

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED

JUL 20 '01

U.S. Bankruptcy Court
Greensboro, NC
KWC

IN RE:)
)
Emerald Green Pension Fund,) Case No. B-00-11095C-7G
)
Debtor.)

MEMORANDUM OPINION

The matter before the court is whether claimants Raymond St. Laurent, David Andrews and Richard Dingwell ("the Claimants") are entitled to include in their unsecured claims prejudgment interest and court costs that were awarded in a judgment that was entered against the Debtor postpetition after the stay was lifted by this court and before this case was converted to one under Chapter 7. The following pertinent facts are not in dispute.

FACTS

This case was filed by the Debtor as a voluntary Chapter 11 case on May 8, 2000. At that time a civil action brought by the Claimants was pending in the United States District Court for the District of Maine against the Debtor and eight other defendants ("the Maine Action"). Numerous claims were alleged by the Claimants, including claims under state and federal securities laws, fraud, breach of fiduciary duty, conversion, negligent misrepresentation and promissory estoppel. These claims grew out of the Claimants having been induced to "invest" funds with the Debtor through false and misleading representations. The amounts "invested" were \$20,000.00 by Claimant Dingwell, \$140,000.00 by

Claimant Andrews and \$257,500.00 by Claimant St. Laurent.

This case was filed on the eve of the trial of the Maine Action. The Claimants promptly filed a motion for relief from the automatic stay requesting that the stay be modified in order to permit them to proceed with the trial of the Maine Action. The motion for relief from stay was granted on May 17, 2000, to the extent of permitting the Claimants to reduce the claims in Maine Action to judgment, but leaving the stay in effect as to the enforcement of any judgment against any assets of the Debtor.

On July 13, 2000, a consent order was entered in the Maine Action that awarded the Claimants interest of 5.25% per annum on the principal amount of their claims. Claimant Andrews was awarded interest from December 16, 1997 with respect to his initial investment of \$30,000.00, from February 2, 1998 with respect to the second investment of \$60,000.00, and from May 5, 1998 with respect to the third investment of \$50,000.00. Claimant Dingwell was awarded interest from December 22, 1997 with respect to his \$20,000.00 investment. Claimant St. Laurent was awarded interest from December 16, 1997 with respect to the initial investment of \$70,000.00, and from May 26, 1998 with respect to the second investment of \$187,500.00.

Based upon the consent order, the Claimants contend that they are entitled to include in their claims the amounts that were obtained from them plus prejudgment interest from the dates

specified in the consent order to the petition date of May 8, 2000, as well as the costs awarded in the consent judgment. The Trustee contends that the claims should be limited to \$20,000.00, \$140,000.00 and \$257,500.00, respectively.

ANALYSIS

The requirement in § 502(b) that claims be determined as of the date of the filing of the petition and not include unmatured interest erects "the general rule that interest stops accruing when the bankruptcy petition is filed." Ford Motor Credit v. Dobbins, 35 F.3d 860, 869 (4th Cir. 1994). Moreover, "[t]he equitable powers of the [bankruptcy] court and the concern for equal treatment of creditors also can prompt the disallowance of prepetition, as well as postpetition interest." In re A.H. Robins Company, Inc., 216 B.R. 175, 185 (E.D. Va. 1997), aff'd 163 F.3d 598, 1998 WL *637401 (4th Cir.). In denying both prepetition and postpetition interest that was awarded to claimants in their postpetition judgments, the district court in A.H. Robins relied upon the equitable power of the bankruptcy court to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankruptcy estate. The district court decided that disallowance of interest was appropriate because other claimants in the same class had not received such interest and because the great inconsistency in the laws of the various states regarding prejudgment interest would result in disparity in the

amounts of interest available to claimants and unduly complicate and burden the administration of the case. The court concluded that to allow prejudgment interest to the claimants in question would run counter to two bedrock principles of bankruptcy law-ratable distribution of assets to unsecured creditors and uniform treatment of similarly situated claimants, i.e., fairness of treatment. On appeal, the Fourth Circuit Court of Appeals, citing its earlier opinion in Smith v. Robinson, 343 F.2d 793, 800 (4th Cir. 1965), observed that "[t]hough prepetition interest is more often awarded, it too can be disallowed in the interest of fairness to all." In affirming the district court, the Court concluded that the district court had given "cogent reasons for its decision that allowing prejudgment interest, whether pre- or postpetition, to holders of unliquidated claims would be inequitable." WL 637401, **5.

Similar considerations are involved in the present case. The vast majority of the claimants in this case are unsecured, just as the Claimants are. Like the Claimants now before the court, nearly all of the other claimants in this case have claims based upon their having "invested" money with the Debtor as a result of the same type of fraud and misrepresentations as relied upon by the Claimants. The other unsecured claimants in this case have not been permitted to include interest in their claims. To allow the Claimants to include interest in their claims would be inconsistent

with the concept of ratable distribution to unsecured creditors, would create inequities in the treatment of creditors in the same class and would be contrary to the bankruptcy goal that the limited resources available be equally distributed among the creditors. Having balanced the equities among all of the claimants in this case, the court has concluded that the Trustee's objection to the prejudgment interest and costs included in the claims of the Claimants should be sustained and that their claims should be allowed as general unsecured claims in the amounts of \$20,000.00 for Claimant Dingwell, \$140,000.00 for Claimant Andrews and \$257,500.00 for Claimant St. Laurent.¹

Claimants' argument that the consent order allowing the prejudgment interest and costs is binding in the bankruptcy court is not accepted. The order is a consent order that is a component of a settlement that the Debtor entered into with the Claimants shortly before this case was converted to Chapter 7. Even though the settlement was made during the pendency of this case, the settlement was made without giving creditors notice of the proposed settlement and an opportunity to object and without the approval of the bankruptcy court in which this case was pending. Had the

¹If the funds that come into the estate exceed the principal amount of unsecured claims, claimants may seek reconsideration pursuant to § 502(j) in order to include prepetition interest and exemplary damages in their claims. Additionally, Claimants and other similarly situated claimants will be entitled to postpetition interest pursuant to § 726(a)(5) before any funds are returned to the Debtor pursuant to § 726(a)(6).

settlement agreement been presented as required under Rule 9019, the payment of prejudgment interest and costs would not have been approved by this court and is not approved at this time. As a result, the settlement and consent order are not binding in this case and do not prevent the disallowance of the prejudgment interest and costs. See In re Sparks, 190 B.R. 842 (Bankr. N.D. Ill. 1996); In re Rothwell, 159 B.R. 374 (Bankr. D. Mass. 1993).

An order in accordance herewith is being entered contemporaneously with the filing of this memorandum opinion.

This 20 day of July, 2001.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

ENTERED

JUL 20 '01

**U.S. Bankruptcy Court
Greensboro, NC
KWC**

IN RE:)
)
EMERALD GREEN PENSION FUND,) **Case No. B-00-11095C-7G**
)
Debtor.)

ORDER ALLOWING CLAIM

THIS MATTER coming on to be heard and being heard on June 5, 2001, before the undersigned United States Bankruptcy Judge for the United States Bankruptcy Court for the Middle District of North Carolina upon the Trustee's Objection to Allowance of Claim, and after due and proper notice to all parties and in consideration of the pleadings herein and evidence presented herein, the Court makes the following Findings of Fact and Conclusions of Law:

1. The above-captioned Debtor filed a voluntary petition under Title 11, Chapter 11 of the United States Bankruptcy Code on May 8, 2000. As a result of an Order entered by the Court on July 17, 2000, the case was converted to a Chapter 7 proceeding. Charles M. Ivey, III, is now the duly appointed, qualified and acting Trustee in that proceeding.
2. On April 10, 2001, the Trustee did file an objection to the allowance of Claims No. 4 and 42, filed as secured claims in the amount of \$2.3 million dollars by Richard Dingwell upon the grounds that claim should be allowed as a general unsecured claim in the amount of \$20,000.00.
3. Notice of objection of claim was duly served in this matter requiring that responses to the Trustee's objections be filed on or before the 18th day of May, 2001, and if a timely response was filed to the Trustee's objection, a hearing was to be held on June 5, 2001.
4. A timely response to the objection was filed by Richard Dingwell indicating he was a creditor of Emerald Green Pension Fund and had obtained a Judgment in the Federal Court in Maine supporting his claim against the Debtor.
5. At the hearing on this matter, Charles M. Ivey, III, appeared as Trustee and Gerald S. Schafer appeared as attorney for Richard Dingwell. The parties indicated to the Court that they were in agreement that Claim No. 4 should be denied in full and that as to Claim No. 42, the parties disagreed as to whether the claim should include prepetition interest and costs.
6. For the reasons stated in the Memorandum Opinion filed contemporaneously herewith the Court has concluded that interest and costs should not be allowed and that the claim should be allowed as a general unsecured claim in the amount of \$20,000.00.

7. Galen C. Shawver appeared individually and voiced an objection to the allowance of the claim and further objected to the allowance of this claim having any impact as to certain objections currently pending in his individual Chapter 7 case now pending in the United States Bankruptcy Court for the Middle District of North Carolina, Case No. 00-11096C-7G. All parties agree the allowance of this claim was not intended to impact matters in his individual case and the remaining portions of his objection were disallowed.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the claim filed by Richard Dingwell and designated as Claim No. 4 is disallowed and that Claim No. 42 shall be allowed as a general unsecured claim in the amount of \$20,000.

This the 20th day of July, 2001.

William L. Stocks

William L. Stocks
United States Bankruptcy Judge

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FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
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Debtor.

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1. The above-captioned Debtor filed a voluntary petition under Title 11, Chapter 11 of the United States Bankruptcy Code on May 8, 2000. As a result of an Order entered by the Court on July 17, 2000, the case was converted to a Chapter 7 proceeding. Charles M. Ivey, III, is now the duly appointed, qualified and acting Trustee in that proceeding.

2. On April 10, 2001, the Trustee did file an objection to the allowance of Claims No. 6 and 43, filed as secured claims in the amount of \$2.3 million dollars by David Andrews upon the grounds that claim should be allowed as a general unsecured claim in the amount of \$140,000.00.

3. Notice of objection of claim was duly served in this matter requiring that responses to the Trustee's objections be filed on or before the 18th day of May, 2001, and if a timely response was filed to the Trustee's objection, a hearing was to be held on June 5, 2001.

4. A timely response to the objection was filed by David Andrews indicating he was a creditor of Emerald Green Pension Fund and had obtained a Judgment in the Federal Court in Maine supporting his claim against the Debtor.

5. At the hearing on this matter, Charles M. Ivey, III, appeared as Trustee and Gerald S. Schafer appeared as attorney for David Andrews. The parties indicated to the Court that they were in agreement that Claim No. 6 should be denied in full and that as to Claim No. 43, the parties disagreed as to whether the claim should include prepetition interest and costs.

6. For the reasons stated in the Memorandum Opinion filed contemporaneously herewith the Court has concluded that interest and costs should not be allowed and that the claim should be allowed as a general unsecured claim in the amount of \$140,000.00.

7. Galen C. Shawver appeared individually and voiced an objection to the allowance of the claim and further objected to the allowance of this claim having any impact as to certain objections currently pending in his individual Chapter 7 case now pending in the United States Bankruptcy Court for the Middle District of North Carolina, Case No. 00-11096C-7G. All parties agree the allowance of this claim was not intended to impact matters in his individual case and the remaining portions of his objection were disallowed.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the claim filed by David Andrews and designated as Claim No. 6 is disallowed and that Claim No. 43 shall be allowed as a general unsecured claim in the amount of \$140,000.00.

This the 20th day of July, 2001.

~~William L. Stocks~~

William L. Stocks
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
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EMERALD GREEN PENSION FUND,)

Case No. B-00-11095C-7G

Debtor.)

ORDER ALLOWING CLAIM

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1. The above-captioned Debtor filed a voluntary petition under Title 11, Chapter 11 of the United States Bankruptcy Code on May 8, 2000. As a result of an Order entered by the Court on July 17, 2000, the case was converted to a Chapter 7 proceeding. Charles M. Ivey, III, is now the duly appointed, qualified and acting Trustee in that proceeding.

2. On April 10, 2001, the Trustee did file an objection to the allowance of Claims No. 5 and 44, filed as secured claims in the amount of \$2.3 million dollars by Raymond St. Laurent upon the grounds that claim should be allowed as a general unsecured claim in the amount of \$257,500.00.

3. Notice of objection of claim was duly served in this matter requiring that responses to the Trustee's objections be filed on or before the 18th day of May, 2001, and if a timely response was filed to the Trustee's objection, a hearing was to be held on June 5, 2001.

4. A timely response to the objection was filed by Raymond St. Laurent indicating he was a creditor of Emerald Green Pension Fund and had obtained a Judgment in the Federal Court in Maine supporting his claim against the Debtor.

5. At the hearing on this matter, Charles M. Ivey, III, appeared as Trustee and Gerald S. Schafer appeared as attorney for Raymond St. Laurent. The parties indicated to the Court that they were in agreement that Claim No. 5 should be denied in full and that as to Claim No. 44, the parties disagreed as to whether the claim should include prepetition interest and costs.

6. For the reasons stated in the Memorandum Opinion filed contemporaneously herewith the Court has concluded that interest and costs should not be allowed and that the claim should be allowed as a general unsecured claim in the amount of \$257,500.00.

7. Galen C. Shawver appeared individually and voiced an objection to the allowance of the claim and further objected to the allowance of this claim having any impact as to certain objections currently pending in his individual Chapter 7 case now pending in the United States Bankruptcy Court for the Middle District of North Carolina, Case No. 00-11096C-7G. All parties agree the allowance of this claim was not intended to impact matters in his individual case and the remaining portions of his objection were disallowed.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the claim filed by Raymond St. Laurent and designated as Claim No. 5 is disallowed and that Claim No. 44 shall be allowed as a general unsecured claim in the amount of \$257,500.00.

This the 20th day of July, 2001.

William L. Stocks

William L. Stocks
United States Bankruptcy Judge