

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In re:	)	Bankr. No. 96-30016
	)	Chapter 12
NOVOTNY BROTHERS, INC.	)	
Tax I.D. No. 46-0324821	)	DECISION RE: MOTOR
	)	EQUIPMENT'S JOINDER IN
Debtor.	)	TRUSTEE'S MOTION TO DISMISS

The matter before the Court is the joinder in Trustee John S. Lovald's motion to dismiss the case filed by Motor Equipment of Winner, Inc. This Decision and accompanying Order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052 and 9014. As set forth below, the joinder will be dismissed without prejudice since Motor Equipment's pre-petition claim will not be discharged in this bankruptcy proceeding.

SUMMARY OF FACTS.

Novotny Brothers, Inc., ("Debtor") filed a Chapter 12 petition on March 27, 1996. In its schedules, Debtor did not include Motor Equipment of Winner, Inc. ("Motor Equipment") among its creditors. Motor Equipment also did not receive notice of the commencement of the case from the Clerk since it was not included on the mailing list of creditors provided by Debtor. When Debtor filed its amended proposed plan in September 1996, Motor Equipment was not served with the plan or the notice of the confirmation hearing. A plan was eventually confirmed on October 18, 1996. The Plan as Confirmed did not address any claim held by Motor Equipment. Motor Equipment filed a proof of an unsecured claim for \$6,572.88 on

January 26, 1998. Debtor has not moved to modify its confirmed plan to address Motor Equipment's claim.

On December 4, 2002, Trustee John S. Lovald filed a motion to dismiss the case because Debtor had not completed and filed its final report and account. Motor Equipment joined the Trustee's Motion. It sought dismissal of the case or, in the alternative, payment in the same manner under the plan that other unsecured creditors have been paid. Trustee Lovald subsequently advised the Court that Debtor is now completing its final report and account and that the case should soon be ready for the entry of Debtor's discharge.

DISCUSSION.

With only a few exceptions which are not applicable here, a discharge in a Chapter 12 case discharges only those debts that were "provided for by the plan." 11 U.S.C. § 1228(a). Since Debtor has not provided for Motor Equipment's pre-petition claim in its confirmed plan (or in any subsequent modification), Motor Equipment's pre-petition claim will not be discharged in this bankruptcy proceeding.

Further, it appears that all payments required under Debtor's confirmed plan have now been paid. Therefore, Debtor's confirmed plan can no longer be modified. 11 U.S.C. § 1229.

The automatic stay imposed by 11 U.S.C. § 362 will soon end

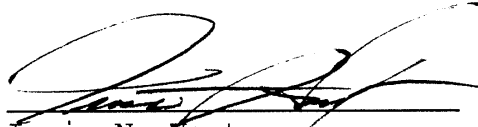
-3-

when Debtor receives its discharge. At that time, Motor Credit may proceed to collect its claim from Debtor under any applicable nonbankruptcy law. 11 U.S.C. § 362(c)(2)(C). Accordingly, Motor Equipment's joinder in Trustee Lovald's motion to dismiss this case may be denied without prejudice to any further nonbankruptcy law collection action by Motor Credit.

An appropriate order will be entered.

So ordered this 28 day of January, 2003.

BY THE COURT:


Irvin N. Hoyt
Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk

By: 
Deputy Clerk



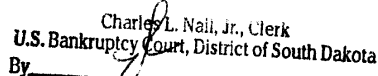
NOTICE OF ENTRY
Under F.R.B.P. 9022(a)
Served

JAN 21 2003

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

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

JAN 21 2003

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

D. Mark Collins
300 N. Dakota Ave., #403
Sioux Falls, SD 57104

Donald E. Covey
PO Box 1766
Winner, SD 57580

Bruce J. Gering
Office of the U.S. Trustee
230 S Phillips Ave, Suite 502
Sioux Falls, SD 57104-6321

John S. Lovald
Trustee
PO Box 66
Pierre, SD 57501

Robert M. Nash
PO Box 1552
Rapid City, SD 57709

Novotny Brothers, Inc.
RR 3, Box 26
Colome, SD 57528

Cheryl Schrempp DuPris
Assistant U.S. Attorney
225 South Pierre Street #337
Pierre, SD 57501

Judith A. Spindler
8031 West Center Road
Suite 208
Omaha, NE 68124