take place outside of bankruptcy.

Assuming, for the sake of argument, that the plan is a proper "compromise" under Rule 9019, it should not be approved. The Eighth Circuit in Drexal Burnham, Lambert, Inc. v. Flight Transp. Corp. (In Re Flight Transp. Corp. Sec. Litig.), 730 F.2d 1128 (8th Cir. 1984) cert. denied, 469 U.S. 1207, 105 S.Ct. 1169 (1985), established four factors to be weighed by the bankruptcy court. The four factors are:

- (1) The probability of success in the litigation;
- (2) the difficulties, if any, to be encountered in the matter of collection;
- (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (4) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. Id. at 1135 (citation omitted).

However, those factors concern settlement of pending litigation, not a global settlement of creditor claims without a confirmed bankruptcy plan. In this case, there is no pending litigation relating to the bankruptcy proceeding in which to ascertain the probability of success. Under the proposed compromise agreement, the Debtor will continue her pending appeal of an adverse tax ruling and specifically retains the right to further challenge the IRS determinations. Concerning the "difficulty of collection" prong, this settlement concerns procedures for the Debtor to pay creditors, not for the Debtor to collect anything. Therefore, this prong of the test is irrelevant. No litigation expense or delay would be removed by the approval of the compromise agreement, except the Chapter 13 Trustee fees. Finally, while some creditors may, arguably, receive more payments from the compromise agreement than through a Chapter 13 plan, the plan may not be in the best interest of all the creditors. In a Chapter 13 case, the creditors have certain statutory rights, combined with the diligence of the trustee and the power of the bankruptcy court to enforce a confirmed plan. In the proposed agreement, the unsecured creditors may on paper receive greater payments than through a Chapter 13 plan, however, the Debtor's spotty payment history, the questionable jurisdiction of this Court to enforce contractual arrangements between parties not in bankruptcy and other legal and practical issues may subject those creditors to further

litigation or a future bankruptcy. Applying the four factors to the particular facts and circumstances of this case it is clear that the proposed compromise agreement should be denied.

The proposed compromise agreement, in its entirety, is a private reorganization plan. The agreement the Debtor proposes is merely an attempt to obtain court sanctioning of a plan that does not meet the statutory requirements of Chapter 13. The Chapter 13 Trustee cites Pension Benefit Guarantee v. Braniff, 700 F.2d 935 (5th Cir. 1983), in support of her objection to approval of the "disguised plan". In Braniff, the Fifth Circuit stated "[t]he debtor and the Bankruptcy Court should not be able to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan sub rosa in connection with a sale of assets." Id. at 940. While the Braniff case is not directly on point, nor controlling, the reasoning is sound. A debtor should not be able to enter the bankruptcy system, and then be allowed to circumvent plan requirements and to empower a private "trustee" for the purpose of disbursement of funds.

B. Retained Jurisdiction. Paragraph 14 of the proposed compromise plan states in part:

The Court shall retain jurisdiction, however, to interpret and implement the terms of this Compromise Agreement, if so requested by any party thereto. The Court will not retain jurisdiction to determine Debtor's tax liabilities.

The Debtor seeks a dismissal of the bankruptcy proceedings, yet proposes that this court should retain jurisdiction to interpret and enforce the agreement. It is well settled law that all Federal Courts are courts of limited jurisdiction and subject matter jurisdiction cannot be granted by the parties. Under 28 U.S.C § 1334(b), the federal district court, and, by reference, the bankruptcy court, have jurisdiction over issues related to a bankruptcy case. Since the agreement contemplates that, after its approval, there will be no bankruptcy case pending and no issues related to a bankruptcy case, subject matter and personal jurisdiction concerning the agreement and the parties would be lacking after dismissal.

C. Survival of Agreement. Paragraph 14 of the proposed compromise plan states in part:

Contrary to 11 U.S.C. § 349, this Agreement will survive a dismissal of this bankruptcy proceeding and will remain in full force and effect if this case is dismissed.

Assuming Section 349 contains authority for the bankruptcy court to enter orders that are binding and enforceable after dismissal of a bankruptcy case, as the Debtor contends, the use of such authority is discretionary and applicable on a showing of good cause. The Debtor cannot simply assert that good cause exists for invoking such authority. She must make a showing of cause. No evidence of "cause" has been presented.

D. Disbursing Agent. Finally, there are substantial issues of a more practical nature. The Debtor claims that the "disbursing agent" will continue to pay the royalties to her, and will not distribute the royalty proceeds to creditors without a court order.¹ However, this court has no jurisdiction over a California entity that controls the Debtor's royalty income, except in relation to funding a Chapter 13 plan. The disbursing agent may decide that the effort to comply with the agreement, even with a bankruptcy court order, is too burdensome and at a later point in time object to the order on jurisdictional grounds, both personal and subject matter. Additionally, under the proposed agreement, the "disbursing agent" becomes the equivalent of a trustee with responsibilities to pay off creditors in a certain order and in certain amounts. It is unclear if the disbursing agent is expecting to receive compensation for

¹It is unclear why the Debtor, outside of bankruptcy, could not execute an enforceable assignment of her right to receive all or a portion of her royalty income for the benefit of her creditors. It is also not clear why the Debtor is unable to confirm a Chapter 13 plan that does all that is proposed in the "settlement." Counsel for the IRS stated on the record that the IRS generally doesn't agree to Chapter 13 plans that affect the rights of the IRS as this settlement does. However, the Bankruptcy Code does not give the IRS absolute veto power.

writing up to fourteen checks a month and submitting reports, as the agreement "obligates" it to do.

Conclusion

The proposed plan exceeds the scope of compromise agreements permitted under Fed. Bankr. R. 9019. The court lacks jurisdiction to enforce the agreement after dismissal. Even assuming Section 349 is applicable, no showing of cause, as required for invocation of Section 349 powers, has been made. The Debtor's motion to approve the compromise agreement is denied.

The Debtor has thirty days to file an amended plan and make one monthly payment, or convert to Chapter 7, or dismiss her case. If debtor fails to act, upon affidavit of the Chapter 13 Trustee, the case will be dismissed.

Separate journal entry to be filed.

DATED: August 20, 1997

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

QUINN, DOUGLAS 341-0216

Copies mailed by the Court to:

Henry Carriger, Attorney
Kathleen Laughlin, Chapter 13 Trustee
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.