

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT

BANKRUPTCY JUDGE

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August 30, 2004

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Chapter 12 Trustee
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Country Air Service, Inc.
Ms. Julie Bruns
10607 397th Avenue
Hecla, South Dakota 57446

Subject: *In re Duane D. Rogers,*
Chapter 12; Bankr. No. 99-10071

Dear Mr. Pokela, Trustee Lovald, and Ms. Bruns:

The matter before the Court is the Motion for Approval of Secured Debt filed by Debtor on August 6, 2004, and the objection thereto filed by Country Air Service, Inc., on August 19, 2004. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and subsequent order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014(c). As set forth below, Debtor's Motion will be granted.

Summary. Debtor Duane D. Rogers is presently operating under a Chapter 12 plan. Debtor did not timely file his final report and account so the case trustee, John S. Lovald, moved to dismiss the case. Debtor responded to the motion stating he had made all plan payments except that he needed to pay the balance due unsecured creditors. He stated he expected to receive the necessary funds soon from a probate estate, which was slow in being administered. The hearing on the motion to dismiss was continued several times during 2003 to allow the probate to be finalized.

Eventually, Debtor proposed to pay the balance due with other funds. At a continued hearing on July 20, 2004, Debtor's

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counsel reported that Debtor was going to refinance some land to obtain the necessary funds to repay the balance owed the unsecured creditors. Debtor filed a motion for court approval to incur the secured debt on August 6, 2004. Country Air Service, Inc., filed an objection on August 19, 2004. It stated it was opposed to Debtor doing anything but paying its claim of \$2,227.38 and that it did not want the credit motion approved unless Debtor intended to pay them.

Discussion. Debtor's purpose in borrowing the funds is to finish paying the unsecured creditors' claims under his confirmed plan. In light of that purpose, Country Air Service does not have a sustainable objection. Accordingly, Debtor's motion to incur secured debt will be approved.

However, that does not mean that Country Air Service will get its particular unsecured claim paid by Debtor through his Chapter 12 plan. Country Air Service was served with notice of the commencement of Debtor's Chapter 12 case on March 17, 1999. That notice advised Country Air Service that the deadline to file proof of its claim was July 19, 1999. Country Air Service did not timely file a proof of claim. Further, Debtor's proposed repayment plan, which was eventually confirmed, provided that the class of unsecured creditors would include all claims that had been filed and allowed. Country Air Service received notice of the proposed plan and the deadline to file an objection to that plan but it did not do so. Since Country Air Service did not file a proof of claim, it is not in the class of unsecured creditors under Debtor's plan, and it will not be paid under Debtor's plan.

Country Air Service's claim will survive the bankruptcy case since the claim will not be discharged under 11 U.S.C. § 1328(a). Only those debts that are "provided for by the plan" are discharged under § 1328(a). Country Air Service's claim was not provided for by the plan. Therefore, after the bankruptcy case is closed, Country Air Service may collect on its claim through the usual state court procedures.

Counsel for Debtor shall submit an appropriate order granting Debtor's Motion for Approval of Secured Debt.

Sincerely,
/s/ Irvin N. Hoyt
Irvin N. Hoyt
Bankruptcy Judge

INH:sh
CC: case file (docket original; serve parties in interest)