

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

IN RE:) CASE NO. 90-10094-INH
)
RICHARD EARENFIGHT TRAVIS,) CHAPTER 11
)
) MEMORANDUM OF DECISION
) RE: INTERIM FEE
Debtor.) APPLICATIONS OF COUNSEL
) FOR DEBTOR

The matters before the Court are the Amended Interim Application for Compensation and Reimbursement filed by J. Bruce Blake, counsel for Debtor, and the objection thereto filed by creditor Overholt Crop Insurance Service Company and the second Rule 2016(a) Interim Application for Compensation and Reimbursement filed by Mr Blake. This is a core proceeding under 28 U.S.C. § 157(b)(2). This ruling shall constitute Findings and Conclusions as required by Bankr. R. 7052.

I.

J. Bruce Blake, counsel for Debtor Richard E. Travis, filed a Rule 2016(a) Interim Application for Compensation and Reimbursement on September 25, 1990 for services rendered and expenses incurred from May 10, 1990 through September 12, 1990. Creditor Overholt Crop Insurance Service Company (Overholt) filed an Objection to the Application on September 27, 1990 on the grounds that payment of any attorney fees and expenses would be premature and would unnecessarily deplete the estate because Debtor "cannot conceivably obtain confirmation of a Chapter ii plan.

A hearing on the Application and Objection was held November 13, 1990. Mr. Blake agreed to amend his Application to

cure the "lumping" of services problem identified by the Court. The Court also directed him to serve the amended application on Overholt's counsel after which the Court would again consider the matter.

Applicant filed an Amended Application on January 9, 1991. It was served on the United States Trustee and counsel for Overholt. Neither party filed any objections to the Amended Application. A hearing on the Amended Application was held January 23, 1991. The Amended Application cured the "lumping" and related problems identified by the Court at the earlier hearing. Overholt stood on their original objections. Concerned about the lack of progress toward confirmation and in recognition of the Motion to Convert filed by Overholt which was taken under advisement that day, the Court deferred approval of the Amended Application pending resolution of the Motion to Convert.

Mr. Blake filed another Rule 2016(a) Interim Application for Compensation and Reimbursement on February 15, 1991 for services rendered and expenses incurred between September 13, 1990 and February 12, 1991. No objections to that Application were filed.

II.

There is no question that Mr. Blake's Amended Interim Application and second Interim Application conform with the requirements of 11 U.S.C. 331 and Bankr. R. 2016(a). See *In re Grimes*, 115 B.R. 639 (Bankr. D.S.D. 1990); *In re Hanson* Bankr. No. 386-00136, slip op. (Bankr. D.S.D. March 8, 1989). Items of service and expense have been sufficiently itemized and adequately described. The question presented, therefore, is

whether the services rendered to date have benefitted the estate. *In re Reed*, 890 F.2d 104, 106 (8th Cir. 1989).

As this Court ruled in *In re Alderson*, 114 B.R. 672, 679-81 (Bankr. D.S.D. 1990), professional compensation may be limited in reorganization cases that are candidates for conversion. At the point that it is clear that reorganization is not a reasonable expectation, the case should be dismissed or converted and professional services that do not benefit the estate must cease. *Id.* Moreover, if a case was never an appropriate candidate for reorganization, compensation for all services directed toward reorganization may be denied.

III.

At this time, Mr. Blake will be allowed compensation for those services by Mr. Blake and his paralegal that would have been allowed if the case had been initially filed as a Chapter 7. These allowed services and related expenses include meeting with Debtor, preparing and amending the schedules, and providing representation at the § 341 meeting of creditors on May 10, 16, 17, 19, 20, 21, and 31, 1990 and June 1 and 11, 1990. Since toll calls, postage, and photocopies were not separately itemized, the Court will allow 25% of those expenses. Fax charges on May 17, 21, and 25, 1990 also will be allowed.

The Court will render a decision on the remainder of the Applications following consideration of Debtor's amended disclosure statement and amended plan or conversion of the case, whichever occurs first. Mr. Blake may submit additional authority or other support for his Applications and request a continued

hearing on the Applications at his discretion.

Whatever is the outcome of the case, it will be Mr. Blake's burden to show that all services rendered and expenses incurred in the reorganization effort were "necessary," as required by 11 U.S.C. § 330(a). There is no typical business reorganization taking place in this case; that is, no significant changes are contemplated in the management, size, or type of Debtor's business. Thus, if Debtor ever had a reasonable ability to reorganize, it should have been apparent from the inception of the case. Counsel should be prepared to show that fact in order to obtain more compensation than that awarded today. If Debtor is unable to get a plan confirmed, counsel is forewarned that additional compensation for his reorganization-related services may be in jeopardy.

Dated this 5th day of April, 1991.

BY THE COURT:

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. 90-10094-INH
)
RICHARD EARENFIGHT TRAVIS,) CHAPTER 11
)
) ORDER ALLOWING
) INTERIM COMPENSATION
Debtor.) OF COUNSEL FOR DEBTOR

In recognition of and compliance with the Memorandum of Decision Re: Interim Fee Applications of Counsel for Debtors,

IT IS HEREBY ORDERED that J. Bruce Blake, counsel for Debtor, is awarded compensation of services of \$675.00; sales tax on services of \$40.50; and expenses of \$698.03; and

IT IS FURTHER ORDERED that the Court's decision on the remainder of the compensation and reimbursement requested in the Amended Interim Application for Compensation and Reimbursement and the second Rule 2016(a) Interim Application for Compensation and Reimbursement filed by J Bruce Blake, counsel for Debtor, will be held in abeyance until after consideration of Debtor's amended disclosure statement and amended plan of reorganization; and

IT IS FURTHER ORDERED that Mr. Blake may submit additional authority or other support for his Applications and, at his discretion, request a continued hearing on the Applications.

So ordered this 5th day of April, 1991.

BY THE COURT:

Chief Bankruptcy Judge

ATTEST:
PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)