

provides that only spouses may file a joint petition. Centrol's request for costs, including attorneys' fees, was reserved.

Centrol's Motion specifically requested that the Court award Centrol "its costs and disbursements herein, including reasonable attorneys' fees in an amount not less than \$3,000, together with all such other and further relief as the Court shall deem just and equitable." Centrol has not filed an itemization of the services rendered or expenses incurred in connection with its Motion. In its brief, Centrol argued sanctions against Debtors, their attorney, or both are warranted under Bankr. R. 9011.

II.

Bankruptcy Rule 7054 states the Court may allow costs to the prevailing party in an adversary proceeding. Pursuant to Bankr. R. 9014, Bankr. R. 7054 is also applicable to contested matters, including motions to dismiss and motions for relief from the automatic stay.

Section 1920 of Title 28 of the United States Code sets forth what may be taxed as costs by a "judge or clerk of any court of the United States[.]"

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920 (in pertinent part).¹ Attorneys' fees are generally **not** included as costs. Obin v. District No. 9 of the International Association of Machinists and Aerospace Workers, 651 F.2d 574, 580 (8th Cir. 1981).

Bankruptcy Rule 9011 allows the Court on motion or sua sponte to impose on a party or its attorney reasonable expenses incurred by the opposing party when the offending party files a pleading, petition, motion or other paper "that to the best of the attorney's or party's knowledge ... is [not] well-grounded in fact and is [not] warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law" or that is "interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost

¹ While a bankruptcy court is not a court of the United States, see 28 U.S.C. § 451, it is an adjunct of the district court which may tax costs under § 1920. Therefore, § 1920 is applicable in bankruptcy cases. See Collier on Bankruptcy, 2ed., ¶7054.07.

of litigation."

III.

The threshold question presented is whether Centrol has requested sanctions under Bankr. R. 9011 or costs under Bankr. R. 7054 or both. Centrol's brief clearly argues application of Bankr. R. 9011. Its Motion, however, is more generic and no statute or rule of procedure is referenced.

The Court of Appeals for the Eighth Circuit has clearly held that resolution of a request for attorneys' fees is separate from a judgment on the merits of an action or a determination of costs under Fed.R.Civ.P. 54. Obin, 651 F.2d at 580. The court also recognized the need for a hearing, with submission of additional evidence and argument, on a request for attorneys' fees that is separate from the hearing on the merits or costs. Id. at 581-82.

These procedural safeguards regarding attorney fee requests leads this Court to find that Centrol's Motion requested only costs under Bankr. R. 7054. Since a determination of attorneys' fees is a collateral, independent claim requiring a hearing separate from the one held July 9, 1990 and since Centrol is not precluded from filing a motion for attorneys' fees under Bankr. R. 9011, see Obin, 651 F.2d at 583-84, Centrol is not prejudiced by this finding.

The remaining question is what costs, if any, under Bankr. R. 7054 and 28 U.S.C. § 1920 should be awarded to Centrol as the prevailing party on its Motion. Costs to the prevailing party on motions to dismiss, motions for relief from the automatic stay, or similar contested matters have generally not been awarded as a matter of course in bankruptcy cases in this District. See Local Bankr. R. 402. The Court concludes that the circumstances presented here do not warrant departure from that procedure.

An order denying Centrol's request for costs shall be entered.

Dated this 25th day of October, 1990.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

IN RE:)
) CASE NO. 90-10073-INH
)
KEVIN JAMES MORROW and)
) CHAPTER 7
LAURA JEAN MORROW,)
)
d/b/a Agronomics,)
)
) ORDER DENYING
) REQUEST FOR COSTS
Debtors.)

Pursuant to the Memorandum of Decision entered this day,

IT IS HEREBY ORDERED that creditor Centrol, Inc., of South Dakota's request for costs as set forth in its Motion to Dismiss, or in the Alternative, for Relief from Stay is DENIED.

So ordered this _____ day of October, 1990.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)