

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

ABC TRANSIT, INC., )

BANKRUPT )

CASE NO. BK78-0-303

MEMORANDUM OPINION

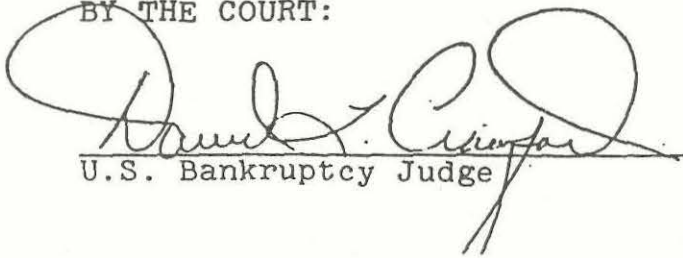
Before me is the motion filed by the petitioning creditors for leave to file a second amended involuntary petition in bankruptcy. Prior to the filing of this involuntary proceeding, the petitioning creditors filed another involuntary petition against ABC Transit, Inc., (BK78-0-90). That proceeding was dismissed by this Court because of the failure to allege in the petition a specific act. Following that dismissal, the petitioning creditors filed this proceeding. The alleged bankrupt filed a motion for more definite statement of facts which was, in part, sustained on October 17, 1978. On October 23, 1978, the Honorable Robert V. Denney entered an order with regard to the appeal in the prior proceeding elaborating on the requirement that specific acts be alleged in an involuntary proceeding and discussing the doctrine of "relation back". Thereafter, and with the benefit of Judge Denney's opinion, the petitioning creditors filed their amended petition in this proceeding in compliance with the Court's prior order sustaining the motion for more definite statement. This matter was set for pretrial conference on December 8, 1978. On December 6, 1978, co-counsel entered their appearance on behalf of the petitioning creditors and the present motion for leave to file a second amended involuntary petition was filed.

The proposed amended involuntary petition alleges in sub-paragraphs a and e of Paragraph 4 the same allegations as the original petition. Sub-paragraphs b, c and d of Paragraph 4 appear to be new allegations. I assume that there is some reason for the addition of sub-paragraphs b, c and d. I also assume that those allegations constitute different allegations than the original allegations. The language of sub-paragraphs b, c and d lead me to that conclusion. Accordingly, the allegations may not be permitted because they do not relate to the specific allegations of the original petition. They are new allegations. In addition, I would also deny the application because it was made so near to the time of the pretrial conference.

A separate order is entered in accordance with the foregoing.

DATED: June 28, 1979.

BY THE COURT:

  
U.S. Bankruptcy Judge