

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
SILVER MONARCH OIL & GAS ) CASE NO. BK79-0-1045  
CO., INC., )  
 )  
DEBTOR )  
 )  
OFFICIAL CREDITORS' COMMITTEE, )  
 )  
Plaintiff )  
 )  
vs. )  
 )  
DALE NELSON and )  
AM-CAN RESOURCES, INC., )  
 )  
Defendants )

MEMORANDUM AND ORDER

Before me are the defendants' motions to dismiss filed alleging that the plaintiff has no standing to bring this adversary proceeding. In essence, the defendants allege that the Official Creditors' Committee under the old Bankruptcy Act has no standing to prosecute action on behalf of the estate. The cause of action alleged by the plaintiff against the defendants results from a transfer by the debtor-in-possession to a third party named herein as a defendant. Thus, the cause of action alleges an improper transfer from the estate of the debtor-in-possession during this Chapter XI proceeding.

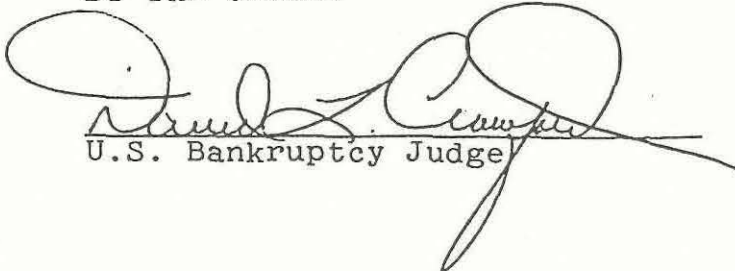
My understanding of the law under the old Bankruptcy Act was that the Official Creditors' Committee had no powers possessed by the debtor-in-possession to avoid fraudulent transfers and preferences. Similarly, the Official Creditors' Committee had no authority to bring lawsuits based upon improper transfers from the estate of the debtor. The Creditors' Committee remedy under the old Act was to apply for a receiver if the debtor-in-possession could not or would not bring the cause of action. Accordingly, my conclusion is that the plaintiff in this action has no standing to prosecute the action and its remedy is to apply for a receiver. In accordance with the foregoing, it is

ORDERED that the motion to dismiss filed by the defendants be, and the same hereby is, sustained; and it is further

ORDERED that this adversary proceeding be, and it hereby is, dismissed without prejudice.

DATED: January 6, 1982.

BY THE COURT:

  
U.S. Bankruptcy Judge

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