

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
MARK R. ANDERSON and : Case No. 90-0438-C H
JEANNE M. ANDERSON, : Chapter 13
Debtors. :
: - - - - -

ORDER--APPLICATION FOR ALLOWANCE OF COMPENSATION

On November 1, 1990, a hearing was held on the application for allowance of compensation by Thomas J. Reilly. The following attorneys appeared on behalf of their respective clients: Douglas Reed for Debtors; Thomas J. Reilly for Bayliff Construction Company ("Bayliff"); and Joe Warford as Chapter 13 Trustee. At the conclusion of said hearing, the Court took the matter under advisement, and the Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). The Court, upon review of the application, objection and arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Civ.P. 7052.

FINDINGS OF FACT

1. On February 20, 1990, Debtors filed a voluntary Chapter 13 petition.
2. On September 19, 1990, Thomas J. Reilly, attorney for the unsecured creditor Bayliff, filed an application for allowance of compensation. Attorney for Bayliff asserts that

he has incurred reasonable attorney fees in the amount of \$2,813.50 and has incurred an expense in the amount of \$119.00. Attorney for Bayliff itemizes the professional services rendered representing Bayliff in Debtors' Chapter 13 case from February 20, 1990 through September 17, 1990 in a statement attached to the application for allowance of compensation.

3. In support of his application for allowance of compensation, attorney for Bayliff asserts that Bayliff is an unsecured creditor of Debtors due to an unpaid garage construction bill and subsequent judgment obtained on November 27, 1989, in Polk County.

DISCUSSION

11 U.S.C. §503(b)(3) and 11 U.S.C. §503(b)(4) provide administrative expense compensation to certain creditors in a bankruptcy case and the attorney or accountant for said creditors in a bankruptcy case. 11 U.S.C. §503(b)(3) provides that the following are administrative expenses:

- (3) the actual, necessary expenses, other than compensation and reimbursement specified in 11 U.S.C. §503(b)(4), incurred by--
 - (A) a creditor that files a petition under 11 U.S.C. §303 (involuntary petition);
 - (B) a creditor that recovers, after the court's approval, for the

benefit of the estate any property transferred or concealed by the debtor;

- (C) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;
- (D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under 11 U.S.C. §1102, in making a substantial contribution in a case under Chapter 9 or Chapter 11 of Title 11; or
- (E) a custodian superseded under 11 U.S.C. §543, and compensation for the services of such custodian.

11 U.S.C. §503(b)(4) provides that the following is an administrative expense:

- (4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under 11 U.S.C. §503(b)(3), based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under Title 11, and reimbursement for actual, necessary expenses incurred by such attorney or accountant.

In the instant case, the application for allowance of compensation and attached statement of professional services rendered reveal nothing which indicates that the professional services rendered by the attorney for Bayliff meet the

specific criteria set forth in 11 U.S.C. §507(b)(3) and 11 U.S.C. §507(b)(4). As support for his position, attorney for Bayliff has submitted In re Kimble, 163 F.Supp. 904 (N.D. Cal. 1958) and England v. American Trust Company, 267 F.2d 20 (9th Cir. 1959). In Kimble and England, the courts, pursuant to Bankruptcy Act §64(a)(3), allowed reimbursement to a creditor for expenses incurred in obtaining refusal of a bankrupt's discharge. Bankruptcy Act §64(a)(3) provided reasonable costs and expenses to creditors obtaining a refusal, revocation or setting aside, of the confirmation of an arrangement or wage earner plan or a bankrupt's discharge. The Bankruptcy Code was enacted November 6, 1978, and replaced the Bankruptcy Act.

There is no provision in the Bankruptcy Code comparable to Bankruptcy Act §64(a)(3). Therefore, Kimble and England are not applicable to the instant case. Further, Debtors' Chapter 13 plan was confirmed November 6, 1990, and the application for allowance of compensation and attached statement reveal nothing which indicates that the professional services rendered by the attorney for Bayliff even meet the criteria of Bankruptcy Act §64(a)(3).

ORDER

IT IS ACCORDINGLY ORDERED that the application for allowance of compensation by Thomas J. Reilly is denied.

Dated this 4th day of February, 1991.

Judge

RUSSELL J. HILL
United States Bankruptcy