

**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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March 28, 1990

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Re: Leo and Rosalie Stangle  
f/d/b/a Gopher Choker  
Chapter 7 88-50065

Dear Counsel:

The Court has before it Trustee Dennis Whetzal's notice of proposed action and debtors Leo and Rosalie Stangles' objection thereto, both relating to the approval of a stipulation and settlement of Stangles' claim against the Bureau of Indian Affairs. This is a core proceeding under 28 U.S.C. § 157(b) (2) (N).

Stangles filed for relief under Chapter 7 of the Code on April 4, 1988. Stangles were granted a discharge on March 7, 1989. On September 29, 1989, Trustee Dennis Whetzal applied for authorization to employ Attorney Lawrence Long for the purpose of settling a claim with the Bureau of Indian Affairs. The Court entered an order approving Trustee Whetzal's request. In October 1989 a stipulation of settlement was entered into between counsel for the Interior Department and counsel for the trustee. The stipulation, signed by both attorneys, set forth that Stangle would be paid \$25,871.50 as a full settlement in return for dismissing the matter with prejudice. The attorneys realized that the Stangles were currently in bankruptcy and stipulated that the settlement would not become effective until it had been approved by the Bankruptcy Court. The trustee then filed a notice of proposed action to approve the stipulation. Stangles timely filed an objection to the approval of the stipulation of settlement.

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Stangles claim that the stipulation amounts to only a fraction of what is owed them. Stangles' bankruptcy counsel advised the Court that the settlement amount would be more than sufficient to pay their unsecured creditors, who are owed a total of \$14,166.00.<sup>1</sup> However, while the amount of the settlement would satisfy their unsecured debt, Stangles maintain that the amount is "wholly and sufficient and would leave them with no amounts after the settlement."

A hearing on the Trustee's notice of proposed action was held on December 11, 1989. It was adduced at the hearing that Leo Stangle had been awarded a contract to eradicate prairie dogs on BIA land. Stangle's bid was \$3.10 per acre for the acres he treated. Snows during 1985 prevented the completion of the eradication program; however, the BIA allowed Stangle and other contractors to finish their work in 1986. A dispute arose concerning the amount due Stangle under the contract. In an administrative proceeding before the Interior Board of Contract Appeals, Stangle contended the amount due him was \$96,000.00. At the December 11 hearing, Stangle argued that the contract was worth at least \$80,000.00. The BIA estimated that Stangle was owed \$25,000.00 to \$39,000.00 under the contract.

The Court declines to grant Stangles' request. Under 11 U.S.C. § 323, the trustee is the representative of the bankruptcy estate. Under § 704, it is the trustee's duty to collect and reduce to money the property of the estate and to close the estate as expeditiously as is compatible with the best interests of the parties in interest. See In re BeVier, 12 B.R. 75 (Bankr. D. S.D. 1981). The trustee's duty to both the debtor and the creditors is to realize from the estate all that is possible for distribution among the creditors. 4 L. King Collier on Bankruptcy ¶ 704.01[3] (1989). Under § 541, property of the estate includes all legal or equitable interests of the debtor in the property at the commencement of the case. Causes of action belonging to the debtor at the commencement of the case are included within this definition. See In re Ozark Restaurant Equip. Co., Inc., 816 F.2d 1222, 1225 (8th Cir. 1987) (citing Collier, supra, ¶ 541.10[1]). Any actions that are unresolved at the time of filing pass to the trustee or representative of the estate, who has the responsibility under § 704(1) of asserting them whenever necessary for collection or preservation of the estate. Id.

Obligations to Stangles' secured creditors have been satisfied by the return of the secured collateral.

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Stangles believe that the amount of the settlement is too little and that there is a chance of a greater recovery if the claim against the BIA is allowed to proceed through the administrative appeal process. While this may be true, the amount currently "on the table" would be more than sufficient to pay all of Stangles' unsecured creditors plus leave a balance of several thousand dollars. The Court does not believe that the best interests of the bankruptcy estate, the creditors or the Stangles would be served by forcing the trustee to litigate this claim in the hope of winning a greater recovery. Rather, the best interest of the estate, creditors and the Stangles warrants the Court's approval of the stipulation of settlement. As an alternative, if they wish to pursue their claim against the BIA, Stangles may purchase the cause of action from the Chapter 7 trustee for an amount sufficient to pay their unsecured creditors, the trustee's attorney's fees, and any amounts owing to the trustee for administrative costs. Debtors should contact the trustee within ten days if they wish to pursue this option.

The debtors' objection will be overruled with the above-noted condition. The Court will hold an order approving the trustee's proposed action for ten days so that the debtors can decide whether they wish to purchase the cause of action. This constitutes the Court's findings of fact and conclusions of law pursuant to B.R. 7052 and 9014 and Federal Rule of Civil Procedure 52. The Court will enter an appropriate order.

Very truly yours,

Irvin N. Hoyt  
Chief Bankruptcy Judge

INH/sh

CC: Bankruptcy Clerk