

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	BK 82-1788
ROSEN NOVAK AUTO CO.,	)	
Debtor.	)	
OFFICIAL CREDITORS' COMMITTEE,	)	CV 83-0-834
Plaintiff,	)	
vs.	)	ORDER 25
ROSEN NOVAK AUTO CO.,	)	
Defendant.	)	

This matter is before the Court on appeal from an order of the Bankruptcy Court for the District of Nebraska authorizing the debtor in this Chapter 11 proceeding to employ special counsel to defend certain legal actions currently pending in state and federal district courts. The lawsuits were filed against the individual partners of the debtor not the debtor itself. The debtor sought and obtained approval to hire special counsel pursuant to 11 U.S.C. § 327(a) which authorizes the employment of attorneys and other professional persons to assist a trustee or Chapter 11 debtor in carrying out his duties.

The only statutory standard governing the retention of professionals under section 327(a) is that such persons must be "disinterested" and not "hold or represent an interest adverse to the estate." Appellant, the Official Creditors Committee, objects to the retention of special counsel on the ground that assets of the estate will be depleted by the payment of attorney fees without any corresponding benefit to the estate.

The Court is persuaded to adopt the approach taken in Matter of Colin, 27 B.R. 87, 89 (Bankr. S.D.N.Y. 1983). In Colin, the Court approved the debtor's employment of special counsel in connection with a divorce proceeding on the ground that the "Court is not convinced that the divorce proceedings will have no effect on the Chapter 11 case." Id. at 89. The Court rejected the argument made by the Creditors Committee in Colin that the Bankruptcy Court should decline to appoint counsel and should await the outcome of the divorce suit, stating:

This Court believes that the debtor should prosecute his case fully in the state court and not wait for issues to arise within the context of [the] bankruptcy case.

. . .

Special counsel should be retained to protect the estate. Demonstration of benefit [as a precondition to the retention of counsel] would be difficult given the defensive nature of the representation. Retention at the outset is preferable. Id.

While the present case differs from Colin in that the partners of the debtor rather than the debtor itself have been drawn into litigation in other courts, the Court in this case as in Colin is not persuaded that the Chapter 11 case will escape the impact of adverse rulings in the collateral litigation. The debtor has, in fact, made more than a prima facie showing that the assets of the bankruptcy estate will be implicated if the partners fail to defend the suits against them successfully in the state and federal courts. This Court has reviewed the file in the federal proceeding and the petition filed in the state lawsuit and finds that both cases at least facially arise out of

the conduct of the debtor's business. Neb. Rev. Stat. § 67-318(b) (1981) states that "[a] partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property." It therefore seems very likely, as appellee urges, that the bankruptcy estate will be required to indemnify the partners if they fail to prevail in the collateral litigation. Accordingly, the Court finds that the Bankruptcy Court did not err in approving the retention of special counsel to avert this result.

IT IS THEREFORE ORDERED that the order of the Bankruptcy Court is hereby affirmed.

DATED this 25<sup>th</sup> day of September, 1984.

BY THE COURT:



C. ARLEN BEAM  
UNITED STATES DISTRICT JUDGE