

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of	:	Case No. 82-1857-C-H
	:	
ROBERT V. BROWN and	:	Chapter 7
SUE A. BROWN,	:	
	:	
Debtors.	:	

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**ORDER ON SECURITY BANK'S CLAIM**

The hearing on Security Bank's objection to Trustee's objections to proofs of claim and allowance of claims came before the Court on November 19, 1991. James L. Goodman appeared on behalf of Security Bank (hereinafter, Bank) and Donald F. Neiman, Trustee, appeared for the Trustee. At the outset, the Court set aside its October 15, 1991 Order allowing Trustee's objections to proofs of claims and the matter was taken under advisement. Only the Bank submitted an Argument and Statement of Authorities (filed November 18, 1991) in support of its position. The Court considers the matter fully submitted. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B) and the Court now enters its findings of facts and conclusions pursuant to Fed.R.Bankr.P. 7052.

**FINDINGS**

1. The Debtors originally filed their bankruptcy petition under Chapter 13 on December 27, 1982. Their Chapter 13 plan was confirmed on August 4, 1983.

2. After confirmation of their plan, the Debtors

continued their farming operation business and incurred certain postpetition debts as a result.

3. On October 7, 1986 the Bankruptcy Court entered an order that provided that the Bank release all liens it held upon the property of the debtors. The Bank's allowed secured claim of \$168,840.01 had been paid in full and under the terms of the plan the lien securing the Bank's claim would be released upon payment in full. In an accompanying memorandum of decision the Court further provided:

Any new lien placed upon the Bank's collateral will, upon conversion to Chapter 7, be subordinated to a claim in favor of the estate. See 11 U.S.C. § 510(c), 105(a). The amount of the estate's claim in the collateral will be equal to the amount the present unsecured creditors would have received if the case had been originally filed under Chapter 7. If this case is dismissed instead of converted to Chapter 7, any new lien on the collateral will be subordinated to a lien in favor of the Bank in an amount that matches the dividend the Bank would have received if this case had originally been filed under Chapter 7. See 11 U.S.C. § 349(b)(1)(C). . . . Any payments received by unsecured creditors under the Chapter 13 plan will reduce the amount by which a new lien is subordinated.

"At the time of confirmation the debtors held \$98,112 worth of property that would have been available for distribution to unsecured and priority creditors in a liquidation case."

4. On November 17, 1986 the Debtors converted their case to a Chapter 7 proceeding. Donald F. Neiman was

appointed as trustee on November 18, 1986.

5. On June 8, 1987 the Chapter 7 Trustee filed Adversary Proceeding No. 87-109 against Annabel Brown; Central Veterinary Service; Farmers Cooperative; Dallas J. Janssen; Juhl-Son Enterprises; Mastercard/Citizens Savings Bank; Thermogas Co. of Marshalltown, a division of Mapco Gas Products, Inc.; and VISA/ First Bankcard Center. The Complaint was amended, pursuant to an August 26, 1987 Court Order, to include as a defendant Eugene Mercer d/b/a Mercer Livestock Supply. The Trustee's action was a complaint to recover preferential payments made by the Debtors to said defendants within ninety days prior to conversion of the Chapter 13 proceeding to a Chapter 7 proceeding. The Trustee reached settlement with the defendants, notice was given of the settlements, and orders dismissing the adversary proceeding as to each of the defendants were entered by the Court without objection.

6. Based on the settlements reached in adversary proceeding 87-109 and the claims filed, Trustee made the following recommendation as to the allowance of and objection to claims:

- a. CHAPTER 13 ADMINISTRATIVE FEES AND EXPENSES. The Chapter 13 administrative fees and expenses shall be paid after payment of trustee and attorney fees and expenses. The Chapter 13 administrative fees and expenses consist partially of claims as actually filed and shown on the claims register and consist partially of

claims acknowledged pursuant to the court-ordered settlements reached in adversary proceeding No. 87-0109. The following fees and expenses as allowed for the amounts shown shall be paid on a pro-rata basis:

- (1) Annabel Brown. Claim No. 30 filed January 5, 1990, in the amount of \$5,852.67. Allow as a Chapter 13 administrative claim pursuant to 11 U.S.C. § 503(b)(1)(A) in the amount of \$5,852.67.
- (2) Central-Veterinary Service. Claim No. 28 filed May 15, 1989, in the amount of \$3,500. Allow as a Chapter 13 administrative claim under 11 U.S.C. § 503(b)(1)(A) in the amount of \$3,500.00.
- (3) Erickson, Miller & Lytle, P.C. (substituted for Dallas J. Janssen in the adversary proceedings). Settlement reached in adversary proceeding No. 87-0109 on July 25, 1989, in the amount of \$17,571.38. Allow as a Chapter 13 administrative claim under 11 U.S.C. § 503(b)(1)(A) in the amount of \$17,571.38.
- (4) Farmers Cooperative. Claim No. 29 filed June 12, 1989, in the amount of \$7,000.00. Allow as a Chapter 13 administrative claim under 11 U.S.C. § 503(b)(1)(A) in the amount of \$7,000.00.
- (5) Juhl-Son Enterprises. Settlement reached in adversary proceeding No. 87-0109 on November 7, 1989, in the amount of \$350.00. Allow as a Chapter 13 administrative claim under 11 U.S.C. § 503(b)(1)(A) in the amount of \$350.00.
- (6) Eugene Mercer d/b/a Mercer Livestock Supply. Claim No. 24 filed February 18, 1987, in the amount of \$68,029.82. Allow \$5,205.00 as an unsecured claim for charges incurred prior to the filing of the Chapter 13 bankruptcy proceedings, with no distribution for the reason no funds will be remaining after payment of the Chapter 7 and Chapter 13 administrative fees and expenses. Allow \$57,287.06 as a Chapter 13 administrative claim under 11 U.S.C. §

503(b)(1)(A) and disallow \$5,537.76 pursuant to the settlement reached in adversary proceeding No. 87-0109 on October 10, 1989.

(7) Thermogas Co. of Marshalltown, A Division of Mapco Gas Products, Inc. Settlement reached in adversary proceeding No. 87-0109 on November 7, 1989, in the amount of \$1,225.00. Allow as a Chapter 13 administrative claim under 11 U.S.C. § 503(b)(1)(A) in the amount of \$1,225.00.

(8) Security Bank f/k/a Security Savings Bank. Claim No. 17 filed February 22, 1983, in the amount of \$324,038.78, amended by Claim 31 filed August 7, 1991, as a priority claim in the amount of \$154,805.51. Originally allowed as secured, the Bank's claim was reduced to \$154,805.51 under the Debtors' plan and after payments made during the course of the plan. Order of October 7, 1986 ordered Bank to release its liens on Debtors' property, including livestock. Trustee recommends allowance of claim as a totally unsecured claim for a debt incurred prior to the filing of the Chapter 13 petition. Because, however, no funds will remain after payment of administrative expense claims, the claim will not benefit from a distribution.

7. Payment of the trustee and attorney fees and expenses has been provided for by Order of October 1, 1991.

#### DISCUSSION

The Bank raises two issues in this case:

- (1) Whether the claims are entitled to administrative claim status pursuant to the Trustee's recommendation under 11 U.S.C. § 503(b)(1)(A), and,
- (2) Whether those same claims should be subordinated to

the claim of the Bank under equitable principles and 11 U.S.C. § 510(c).

The Court will only briefly address the second issue. The subject claims will not be subordinated to the claim of the Bank. Pursuant to this court's order of October 7, 1986, any new lien placed on the property formerly securing the Bank's claim was to "be subordinated to a claim in favor of the estate" pursuant to 11 U.S.C. § 510(c) in the event the case was converted. Order of October 7, 1986 at 6 (emphasis added). The case was converted to Chapter 7, not dismissed. This ruling was intended to protect unsecured and priority creditors in case of conversion or dismissal. The effect of the Court's order of October 7, 1986 was to avoid the Bank's lien and provide that the property thereby released would be available to pay unsecured and priority creditors in case of conversion or dismissal, regardless of whether the property had been pledged as collateral again. As to the Bank's unsecured claim, it enjoys no higher status than any other unsecured claim.

Because, however, the assets of the estate are limited, the key issue of the case is whether the other claims here at issue should be classified as priority administrative expense claims pursuant to § 503(b), as Trustee recommends. As administrative expense claims, they would be accorded a higher priority than the Bank's unsecured claim. If administrative

priority expense claims are allowed as the Trustee recommends, the unsecured creditors like the Bank will be left with nothing.

The Court therefore now turns to whether the Court should approve the Trustee's recommendation on allowance of § 503(b)(1)(A) priority claims. 11 U.S.C. § 503(b) provides in pertinent part:

After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under Section 502(f) of this title, including--

- (1) (A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commission for services rendered after the commencement of the case...

11 U.S.C. § 503(b)(1)(A).

The Bank's only argument is that the costs and expenses at issue were not necessary to preservation of the estate because the estate ceased to exist upon confirmation of the Chapter 13 plan. (Bank's Brief at 10-12 citing In re Frank Meador Buick, Inc., 59 B.R. 787, 791 (Bankr. W.D. Va. 1986)). The bank does not argue whether the costs and expenses were necessary to preservation of the estate should the court hold the estate does continue to exist after confirmation. The Bank argues that since the estate no longer exists the costs and expenses claimed to have priority could not have been necessary to

preserving the estate. Therefore, the claims should not be afforded administrative expense priority pursuant to 11 U.S.C. § 503(b).

There is a split in authorities on whether a bankruptcy "estate" continues to exist in a Chapter 13 case after confirmation of a plan. One line of cases recognizes the tension between § 1306 (property of the estate includes earnings from filing to closure, dismissal, or conversion) and § 1327 (confirmation vests property in debtor) and holds that the estate exists after confirmation and consists of the debtor's property and earnings dedicated to fulfillment of the plan. Price v. U.S. (In re Price), 130 B.R. 259, 269 (N.D. Ill. 1991); In re Root, 61 B.R. 984, 985 (Bankr. D. Colo. 1986); see also In re Martin, 73 B.R. 721 (Bankr. C.D. Cal. 1987); In re Anerio, 72 B.R. 424, 429-30 (Bankr. S.D. Cal. 1987); In re Clark, 71 B.R. 747, 750 (Bankr. E.D. Pa. 1987); In re Adams, 12 B.R. 540, 542 (Bankr. D. Utah 1981). Other courts have held that unless the plan provides otherwise, confirmation vests all property of the Chapter 13 estate in the debtor, terminating the estate at that point. See, e.g., In re Petrucelli, 113 B.R. 5, 16 (Bankr. S.D. Cal. 1990); In re Walker, 84 B.R. 888, 888 (Bankr. D.C. 1988); In re Walker, 67 B.R. 881, 812 n.3; (Bankr. C.D. Cal. 1986), aff'd on other grounds, 861 F.2d 597 (9th Cir. 1988); In re Dickey, 64 B.R. 3, 4 (Bankr. E.D. Va. 1985); In re Mason, 45 B.R. 498, 500-01



(Bankr. D. Or. 1984), aff'd, 51 B.R. 548 (D. Or. 1985); In re Stark, 8 B.R. 233, 234 (Bankr. N.D. Ohio 1981).

The Eighth Circuit Court of Appeals has declined to consider whether funds held by a Chapter 13 trustee under a confirmed plan constitute property of the estate. Laughlin v. IRS, 912 F.2d 197, 198 n.4 (8th Cir. 1990), cert. denied, 111 S.Ct. 1073 (1991); id. at 200 (J. Magill, dissenting); see also Price, 130 B.R. at 269, n.9. In Laughlin the Chapter 13 trustee filed a motion to enforce the automatic stay against the IRS, which had levied upon trustee funds payable to a debtor's attorney from Chapter 13 estates. The Court held the IRS levy did not violate the automatic stay because the levy did not interfere with the purposes of the stay. Judge Magill, dissenting, criticized the majority for failing to address the issue of whether the Chapter 13 estate continues to exist after confirmation. Laughlin, 912 F.2d at 200. Judge Magill would conclude that it does and that the IRS violated the automatic stay when it levied on funds, which were property of the estate.

Judge Magill thoroughly analyzed the issue of existence of the Chapter 13 estate postconfirmation and based his conclusion on Resendez v. Lindquist, 691 F.2d 397, 398-99 (8th Cir. 1982), which held that undistributed funds in the possession of a Chapter 13 trustee postconfirmation are property of the Chapter 13 estate. 912 F.2d at 201. He also

relied on the reasoning of Root, supra, and noted that §§ 345, 347(a), 349(b)(3), 704(9) (through § 1302 (b)(1)), and 1306(a) assume the continuing existence of the Chapter 13 bankruptcy estate postconfirmation.

This Court holds that the Chapter 13 bankruptcy estate continues to exist after confirmation of a plan; therefore, the Bank's argument, which is based on the premise that it does not, must fail. The Bank does not argue that the costs and expenses the Trustee proposes to classify as § 503(b) priorities were not necessary, actual costs and expenses of preserving the estate. In the absence of such an argument, the Court assumes the costs and expenses were incurred in preservation of the estate. Therefore, the Trustee's objections to claims and allowance of administrative priority claims pursuant to § 503(b) should be approved.

Finally, while it is understandable that a creditor would be unhappy about preferential payments being avoided then redistributed in large part back to those same creditors, it is neither illegal nor improper for a debtor to make a preferential transfer or for a creditor to exact one. L. LoPucki, Strategies for Creditors in Bankruptcy Proceedings, § 2.4, at 54 (2nd ed. 1991). Preferential transfers can be avoided so funds can be brought back into the bankruptcy estate to be distributed as provided for by the Code. Once the funds are back in the hands of the trustee, the issue is

the classification of claims for priority under the Code, not whether the funds had been preferential paid out by the Debtor to preferred or more aggressive creditors.

**ORDER**

IT IS ACCORDINGLY ORDERED that the Trustee's recommendations on claims as set forth in the Objections to Proofs of Claim, and Allowance of Claims are approved.

Dated this 2nd day of June, 1992.

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RUSSELL J. HILL  
U.S. Bankruptcy Judge