



Chapter 7 on July 21, 1992. The original schedules did not include reference to any contingent or unliquidated claim, nor did the statement of financial affairs indicate that the Debtor was involved in pending litigation.

2. Subsequently, the Trustee learned that the Debtor was involved as a plaintiff in a lawsuit pending in the Iowa District Court in Mahaska County. (Case No. CL 72-001-0991)

3. On September 25, 1991, Ronald Witt filed a petition in equity against the Mahaska County Board of Supervisors, the supervisors individually, and Mahaska County (hereinafter "Mahaska County Defendants") alleging wrongful termination of employment. In that action, Debtor seeks money damages and reinstatement to his former position as deputy sheriff.

4. The Trustee investigated the circumstances of the litigation and made a determination to sell the cause of action. The Mahaska County Defendants offered the Trustee \$5,000 to purchase the lawsuit from the bankruptcy estate. Thereafter, DaVerne Witt, Debtor's father, made a counter-offer for the purchase of the lawsuit. The Trustee now moves for permission to sell the estate property pursuant to 11 U.S.C. § 363.

6. The Mahaska County Defendants objects to the Trustee's motion, requesting further offers be allowed by sealed bid on the condition that all legal and equitable claims be conveyed.

7. Debtor also objects to the Trustee's motion arguing that the value of the suit is greatly in excess of the offers and asking that the Trustee be required to pursue the litigation. Alternatively, Debtor requests that the claim for reinstatement be severed from the claim for money damages for purposes of sale and he be allowed to pursue the claim for reinstatement.

### DISCUSSION

11 U.S.C. § 541(a) provides in relevant part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

The United States Supreme Court has held that § 541(a) is to be read broadly in determining what constitutes property of the estate. U.S. v. Whiting Pools, Inc., 462 U.S. 198, 204, 103 S.Ct. 2309, 2013, 76 L.Ed.2d 515, 519 (1983). Property of the estate includes causes of action which have accrued to the Debtor at the commencement of the bankruptcy proceeding. In re Ozark Restaurant Equip. Co., Inc., 816 F.2d 1222, 1225 (8th Cir. 1987). Such unresolved actions pass to the Trustee who then has the responsibility to assert them when necessary on behalf of the estate. Id. Section 541(a)(1) clearly states

that property of the estate reaches all equitable interests of the debtor. No exception is made for claims such as Debtor's action for reinstatement. Therefore, the Court finds that the entire cause of action is, clearly, property of the estate.

The Debtor requests that this Court allow him to pursue the action or, alternatively, that the claim for job reinstatement be severed from the claim for money damages for purposes of sale and he be allowed to proceed with that portion. A Debtor only regains standing to pursue the cause of action if the Trustee abandons the property. Pursuant to 11 U.S.C. § 554(b), a court may order the Trustee to abandon property of the estate that is "burdensome to the estate or that is of inconsequential value and benefit to the estate". Ready buyers for the asset have been identified. The property only retains this value if the entire cause of action, including the claim for reinstatement, is sold. The last bid is not merely a nominal sum, in view of the circumstances of this particular case, and would benefit the bankruptcy estate. Therefore, the Court finds that the entire asset is not burdensome or of inconsequential value or benefit to the estate.

Debtor also argues for severance of the claims based on equitable principles which he contends support his right to resume his chosen career. In this case, the possibility of actual reinstatement of the Debtor in his job is speculative

at best. Under Iowa law, it is the duty of the county sheriff to determine who will fill the positions of deputy and jailer. Iowa Code §§ 331.652(7) and 331.903(1). The current sheriff, Charles Van Toorn, has indicated that he will not rehire the Debtor due to his past conduct and questionable veracity. Therefore, it is unlikely that a court would order reinstatement. Accordingly, the Court will not order abandonment of this cause of action, nor any portion thereof.

The Trustee has determined that the estate will receive the greatest benefit from the sale of the litigation pursuant to § 363(b). The Debtor asks that the Trustee's motion for sale be denied and the Trustee required to pursue the action. The Eighth Circuit has found that a Trustee's decision to settle a lawsuit is subject to the four following conditions:

a) The probability of success in the litigation; b) the difficulties, if any, to be encountered in the matter of collection; c) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re: Flight Transp. Corp. Sec. Litig., 730 F.2d 1128, 1135 (8th Cir.1984) (citations omitted). This test is applicable to the similar circumstances where a Trustee decides to sell a cause of action. In this case, the Mahaska Defendants have stated a viable defense to Debtor's claims of wrongful termination. The litigation costs and delay involved in the pending litigation would greatly burden the estate and outweigh the possibility of success. Additionally, the

proceeds from the sale will significantly benefit the estate. Accordingly, the Court finds that the Trustee's decision to sell this asset is in the best interests of the estate and is proper under these circumstances.

The Trustee has determined that a sale by sealed bid process will provide maximum benefit to the estate. The Court finds no reason why this judgment call should be disregarded. The Trustee is, therefore, authorized to proceed with a sale by sealed bid after proper notice to all creditors.

**ORDER**

IT IS THEREFORE ORDERED that the Trustee's Motion to Sell Estate Property is granted.

IT IS FURTHER ORDERED that the Trustee shall proceed with a sale by sealed bid process after proper notice to all creditors.

Dated this 29th day of September, 1993.

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RUSSELL J. HILL  
U.S. Bankruptcy Judge