



Prior to this, Debtors had filed numerous Chapter 11 petitions and one Chapter 12 petition.

2. On May 9, 1988, Debtors filed a lawsuit against the Federal Land Bank of Omaha (hereinafter "FLB"), now known as the Farm Credit Bank of Omaha, in the Iowa District Court for Harrison County. Debtors claim in this action that the oral objections made by FLB during the course of an earlier bankruptcy proceeding were tortious and caused them damages. Both FLB and Trustee allege said lawsuit is totally without merit.

3. On June 28, 1988, FLB offered Trustee \$500.00 to purchase the lawsuit. In response, Trustee indicated he would propose to sell said lawsuit for \$2,000.00.

4. On July 1, 1988, Trustee filed a notice and report of abandonment of property concerning Debtors' state court lawsuit against FLB. Trustee's reason for the abandonment was that the asset would be burdensome to the estate.

5. On July 12, 1988, FLB filed an objection to the proposed abandonment. In said objection, FLB argued Trustee has no right to refuse a bona fide offer to purchase the spurious lawsuit filed by Debtors.

6. Debtors' schedule A-3 lists 15 unsecured creditors with total claims of \$1,486,726.00. None of these creditors other than FLB objected to Trustee's

notice and report of abandonment of Debtors' state court lawsuit against FLB.

#### DISCUSSION

The issue in this case is whether Trustee can abandon a lawsuit as burdensome to the estate when an unsecured creditor has made a bona fide offer of \$500.00 to purchase the lawsuit. The dispute centers on the apparent conflict between Trustee's duty under §704(1) to liquidate property of the estate for the benefit of unsecured creditors and Trustee's discretion under §554 to abandon property of the estate.

A starting point is to look at the relevant statutes. Section 704(1) provides that a trustee has a duty to "collect and reduce to money the property of the estate for which trustee serves...." 11 U.S.C. §704(1). A bankruptcy estate's property includes pending lawsuits. In re Auto West, Inc., 43 B.R. 761, 763 (Bankr. C.D. Utah 1984). Concerning abandonment, §554(a) provides "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. §554(a). Before ordering abandonment, the Court must find either: 1) the property is burdensome to the estate; or 2) the property is both of inconsequential value and inconsequential benefit to the estate. In re K.C. Mach. & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987) (emphasis added). Abandonment is in the trustee's discretion, subject only to that

of the court. Id. at 246. The best interests of the estate and not the interests of the debtor and creditors will determine whether property should be abandoned. 2 Norton Bankr L & Prac §39.01 (emphasis added).

A trustee has an obligation to the estate's creditors to show by competent evidence that the asset is burdensome to the estate or is of inconsequential value and benefit to the estate. Matter of Nat'l Smelting of New Jersey, Inc., 49 B.R. 1012, 1014 (D. Colo. 1985). Property is not burdensome to a debtor's estate if the trustee has a ready buyer for it. K.C. Mach., 816 F.2d at 245. Abandonment should not be ordered where the benefit of administering the asset exceeds the cost of doing so. Id. at 246.

In the case at bar, the Court finds the lawsuit is not burdensome to Debtors' estate because FLB is a ready buyer. However, the Court also finds Trustee has made an adequate showing that the lawsuit is of inconsequential value and benefit to Debtors' estate. Assuming the minimum Trustee fee of \$212.00, a sale of the lawsuit for \$500.00 would only leave \$288.00 available to unsecured creditors. Since the unsecured creditors' claims total \$1,486,726.00, a distribution would amount to \$.0001937814 on the dollar. Further, the cost of administering the asset could far exceed the benefit to the estate because there are no assets in the estate to finance the litigation. As a result, the Court concludes Trustee is

entitled to abandon the lawsuit.

The Court recognizes FLB's concern over being subject to an alleged frivolous lawsuit in state court, but points out the state court has procedures to resolve frivolous lawsuits in an expedited manner. It also has sanction

provisions for harassing litigation. Thus, FLB does have means at its disposal to deal with the lawsuit.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes Trustee has met his burden of demonstrating Debtors' lawsuit against FLB is of inconsequential value and benefit to Debtors' estate.

IT IS ACCORDINGLY ORDERED that FLB's objection to Trustee's proposed abandonment is overruled.

IT IS FURTHER ORDERED that Trustee shall abandon Debtors' state court lawsuit against FLB.

Dated this \_\_\_\_\_ day of January, 1989.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE