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In re Lister, 846 F.2d 55

Appellant's collection efforts on a judgment obtained against the Listers were stayed when the Listers filed a chapter 11 bankruptcy petition. Subsequent thereto, appellant gave to the bankruptcy trustee the information he had gathered on the Listers' assets and developed a reorganization plan regarding the Listers, which was never approved. The district court affirmed the denial of appellant's application for administrative expenses.

The Tenth Circuit stated that under 11 U.S.C. § 503 (b)(3)(D)(1982), a creditor may be reimbursed for administrative expenses if they were incurred by the creditor in making a substantial contribution in a Chapter 9 or 11 case. A "substantial contribution" is made when the applicant's efforts result in an actual and demonstrable benefit to the debtor's estate and the creditors. Pre-petition expenses are compensable only if they were incurred in efforts that were intended to benefit, and that did directly benefit, the bankruptcy estate.

The court held that appellant's pre-petition expenses are not compensable because they were incurred solely for the purpose of collecting his judgment against the Listers. Moreover, appellant's post-petition efforts only minimally benefitted the estate and did not amount to a "substantial contribution" justifying compensation of post-petition expenses.

In re Ruti-Sweetwater Inc., 836 F.2d 1263

Ruti-Sweetwater and seven other related entities (debtors) were engaged in the business of vacation time-sharing. The debtors filed for relief under chapter 11 of the Bankruptcy Code and prepared a plan of reorganization. Appellants are judgment lien creditors of the debtors. Their lien attached to a parcel of real estate known as the "Ferrell Spencer" property. The appellants did not file written objections to the plan, nor did they exercise their right to vote on the plan. The bankruptcy court held a confirmation hearing but the appellants did not appear. At the hearing the court approved a sale of the Ferrell Spencer property free and clear of the appellants' lien. At a hearing on the distribution of the proceeds of the Ferrell Spencer sale, the appellants appeared and challenged the plan. The bankruptcy court ruled that appellants were bound by the plan, and on appeal the district court affirmed.

The Tenth Circuit affirmed the district court's decision that the appellants' inaction constituted acceptance of the plan. A creditor may not sit idly by and not participate in the formulation and adoption of such a plan and, thereafter challenge the plan for the first time. Such an approach would relieve creditors from taking an active role in protecting their claims under the Bankruptcy Code.

In re Herd, 840 F.2d 757

Appellant Herd filed for reorganization under chapter 11 of the Bankruptcy Code. The notice to the creditors listed an erroneous date as the last day for filing a proof of claim. Citing Bankruptcy Rule 3003 (c), the Tenth Circuit affirmed the district judge's order, stating that a creditor is not responsible for interpreting a notice, and therefore more than inquiry notice of the bar date is required. The court asserted that formal notice must be given to creditors that reasonably conveys the required information. In this case, the erroneous date of March 9, 1983, was listed, instead of the correct date of March 9, 1984. Thus, the court held that the proof of claim filed by creditor-appellee Rowe International, Inc. was timely because it was filed by the only alternative bar date (August 31, 1984) in the notice that had not expired before the notice was even issued.

Bartmann v. Maverick Tube Co., 853 F.2d 1540

Debtor-appellant appeals the district court's decision to grant an involuntary petition in bankruptcy on the grounds that there was not three bona-fide creditors filing the petition as is required by 11 U.S.C. 303(b)(1). Affirmed in part, reversed in part, and remanded.

The Tenth Circuit interpreted a guaranty signed by Bartmann as being unambiguous, and because of this, found the guaranty was a bona-fide claim. Regarding an American Express debt which Bartmann paid after the filing of the petition but before the bankruptcy hearing, the Tenth Circuit held the post-petition payment of a debt does not alter a creditor's status as a petitioning creditor.

The case was remanded to bankruptcy court for the resolution of disputed factual issues.

In re Shah, 859 F.2d 1463

Debtor appealed the district court's failure to consider his motion for rehearing. The district court had issued an order on June 30th affirming a previous bankruptcy court ruling declaring certain debts exempt from discharge. Debtor's counsel did not appear but the district court indicated that it would review counsel's reasons for its absence. The following day, debtor's counsel filed a motion for rehearing. No action was taken by the district court regarding the rehearing motion. Debtor then filed a notice of appeal 29 days later.

Finding that the district court should consider the debtor's motion, the Tenth Circuit held that the July motion suspended the finality of the June 30th order and tolled the running of the appeal period prescribed by federal law. Relying on prior Seventh Circuit case law, the court concluded that a petition for rehearing may be treated as a tolling motion under federal law. The district court's action on a rehearing motion may eliminate the need for an appeal or clarify the basis of the district court's

action, therefore, the district court was required to reconsider the matter. Reversed and remanded.

In re Amarex, 853 F.2d 1526

Debtor Amarex, Inc. hired Appellee Isaac, compensating him with a salary and a $10,000 bonus payable at the year end. Amarex declared bankruptcy and never paid Isaac the bonus. The Tenth Circuit reversed the district court and held that when a bonus is earned day-by-day rather than on completion of the year, only that portion related to services performed post-petition is an administrative expense.

In re Oklahoma Refining Co., 838 F.2d 1133

Appellant Oklahoma Refining filed a voluntary petition for Chapter 11 bankruptcy. The district court approved a plan whereby debtor would be able to use a lender's cash collateral for funds and items in an approved budget during the shutdown of its plants. The lenders, believing appellant was involved in certain questionable transactions, moved for and were granted the appointment of a trustee by the district court. Affirmed.

The court of appeals held that a history of transactions with affiliated companies is sufficient cause for the appointment of a trustee where the best interests of the creditors require it.

In re Billings, 838 F.2d 405

Appellant debtors purchased furniture on credit from a store, and gave a purchase money security interest in the furniture as a part of the transaction. The store then assigned the obligation to appellee creditor. At the request of the appellee creditor, the parties cancelled the old note and substituted a new note and security agreement. The back of this agreement stated that appellee creditor would retain the purchase money security interest. Appellant debtors made one payment under the new agreement and then filed for bankruptcy. Appellants claimed that refinancing automatically extinguishes a purchase money security interest. The bankruptcy court rejected this argument, and the district court affirmed. Affirmed.

The court of appeals held that the appellant debtors did not show that the parties had intended the new note to extinguish the original debt and purchase money security interest, and that lacking this showing, the bankruptcy and district courts correctly decided the issue.

In Re Schneider v. Nazar, 864 F.2d 683

Appellant participated in a crop reduction and diversion program administered through a governmental agency. He filed a request for an eligibility determination to participate in the payment-in-kind (PIK) entitlement program before a bankruptcy petition was filed. The bankruptcy court characterized the PIK entitlement as an inseparable part of

rights established by the debtor in his pre-petition farming operations and concluded that the entitlement was property of the estate. The district court agreed. Reversed.

Agricultural entitlement payments which result from the actual disposition of a planted crop are proceeds of that crop while entitlement payments based on an agreement not to plant crops arise from accounts or general intangibles. At the time the bankruptcy petition was filed, the contract had not been signed by the appropriate government representative, therefore, the Tenth Circuit held the agreement was not part of the debtor's estate. This holding is narrowly limited to its facts because there was no suggestion that the sequence of events was planned to defeat a trustee's claim. In other instances payments-in-kind may be part of the bankruptcy estate.