

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

CARL A. ANDERSON, INC.,

DEBTOR.

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CASE NO. BK86-1900

MEMORANDUM OPINION

This matter came on for hearing on June 17, 1987, upon Thomas Stalnaker's Motion to Reconsider a portion of this Court's Order of March 24, 1987, prohibiting immediate payment of allowed fees and expenses. Appearing on behalf of the Trustee was Thomas Stalnaker of Omaha, Nebraska. Appearing on behalf of Motor Pool International, Inc. was Harvey Cooper of Omaha, Nebraska. Appearing on behalf of Wells Fargo Business Credit was Richard Anderl of Omaha, Nebraska. Appearing on behalf of Erickson and Sederstrom, attorneys for the debtor, was Michael Washburn of Omaha, Nebraska.


This Court's Order of March 24, 1987, allowed interim fees and expenses for the law firm of Erickson and Sederstrom; for the Trustee; for an accountant, R. Keith Neth; for Mr. Stalnaker, counsel for the Trustee; and for Motor Pool International, Inc. However, that Order also provided that none of these fees and expenses were to be paid until the Court made a final determination of the amounts available for paying administrative expenses. At that point payments would be made on a pro rata basis if insufficient funds existed to pay them in full. Mr. Stalnaker has asked the Court to reconsider the portion of the Order dealing with his fees, as well as those of Erickson and Sederstrom, R. Keith Neth, and of the Trustee. He has requested immediate payment of those interim fees and expenses. Motor Pool International, Inc., has objected to immediate payment, alleging that its claim has the same priority as those of the above-named claimants. Motor Pool's position is that if these claimants are granted immediate payment, then it must be granted immediate payment of its administrative expense/for rent. At this time there are no funds for payment of administrative fees and expenses except those funds provided by an agreement with Wells Fargo, the major secured creditor. Wells Fargo has agreed to provide funds for legal fees and other expenses it deems appropriate. It has not made funds available for payment of rent. The Court is aware that there is authority supporting the view that an administrative claim for nonresidential rent should be paid immediately unless the Trustee establishes good cause for withholding payment. In Re

Dieckhaus of King of Prussia, Inc., 73 B.R. 969, 973 (Bkrtcy.E.D.PA. 1987). However, the fact remains that, in the instant case, there are no funds available for rent, while there are funds for the legal and other professional fees. With that in mind, and considering that professionals should not be expected to finance the administration of liquidation or reorganization cases, 2 Collier on Bankruptcy, 15th Ed., Para. 331.01, p. 331-3, this Court has reconsidered its previous Order of March 24, 1987, and finds that the allowed interim fees for the law firm of Erickson and Sederstrom; for the Trustee; for the accountant, R. Keith Neth; and for Mr. Stalnaker, counsel for the Trustee, should be paid immediately.

IT IS SO ORDERED.

DATED: 8-27-87

BY THE COURT:


U.S. Bankruptcy Judge