

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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November 7, 2006

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Counsel for Debtors
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Sioux Falls, South Dakota 57101

Gordon D. Swanson,
Deputy Minnehaha County States Attorney
415 North Dakota Avenue
Sioux Falls, South Dakota 57104

Subject: *In re Ray and Joy Meinders,*
Chapter 13, Bankr. No. 00-40914

Dear Counsel:

The matter before the Court is the Motion for Turnover filed by Debtors and Minnehaha County's objection thereto. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052 and 9014(c). As set forth below, Minnehaha County will not be required to turn over any funds.

Summary. In this long-running Chapter 13 case, First Premier Bank filed on April 28, 2004 a motion to have the Court set aside a tax deed on certain real property the Minnehaha County Treasurer had issued post-petition. The county apparently had sold the property post-petition for non payment of taxes and then issued treasurer's deeds in early 2004. The Bank correctly claimed the tax deeds were voidable as transfers in violation of the bankruptcy's automatic stay. An order setting aside the tax deeds was entered June 3, 2004 following a hearing on the matter.

On April 11, 2006, Debtors filed a motion asking the Court to make Minnehaha County return to them \$600, a sum the county had charged Debtors for attorneys' fees related to the "undoing" of the tax deeds. The county objected, both parties filed briefs, and the matter was taken under advisement.

The county argued the whole problem surrounding the tax deeds

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arose because Debtors failed to schedule Minnehaha County as a creditor in their bankruptcy case. The county also said Debtors could have addressed the problem sooner because the purchaser of the tax certificates would have given Debtors notice of the expiration of their redemption right and of the intent to take a tax deed. Minnehaha County said Debtors waited until December 24, 2003 to advise the county of the bankruptcy. The county further stated the \$600 in fees represented the statutory allowance it collected from Debtors as allowed by S.D.C.L. § 10-25-9, which it then paid to the tax certificate holder as a reimbursement of her associated costs. The county said these statutory costs are allowed whenever there is a redemption, which is how the county treated Debtors' post-petition efforts to restore their ownership of the realty without any tax liens attached. Minnehaha County argued the payment of the \$600 in costs by Debtors only put the parties back in the position they were before the tax certificates were issued. The county also argued Debtors' two-year delay in seeking a refund of the \$600 should preclude their recovery by reason of laches.

Debtors stated the county had actual notice of the bankruptcy via a letter sent to the treasurer about the same time as the notice of commencement of case. Debtors further argued the county, by its own admission, had notice of the bankruptcy on December 24, 2003, when it received a letter from Debtors' attorney, yet still issued the tax deeds on February 27, 2004. In contravention of the county's laches argument, Debtors stated they thought they had paid Minnehaha County only the taxes due and did not understand until later that \$600 in costs had been collected from them. Finally, Debtors argued the tax certificate holder's itemization of her costs was insufficient.

Discussion. The record does not reflect any notice of the commencement of the case being given to Minnehaha County. While Debtors stated that Minnehaha County was sent a letter early in the case regarding the bankruptcy, there is no record of that. Accordingly, the record only shows, and the county acknowledges, it received notice of the bankruptcy on December 24, 2003.

That being said, it appears the parties' actions contributed to these costs being incurred. Debtors should have scheduled Minnehaha County as a creditor and thus ensured the county received a formal notice of the commencement of the case. Debtors also should have been more proactive in ensuring the tax deeds were not issued after their counsel's discussions with the state's

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attorney's office subsequent to the December 24, 2003 letter. On the other hand, Minnehaha County should not have violated the automatic stay based on any assumption it made that Debtors and the tax certificate holder had resolved the matter in the interim.

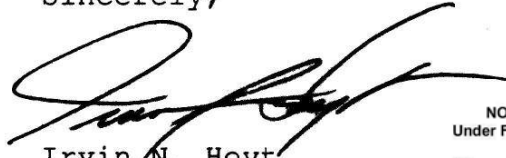
Under the Bankruptcy Code, these post-petition costs incurred by Debtors are essentially an administrative expense. Ideally, the county should have filed an application or motion seeking a court order authorizing Debtors to pay them pursuant to 11 U.S.C. § 503(b) and S.D.C.L. § 10-25-9. However, under the circumstances, Debtors' turnover motion and notice here will suffice procedurally to bring the matter before the Court.

For an expense to be allowed as an administrative expense under § 503(b), the cost incurred must have been reasonable and necessary, and it must have arisen from a transaction with the estate and benefitted the estate in some manner. *Robert M. Hallmark & Assocs. v. Athens/Alpha Gas Corp. (In re Athens/Alpha Gas Corp.)*, 332 B.R. 578, 580 (B.A.P. 8th Cir. 2005) (citing *Williams v. IMC Mortgage Co. (In re Williams)*, 246 B.R. 591, 594-95 (B.A.P. 8th Cir. 1999)).

The Court concludes the costs Debtors incurred under S.D.C.L. § 10-25-9 were necessary to return the parties to the status quo. In the absence of evidence to the contrary, the Court also finds the costs were reasonable. Further, the Court finds the costs benefitted the estate by allowing a return of the property to Debtors without any tax liens attached. Finally, the costs were sufficiently itemized within the purview of § 10-25-9. Accordingly, Minnehaha County's assessment of the costs under § 10-25-9 will be allowed to stand as an administrative expense, and the county need not return the \$600 to Debtors.

An appropriate order will be entered.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

On the above date, a copy of this document was mailed or faxed to the parties shown on the Notice of Electronic Filing as not having received electronic notice and Debtor(s), if Debtor(s) did not receive electronic notice.

Linda M. LaFortune
Acting Clerk, U.S. Bankruptcy Court
District of South Dakota

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered
on the date shown above.

Linda M. LaFortune
Acting Clerk, U.S. Bankruptcy Court
District of South Dakota

INH:sh

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