

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

EVELYN VANDENBURG BROWN,

Debtor.

Case No. 85-849-C

Chapter 7

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ORDER ON MOTION TO RECONSIDER

On March 16, 1988 Ag Hail Insurance Company (Ag Hail) filed a motion to reconsider this court's order of March 10, 1988 which overruled Ag Hail's objection to the trustee's final report. A stipulation of facts was filed by the parties on April 5, 1988. A brief in support of the motion to reconsider was also filed by Ag Hail on April 5, 1988.

Factual Background

On April 11, 1985 Evelyn Vandenburg Brown applied for and was issued crop insurance on cropland in Wayne and Appanoose Counties. The terms of the insurance contract provided that premiums were due and insurance coverage attached upon the planting of the insured crop. On April 23, 1985 Evelyn Brown filed a petition for relief under Chapter 11 of the Bankruptcy Code. ¹ Crops were planted on the subject cropland during the month of May 1985. Thereafter, a payment was made under the terms of the policy for

¹ The case was converted to a Chapter 7 on August 29, 1985.

damage to crops suffered during the reorganization period.

On January 7, 1986 Agricultural Mutual Insurance Company filed unsecured proofs of claim in the amounts of \$305.00 and \$470.00 based on the debtor's failure to pay the premium for issued crop insurance. Amended proofs of claim were filed on April 7, 1986 by Ag Hail asserting priority claims in the above amounts for costs and expenses of preserving the estate pursuant to 11 U.S.C. section 503(b)(1)(A). The trustee's final report, account and petition for allowance, distribution and discharge proposed to allow the unsecured claims of Agricultural Mutual Insurance Company but to disallow the priority claims of Ag Hail "as they are based upon a contract to purchase crop insurance which was entered into before the debtor filed bankruptcy."

Ag Hail filed an objection to the trustee's final report on January 14, 1988. Ag Hail asserts that services were rendered after the commencement of the case since insurance coverage attached postpetition upon the planting of crops and a loss claim was paid to the estate for the 1985 crop. Ag Hail's objection came on for hearing before this court in Des Moines, Iowa on March 10, 1988. This court overruled the creditor's objection but gave the creditor 10 days to file a motion to reconsider.

Analysis

11 U.S.C. section 507 gives first priority to "administrative expenses allowed under section 503(b)". Section

503(b)(1)(A) defines administrative expenses as including "the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case." The policy underlying section 503(b) has been stated as follows:

Congress granted priority to administrative expenses in order to facilitate the efforts of the trustee or debtor in possession to rehabilitate the business for the benefit of all the estate's creditors. Congress reasoned that unless the debts incurred by the debtor in possession could be given priority over the debts which forced the estate into bankruptcy in the first place, persons would not do business with the debtor in possession, which would inhibit rehabilitation of the business and thus harm the creditors.
(citations ommitted)

Trustee of Amalgamated Ins. Fund v. McFarlin's, 789 F.2d 98, 101 (2nd Cir. 1986)⁷ See also, In re Mammoth Mart, Inc., 536 F.2d 950, 953 (1st Cir. 1976); Matter of Jartran, Inc., 732 F.2d 584, 586 (7th Cir. 1984). However, since priority status allows one claimant to be preferred over others it should not be afforded unless it is founded upon a clear statutory purpose. Matter of Jartran, Inc., 732 F.2d at 586. A two part test has been established for determining whether a debt should be afforded administrative priority. First, the debt must arise from a transaction between the creditor and the debtor-in-possession as opposed to the preceding entity and, second, the debt must have directly and substantially benefitted the estate. In re Mammoth Mart, Inc., 732 F.2d at 954.

Ag Hail asserts that its claim meets these criteria because the actual transaction of providing insurance coverage arose with the debtor-in-possession and the payment on the debtor's claim for loss benefitted the estate. Ag Hail contends that although the application for insurance was made prior to the commencement of the case, no irrevocable commitment existed until the time of planting which was postpetition. Moreover, Ag Hail argues that inducement to perform came from the debtor-in-possession upon the debtor's notification of planting.

The court is not persuaded to modify its original ruling. A debt is not entitled to priority simply because the right to payment arises after the debtor-in-possession has begun managing the estate. Trustees of Amalgamated Ins. Fund v. McFarlins, 789 F.2d at 101. Moreover, if the original inducement for performance came from a prepetition debtor, then consideration was given to that entity rather than to the debtor-in-possession. In re White Motor Corp., 831 F.2d 106, 110 (6th Cir. 1987). In this case the application for crop insurance was made and accepted by the creditor and Evelyn Vandenburg Brown. Acceptance of the application obligated the creditor to provide crop insurance upon the planting of crops regardless of the status of the insured. To grant priority status to this creditor would not be in keeping with the statutory purpose of encouraging creditors to do business with a debtor-in-possession. Ag

Hail did not agree to insure crops planted by the debtor-in-possession and cannot use the facts that planting was done and payments were made after the petition in bankruptcy was filed to assert a claim for priority status.

WHEREFORE based on the foregoing analysis, the court hereby finds that the claims of Ag Hail Insurance Company are not allowable as a priority claim.

THEREFORE, the motion to reconsider this court's order overruling Ag Hail Insurance Company's objection to the trustee's final report is denied.

Signed and dated this 24th day of May, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE