

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
KENNETH & TERESA PAVLUSHIK,) CASE NO. BK86-3291
)
DEBTORS) CH. 11

MEMORANDUM

Telephonic hearing on the fee application by counsel for the debtor-in-possession and the objections filed to such fee application was held on May 27, 1988. Appearing on behalf of the applicant was John Harmelink of Harmelink & Fox Law Offices, Yankton, South Dakota. Appearing on behalf of the objecting party, the United States of America through the Farmers Home Administration, was Douglas Semisch, Assistant United States Attorney, Omaha, Nebraska.

This Chapter 11 case was filed in 1986 in the Northern District of Iowa. The debtors were and are residents of Nebraska and all assets are located in Nebraska. Certain creditors moved for change of venue which was granted, after hearing, by the Bankruptcy Court in the Northern District of Iowa. Venue was transferred to the District of Nebraska with hearings to be held in Omaha. The case proceeded with a series of motions for relief and other motions, most of which required hearing in Omaha, Nebraska. Two Chapter 11 plans of reorganization were proposed by the debtors after requesting an extension of time in which to file a plan under the exclusive period available to the debtors. Neither plan was confirmed and in both cases there were objections by various entities and the debtors failed to obtain affirmative ballots from any impaired creditors.

At the confirmation hearing on the second plan, the counsel for the debtors admitted that the plan was not confirmable and it did not appear that the debtors could reorganize under Chapter 11 and orally moved to convert to Chapter 12. That motion was denied based upon the policy of this Court to deny conversion of cases pending on November 26, 1986, the effective date of the statute authorizing Chapter 12.

Shortly after the denial of confirmation of the second plan, debtor-in-possession's counsel filed this application for compensation. The Farmers Home Administration objected on the grounds that the services rendered were not of benefit to the estate. At the hearing, counsel for the United States suggested

that filing in the Northern District of Iowa was of no benefit to the estate and services rendered in appearing in court in Iowa to defend the venue should not be compensated. In addition, the Farmers Home Administration urged the Court to deny compensation for time spent on confirmation hearings when counsel should have known, based upon the law as embodied in Title 11, Chapter 11 of the United States Code, that without an affirmative vote of an impaired class, the "cramdown" opportunities under 11 U.S.C. § 1129(b)(1) were not available.

This Court agrees with most of the objections of the United States acting on behalf of the Farmers Home Administration.

The Bankruptcy Code at 11 U.S.C. § 330(a) provides that compensation is payable to attorneys for the debtor-in-possession for actual, necessary services rendered by such attorney "based on the nature, the extent and the value of such services" ... and for reimbursement for actual, necessary expenses. 11 U.S.C. § 330(a)(1) and § 330(a)(2).

This Court finds that the following services on the following dates were of no benefit to the estate:

1. October 16, 1986, draft objection to change of venue.
2. October 17, 1986, appear at first meeting of creditors at Sioux City, Iowa.
3. October 23, 1986, appear at hearing in Sioux City, Iowa, on motion for change of venue.
4. November 16, 1987, attend hearing on confirmation in Omaha.
5. March 18, 1988, prepare, review and revise motion to convert case to Chapter 12.
6. Attend confirmation hearing in Omaha.

The services were of no benefit to the estate in the above-listed matters because, with regard to venue, the case was not filed in the proper district in the first place and, once the venue question was raised, there was no defense. 28 U.S.C. § 1408. Therefore, any services rendered with regard to the motion to change venue were simply a waste of time and money.

The first meeting held in Iowa was of no benefit to the estate because it had to be rescheduled in Nebraska once venue was transferred.

Services rendered with regard to the two confirmation hearings were of no benefit to the estate because there were no ballots filed in favor of either plan and there was no reason for

a confirmation hearing to be held at all. Counsel could have notified the Court that the plan was not confirmable under any circumstances and the travel time would not have been necessary.

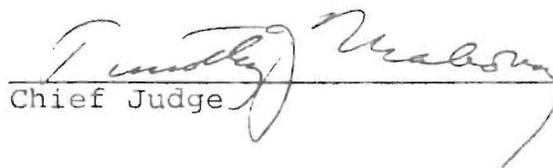
In this district a motion to convert from a preexisting Chapter 11 case to a Chapter 12 is not allowed and a simple inquiry by counsel for the debtor with regard to a review of the statutory language as well as the practice in this district would have alerted counsel to that policy. Therefore, no efforts expended on behalf of a motion to convert to Chapter 12 are of benefit to anybody.

As a result of the above, the Court does hereby find that the fee application will be approved, but the fees requested will be reduced by \$1,370 and the expenses will be reduced by \$149.80. This calculation was made by determining that John Harmelink spent thirteen hours which have been disallowed at his lowest applicable rate of \$80 per hour. Wanda Fox spent five hours which have been disallowed at her lowest rate of \$60 per hour. A paralegal spent one hour at \$30 which has been disallowed. The expenses which have been disallowed are in connection with mileage related to the exact same matters for which the Court has found there was no need.

A separate journal entry will be entered.

DATED: June 1, 1988

BY THE COURT:


Chief Judge