

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
SANITARY & IMPROVEMENT DISTRICT)
NUMBER 93 OF SARPY COUNTY, NEBR.,) CASE NO. BK87-80062
)
DEBTOR) CH. 9
) Fil. 51, 53

MEMORANDUM

Hearing was held on September 12, 1994, on the Motion for Order Regarding City of Papillion by First National Bank of Omaha, Trustee. Appearing on behalf of First National Bank of Omaha was Christopher Curzon of Schmid, Mooney & Frederick, P.C., Omaha, Nebraska. Appearing on behalf of City of Papillion was Michael Schirber of Schirber Law Offices, P.C., Papillion, Nebraska. Also appearing was Kenneth Moore, a certificate holder. 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) and (O).

Background

Sanitary and Improvement District Number 93 of Sarpy County, Nebraska (the SID) filed for bankruptcy protection under Chapter 9 of the Bankruptcy Code on January 9, 1987. A Plan of Adjustment, as modified by amendment on August 27, 1987, was confirmed on December 14, 1987. The Court closed the bankruptcy case on January 12, 1994.

The Plan of Adjustment created a liquidating trust to satisfy the claims of holders of certain warrants, a/k/a/ "Class II" claims. The Plan of Adjustment provided for the payment of Class II claimants, who were impaired claim holders. First National Bank of Omaha (the Bank) was appointed as the disbursing agent and trustee of the liquidating trust.

On August 3, 1993, the City of Papillion annexed all of the territory for the SID pursuant to Section 31-763 of the Nebraska Revised Statutes. The Bank filed a Motion for Order Regarding City of Papillion on April 6, 1994. The motion seeks an Order from this Court finding that the City of Papillion became liable, because of the annexation, for all obligations of the SID. Specifically, the Bank seeks to have the City levy taxes pursuant to the Plan of

Adjustment and pay all tax revenues to the Bank as disbursing agent of the liquidating trust.

The City of Papillion has resisted the Bank's motion on the grounds that the Bank is not an interested party to file said motion and that this Court no longer has jurisdiction over this matter because the City of Papillion issued various general purpose bonds on January 18, 1994 to refinance the general obligation bonds that Class II claimants hold under the Plan of Adjustment.

Discussion

Chapter 9 of the Bankruptcy Code provides for the bankruptcy court's continuing jurisdiction in a bankruptcy case:

(a) The court may retain jurisdiction over the case for such period of time as is necessary for the successful implementation of the plan.

(b) Except as provided in subsection (a) of this section, the court shall close the case when administration of the case has been completed.

11 U.S.C. § 945. The House Judiciary Committee Report provided that the purpose of Section 945 was to allow:

the court to retain jurisdiction over the case for as long as it determines is necessary to the successful execution of the plan, and inures [sic] that the court may enforce the terms of any confirmed plan. In some cases, this could be as long as the longest term of any security issued under the plan, as occurred in the case of Fort Lee, New Jersey.

4 COLLIER ON BANKRUPTCY § 945.01, at 945-1 (15th ed. 1992) (quoting H.R. REP. NO. 94-686, 94th Cong., 1st Sess. 35 (1975)).

The Plan of Adjustment also contains a statement concerning the jurisdiction of the Court:

In order for S.I.D. No. 93 to retain the benefit of the automatic stay provisions of § 362 of the Bankruptcy Code, the Bankruptcy Court shall retain jurisdiction of this case while the Liquidating Trust as herein established is in existence and until the same

has been terminated as herein provided; however, after confirmation of the Plan of Adjustment, and pursuant to the provisions of, S.I.D. No. 93 will operate and receive tax payments into and make payments from its general and construction funds, without the supervision and approval of the Bankruptcy Court.

Amendment to Plan of Adjustment, Filing no. 18, § V(B).

The City of Papillion argues that the Court lost subject matter jurisdiction to consider the post confirmation matters raised by the Bank because the proceeding is not a core proceeding under Title 11. The City of Papillion believes that the motion raised by the Bank, that is the liability of the City of Papillion, is based on state law and is, therefore, not a matter arising under Title 11.

Section 31-763 of the Revised Nebraska Statutes provided the authority under which the City of Papillion annexed the SID:

Whenever any city or village annexes all of the territory within the boundaries of any sanitary and improvement district ..., the district shall merge with the city ... and the city ... shall succeed to all the property and property rights of every kind, contracts, obligations and choses in action of every kind, held by or belonging to the district, and the city ... shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district.

NEB. REV. STAT. § 31-763 (Reissue 1993) (emphasis added). The City is correct that Section 31-763 will ultimately define the City's obligations to the Class II claim holders. However, even though the result of the Bank's motion may be based on state law, the motion itself relates to a core proceeding under the Bankruptcy Code.

Core proceedings under the Bankruptcy Code include "matters concerning the administration of the bankruptcy estate" and matters "affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship." 28 U.S.C. § 157(b)(2)(A) & (O).

Under Section 31-763 of the Nebraska Revised Statutes, the City of Papillion "merged" with the SID and "succeeded" to all of

the SID's obligations. The SID was a debtor under the bankruptcy code operating under a confirmed plan that altered its contractual obligations to its creditors. Therefore, when the City of Papillion annexed the SID, the City stepped into the shoes of the debtor in the bankruptcy case to become subject to terms of the Plan of Adjustment. The annexation did not terminate the Plan of Adjustment, it only replaced the SID with the City of Papillion.

Since the annexation did not terminate the Plan of Adjustment, the Court still has jurisdiction pursuant to the terms of the Plan of Adjustment. See also In re Sanitary & Improvement District No. 7, 112 B.R. 990, Neb. Bkr. 90:83 (Bankr. D. Neb. 1990) (holding that annexation by city did not terminate the court's jurisdiction post petition and post discharge to hear matters relating to the implementation of the plan). Even if the Plan of Adjustment did not so provide, this Court would have jurisdiction pursuant to Section 945 of the Bankruptcy Code until the terms of the bankruptcy plan are carried out, or a representation is made by the City of Papillion to this Court that the City will assume all of the obligations created under the Plan of Adjustment and will release the Bank from its fiduciary responsibilities.

This Court may not interfere with the City of Papillion's authority to annex and reissue bonds to the Class II claimants. Section 904 of the Bankruptcy Code provides that the Court's jurisdiction is limited to the extent that the Court may not interfere with "any of the political or governmental powers of the debtor." 11 U.S.C. § 904(1). However, Section 904(1) does not mean that the obligations created under the Plan of Adjustment are automatically terminated in the bankruptcy case when a City annexes a debtor.

The Bank, as the trustee, was responsible for disbursing funds under this plan. In that role, the Bank became a fiduciary to the Class II claimants. As a fiduciary, the Bank is a proper party raise a motion to determine the liability of the City of Papillion. If the City has actually assumed all of the liabilities of the debtor, the City needs to so inform the Court and the Bank and obtain an order exonerating the Bank from further obligations under the confirmed plan. The Bank may have some claim for fees and/or a bond which will need to be resolved.

Even though state law provides that the City of Papillion has assumed the obligations of the Class II claimants, the Bank is not released from its fiduciary duties under the Plan of Adjustment. For example, if a city annexes a Chapter 9 debtor but then becomes unable to meet the obligations that it assumed or it refuses to meet those obligations, a trustee of the Chapter 9 plan who was in a position similar to that of the Bank could be liable to unpaid

parties. For this reason, the Bank is an interested party to bring its motion before this Court.

The Clerk shall reopen this case so the Court may consider the question of the Bank's continuing obligations under the Plan of Adjustment. See 11 U.S.C. § 350(b) (stating that a case may be reopened to administer assets, provide relief for the debtor or for other cause).

Conclusion

The City of Papillion may exercise its powers without interference by this Court, but the City is subject to this Court's jurisdiction because the Plan of Adjustment has not been terminated and the Bank has not been released from its fiduciary obligations under the Plan of Adjustment. Therefore, the Bank's fiduciary duties to carry out the provisions of the Plan of Adjustment are still in effect. If the City has assumed all of the liabilities of the SID, the City as successor to or substitute for the SID, shall explicitly release the Bank from all of its fiduciary responsibilities under the Plan of Adjustment, so the Bank may then wind up the liquidating trust and make a final report.

Separate journal entry to be filed.

DATED: December 20, 1994

BY THE COURT:

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

Copies faxed by the Court to:

CURZON, CHRISTOPHER 493-7005

Copies mailed by the Court to:

Michael Schirber, 1243 Golden Gate Drive, Papillion, NE 68046
James Cripe, 1231 Golden Gate Drive, Papillion, NE 68046
Kenneth Moore, 9803 Pasadena Ave., Omaha, NE 68124-3763

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DISTRICT NUMBER 93 OF)	
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<u>DEBTOR(S)</u>)	
)	CH. 9
)	Filing No. 51, 53
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	
)	DATE: December 20, 1994
<u>Defendant(s)</u>)	HEARING DATE: September
)	12, 1994

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Order Regarding City of Papillion by First National Bank of Omaha, Trustee.

APPEARANCES

Christopher Curzon, Attorney for First Nat'l. Bank
Michael Schirber, Attorney for City of Papillion
Kenneth Moore, certificate holder

IT IS ORDERED:

City is subject to jurisdiction of this court and must take appropriate action to terminate liquidating trust and relieve trustee of further responsibility. Case shall be reopened. See memorandum entered this date.

BY THE COURT:

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

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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.