

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

TELEPHONE (605) 224-0560  
FAX (605) 224-9020

August 10, 1999

Trustee William J. Pfeiffer  
Post Office Drawer 1585  
Aberdeen, South Dakota 57401

Terry J. Sutton, Esq.,  
Counsel for Debtor  
Post Office Box 1053  
Watertown, South Dakota 57201-6053

Ms. Sherry A. Junso  
Post Office Box 42  
Garden City, South Dakota 57236

Subject: *In re Rodney M. Foster,*  
Chapter 7; Bankr. No. 96-10025

Dear Trustee Pfeiffer, Mr. Sutton, and Ms. Junso:

The matter before the Court is Trustee William J. Pfeiffer's Amended Final Report and Account and the objections thereto filed by Sherry A. Junso and Debtor Rodney M. Foster. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision shall constitute the Court's findings and conclusions and the disposition herein shall be reflected in Trustee Pfeiffer's Second Amended Final Report.

Most of the objections were resolved at the July 20, 1999 hearing. The remaining issue is whether Sherry Junso has an allowable claim for land lease payments or whether her claim may only be treated as a late-filed unsecured claim for which no funds remain to pay it. As set forth below, the Court concludes her claim must be treated as a tardily-filed, unsecured claim that the trustee cannot pay.

SUMMARY OF MATERIAL FACTS. Rodney M. Foster (Debtor) filed a Chapter 12 petition on February 12, 1996. John S. Lovald was appointed the Chapter 12 trustee. Debtor's schedules did not include any debt to Sherry Junso.

Debtor filed a plan on May, 13, 1996. The plan did not list Sherry Junso as a pre-petition creditor or as an administrative claimant. Debtor filed a modified plan on June 27, 1996. It too did not list Sherry Junso as a pre-petition creditor or as an administrative claimant.

228.

Re: Rodney M. Foster  
August 10, 1999  
Page 2

On June 27, 1996, a creditor-bank sought conversion of Debtor's case to Chapter 7 for Debtor's alleged conversion of collateral. Following a hearing on August 6, 1996, the case was converted to Chapter 7 on August 15, 1996. William J. Pfeiffer was appointed the Chapter 7 trustee. Debtor appealed the conversion order but later dismissed it.

Trustee Lovald filed his Chapter 12 final report and account on September 19, 1996. He disclosed that he had not received or paid out any funds. He did not disclose any existing administrative claims. No responses to his report were filed and he was discharged as a Chapter 12 trustee.

On June 12, 1997, Debtor filed amendments to his schedule of unsecured creditors. The two additional creditors did not include Sherry Junso. No other amendments to Debtor's schedules to reflect unpaid post-petition, pre-conversion debts were filed at this time. See F.R.Bankr.P. 1019.

On October 14, 1997, Trustee Pfeiffer advised the clerk that he had found assets to distribute. The clerk gave notice to all creditors and other parties in interest that the last date to file a proof of claim was January 12, 1998. Sherry Junso had not been included by Debtor on the case mailing list and she had not filed a notice of appearance. Therefore, she was not served with the notice of the proof of claim deadline.

Debtor filed a hand-written letter on September 14, 1998 but the Court was unable to read it. On September 15, 1998, Sheri<sup>1</sup> Junso filed a letter with several concerns about the Trustee's sale of estate assets and the general administration of the bankruptcy estate. Debtor faxed to the Court a more legible copy of his letter (it was handwritten by Sheri Junso) and it was docketed on September 24, 1998. Debtor too expressed concerns about the administration of the case.

Trustee Pfeiffer filed a final report and proposed distribution on February 8, 1999. Debtor and the Samp Law Firm both objected. A hearing was held March 9, 1999. The Court directed Trustee Pfeiffer to amend his report and proposed distribution in several ways. The Court also directed the Trustee to further investigate the Internal Revenue Service's claim.

On March 5, 1999, Debtor again amended his schedule of

---

<sup>1</sup> Ms. Junso has filed pleadings or letters signed both "Sherry" and "Sheri."

Re: Rodney M. Foster  
August 10, 1999  
Page 3

unsecured claim holders to add four creditors. Sheri Junso was not listed.

Sherry A. Junso filed a proof of claim on April 20, 1999 for \$12,068.00 for cash rent paid in 1995. She stated the debt was incurred in 1995. No supporting documents were filed with the proof.

On May 24, 1999, Trustee Pfeiffer filed his amended final report and proposed distribution. The distribution included several administrative expenses and partial (20%) payment of unsecured claims. Sheri Junso's claim for 1995 lease payments was not included as either an administrative expense or an unsecured claim. On June 11, 1999, Debtor objected to the Trustee's amended report. He raised concerns regarding: payment of his federal income taxes; some possible duplicate or erroneous claims; and the proposed payment of one law firm in full (the Chapter 12 counsel) but the other (the Chapter 7 counsel) in part. Sheri Junso also objected because her claim had not been included in the Trustee's proposed distribution. Trustee Pfeiffer filed a response to the objections on June 23, 1999.

A hearing on the Trustee's amended report and objections was held July 20, 1999. All objections but Sheri Junso's were resolved on the record. The Court took Sheri Junso's objection under advisement to see whether her claim for 1995 lease payments had been previously recognized in the case and should be paid as an administrative claim.

DISCUSSION. Foremost, the debt to Junso was incurred in 1995, before Debtor filed his Chapter 12 bankruptcy petition. Therefore, Junso's claim is a pre-petition, unsecured claim. It was not incurred during the course of the Chapter 12 or the Chapter 7 and thus was not an administrative expenses. See 11 U.S.C. § 503(b).

Second, Junso did not file a proof of claim until April 20, 1999, which was well after the January 12, 1998 deadline. Under 11 U.S.C. § 726(a), Trustee Pfeiffer must pay timely filed unsecured claims in full before paying tardily filed unsecured claims. Since estate assets are not sufficient to pay the timely filed claims in full, Trustee Pfeiffer cannot pay Junso anything on her late-filed claim.

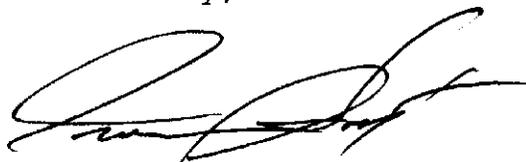
Finally, the Court notes that it cannot find anywhere that Junso's claim for 1995 lease payments was formally recognized earlier in this case. Debtor did not disclose any such debt to her in either of his proposed Chapter 12 plans or in any amendments to his schedules after conversion of his case to Chapter 7. Chapter

Re: Rodney M. Foster  
August 10, 1999  
Page 4

12 Trustee Lovald did not recognize any claim by Junso in his final report and account. Chapter 7 Trustee Pfeiffer did not recognize any claim by her in either of his proposed distributions. Equity dictates that her claim cannot now be recognized when to do so would be contrary to § 726(a).

Trustee Pfeiffer shall file a second amended final report and proposed distribution that conforms to this decision and the oral findings and conclusions entered on the record at the hearing on July 20, 1999.

Sincerely,



Irvin M. Hoyt  
Bankruptcy Judge

INH:sh

CC: case file (docket original; copies to parties in interest)



I hereby certify that a copy of this document  
was mailed, hand delivered, or faxed this date  
to the parties on the attached service list.

**AUG 10 1999**

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court, District of South Dakota

By 

**NOTICE OF ENTRY**  
Under F.R. Bankr.P. 9022(a)  
Entered

**AUG 10 1999**

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court  
District of South Dakota

Case: 96-10025 Form id: 122 Ntc Date: 08/10/1999 Off: 3 Page : 1  
Total notices mailed: 13

Debtor Foster, Rodney M. RR 1, Box 55, Garden City, SD 57236  
Aty -Sutton, Terry J. PO Box 1053, Watertown, SD 57201-6053  
Trustee Pfeiffer, William J. PO Drawer 1585, Aberdeen, SD 57401  
Aty -Cremer, James M. PO Box 970, Aberdeen, SD 57402-0970  
Aty -Ewinger, Curt R. PO Box 96, Aberdeen, SD 57402-0096  
Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321  
Aty -Gerry, Clair R. PO Box 966, Sioux Falls, SD 57101-9965  
Aty Hinderaker, Paul I. PO Box 966, Watertown, SD 57201  
Creditor Junso, Sheri RR 1, Box 55, Garden City, SD 57236  
Aty -Masselink, Chan B. PO Box 495, Sioux Falls, SD 57101  
Aty -Ronayne, Robert M. PO Box 759, Aberdeen, SD 57402-0759  
Aty -Sauck, William K., Jr. PO Box 1030, Aberdeen, SD 57401-1030  
Aty Schremp DuPris, Cheryl Assistant U.S. Attorney, 225 South Pierre Street #337, Pierre, SD 57501



**FACSIMILE  
TRANSMITTAL  
SHEET**

---

**To:** Terry J. Sutton  
**Company:** LAW OFFICE  
**Fax Number:** 8-605-882-3611  
**Phone Number:** 8-605-882-3220

**From:** Dorothy Naber  
**Fax Number:** 605-224-6808  
**Phone Number:** 605-224-6013

**Time Sent:** Tuesday, Aug 10, 1999 01:48PM  
**Pages:** 5  
**Description:**

---

**CONFIRMATION INFORMATION**  
**Sent at:** 1:52PM, 8/10/1999  
**Number of pages:** 5  
**Resolution:** FINE  
**Fax number:** 8-605-882-3611  
**Destination name:** LAW OFFICE  
**Sender name:** DNABE  
**STATUS:** SENT SUCCESSFULLY



**FACSIMILE  
TRANSMITTAL  
SHEET**

---

To: James Cremer  
Company: BANTZ, GOSCH, CREMER - A  
Fax Number: 8-605-225-2497  
Phone Number: 8-605-225-2232

From: Dorothy Naber  
Fax Number: 605-224-6808  
Phone Number: 605-224-6013

Time Sent: Tuesday, Aug 10, 1999 01:48PM  
Pages: 5  
Description:

---

CONFIRMATION INFORMATION  
Sent at: 1:58PM, 8/10/1999  
Number of pages: 5  
Resolution: FINE  
Fax number: 8-605-225-2497  
Destination name: BANTZ, GOSCH, CREMER - A  
Sender name: DNABE  
STATUS: SENT SUCCESSFULLY



**FACSIMILE  
TRANSMITTAL  
SHEET**

---

To: **Clair Gerry**  
Company: **STUART & GERRY LAW FIRM**  
Fax Number: **9-336-6842**  
Phone Number: **9-336-6400**

From: **Dorothy Nabe**  
Fax Number: **605-224-6808**  
Phone Number: **605-224-6013**

Time Sent: **Tuesday, Aug 10, 1999 01:48PM**  
Pages: **5**  
Description:

---

**CONFIRMATION INFORMATION**  
Sent at: 2:04PM, 8/10/1999  
Number of pages: 5  
Resolution: FINE  
Fax number: 9-336-6842  
Destination name: STUART & GERRY LAW FIRM  
Sender name: DNABE  
STATUS: SENT SUCCESSFULLY



**FACSIMILE  
TRANSMITTAL  
SHEET**

---

To: **Curt Ewinger**  
Company: **RICE & EWINGER LAW FIRM**  
Fax Number: **8-605-225-1038**  
Phone Number: **8-605-225-9394**

From: **Dorothy Nabek**  
Fax Number: **605-224-9808**  
Phone Number: **605-224-6013**

Time Sent: **Tuesday, Aug 10, 1999 01:45PM**  
Pages: **5**  
Description:

---

**CONFIRMATION INFORMATION**  
Sent at: 2:10PM, 8/10/1999  
Number of pages: 5  
Resolution: FINE  
Fax number: 8-605-225-1038  
Destination name: RICE & EWINGER LAW FIRM  
Sender name: DNABE  
STATUS: SENT SUCCESSFULLY



**FACSIMILE  
TRANSMITTAL  
SHEET**

---

To: Chan B. Masselink  
Company: SAMP LAW FIRM  
Fax Number: 9-334-6630  
Phone Number: 9-339-1020

From: Dorothy Naber  
Fax Number: 605-224-9808  
Phone Number: 605-224-6013

Time Sent: Tuesday, Aug 10, 1999 01:46PM  
Pages: 5  
Description:

---

**CONFIRMATION INFORMATION**  
Sent at: 2:13PM, 8/10/1999  
Number of pages: 5  
Resolution: FINE  
Fax number: 9-334-6630  
Destination name: SAMP LAW FIRM  
Sender name: DNABE  
STATUS: SENT SUCCESSFULLY



**FACSIMILE  
TRANSMITTAL  
SHEET**

---

To: **Robert Ronayne**  
Company: **RONAYNE & WEIN LAW FIRM**  
Fax Number: **8-605-225-9558**  
Phone Number: **8-605-225-0100**

From: **Dorothy Nabaz**  
Fax Number: **605-224-6808**  
Phone Number: **605-224-6013**

Time Sent: **Tuesday, Aug 10, 1999 01:48PM**  
Pages: **5**  
Description:

---

**CONFIRMATION INFORMATION**  
Sent at: 2:19PM, 8/10/1999  
Number of pages: 5  
Resolution: FINE  
Fax number: 8-605-225-9558  
Destination name: RONAYNE & WEIN LAW FIRM  
Sender name: DNABE  
STATUS: SENT SUCCESSFULLY



**FACSIMILE  
TRANSMITTAL  
SHEET**

---

To: William Sauck  
Company: RICHARDSON, GROSECLOSE  
Fax Number: 8-605-225-2743  
Phone Number: 8-605-225-2743

From: Dorothy Nabele  
Fax Number: 605-224-9808  
Phone Number: 605-224-6013

Time Sent: Tuesday, Aug 10, 1999 01:48PM  
Pages: 5  
Description:

---

**CONFIRMATION INFORMATION**  
Sent at: 2:24PM, 8/10/1999  
Number of pages: 5  
Resolution: FINE  
Fax number: 8-605-225-2743  
Destination name: RICHARDSON, GROSECLOSE  
Sender name: DNABE  
STATUS: SENT SUCCESSFULLY