

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 03-13471
)
JANE A. PICKERING,) Chapter 7
)
Debtor.) Judge Arthur I. Harris

ORDER REGARDING TRUSTEE'S OBJECTION (DOCKET #51)
TO CLAIM OF JAMES CORCORAN (CLAIM #12)

This case is currently before the Court on the Chapter 7 trustee's unopposed objection (Docket #51) to the claim of creditor James Corcoran (Claim #12). For the reasons that follow, the Court declines to enter the proposed agreed order submitted by the parties, which would have allowed Corcoran an administrative expense claim of \$1,500. The Court will hear oral argument on the trustee's objection to claim (Docket #51) and any response filed on or before January 4, 2005, during the Court's regular Chapters 7 and 11 motion docket at 10:00 A.M. on January 11, 2005.

BACKGROUND AND PROCEDURAL HISTORY

The debtor, Jane A. Pickering, filed this Chapter 7 case on March 21, 2003. On July 3, 2003, the Chapter 7 trustee, Virgil E. Brown, Jr., filed a motion to sell a piano, as part of the debtor's estate, for \$10,000 (Docket #5). In a letter to the trustee dated July 9, 2003, James Corcoran asserted that he and not the trustee had the exclusive right to sell the piano. Corcoran also sent a copy of his July 9, 2003,

letter to the undersigned judge (Docket #8). Apparently, neither Corcoran nor Corcoran Fine Arts Ltd., Inc., which had a prepetition contract with Pickering to sell the piano, was served with notice of Pickering's Chapter 7 bankruptcy until shortly before the trustee filed his motion to sell the piano on July 3, 2003. *See* Docket ## 3, 8, & 23 at Exhibit F. In a letter to the trustee dated July 10, 2003, the Court indicated that it would treat Corcoran's letter as a response to the trustee's motion to sell, which would be heard on August 5, 2003 (Docket #9).

Prior to the August 5, 2003, hearing, the Court received several other responses to the trustee's motion to sell (Docket ## 13, 14, 16 & 17), including an offer of \$11,500 from an attorney (Docket #16). On July 29, 2003, Corcoran filed another opposition to the Trustee's motion to sell (Docket #14) in which he requested authorization to sell the piano for an amount in excess of \$15,000. As a result of a hearing on August 5, 2003, which was attended by a representative of Corcoran, the Court ordered that the piano be sold at an auction on September 23, 2003. (Docket #18).

Unbeknownst to the Court, and without the permission of either the Court or the trustee, Corcoran sold the piano to a third party for \$15,000 on or about August 3, 2003, and shipped the piano to Georgia. *See* Docket #23 at 2 & Exhibits B-D. On August 29, 2003, the attorney who had expressed an interest in

bidding on the piano filed an emergency motion for an order that Corcoran appear and show cause why he should not be held in contempt (Docket #20). On August 29, 2003, the Court issued an order that Corcoran appear and show cause why he should not be held in contempt (Docket #21). On September 3, 2003, the emergency hearing was held, and the parties, including Corcoran and the trustee, agreed that the auction would go forward to determine whether anyone wished to bid more than the \$15,000 paid by the third party in Georgia. On September 23, 2003, no one came forward with a higher offer. Accordingly, the Court issued an order on October, 27, 2003, approving the sale of the piano to John C. Watts, Jr., of Georgia for \$15,000 (Docket #29).

On October 30, 2003, Corcoran filed a document entitled “Notice of Motion for Payment of Administrative Claim” (Docket #30). The document states that Corcoran filed a motion for payment of an administrative claim, but no such motion is listed in the docket. Attached to the notice of motion is an invoice from Corcoran Fine Arts Ltd., Inc., listing \$1,820 in various expenses related to storing and selling the piano. *Id.* The notice of motion (Docket #30) was ultimately stricken for failure to comply with Rule 9011(a) (Docket #47).

Corcoran’s Proof of Claim (Claim #12)

On March 24, 2004, a notice to file claims (Docket #36) was sent to all

creditors with a deadline for filing claims of June 21, 2004. On June 21, 2004, James Corcoran filed a proof of claim (Claim #12). The total amount of the claim was \$7,025. The claim was listed alternatively as secured (by the piano), priority (for wages, salaries, or commissions), or general unsecured. Among the documents included with the claim were: a letter requesting a commission based upon quantum meruit or reimbursement for pre-filing and post-filing services rendered and expenses incurred; a fax cover sheet dated July 31, 2003, from John Watts, offering to purchase the piano for \$15,000 paid by the third party in Georgia; a letter from John Watts dated August 5, 2003, with an official check for \$15,000 made payable to Corcoran Fine Arts, Ltd., Inc.; and printouts from eBay indicating the unsuccessful results from reserve auctions for the piano from July 7-17, 2003, and July 21-31, 2003.

On June 30, 2004, the trustee filed an objection to Corcoran's proof of claim (Docket #37). The trustee asserted that the creditor was not entitled to a priority or secured status and had not properly established the amount of the unsecured claim. On July 20, 2004, James Corcoran filed a response to the trustee's objection to claim (Docket #39). The filing was signed by "James Corcoran, Counsellor at Law, For Corcoran Fine Arts Ltd. Inc." Corcoran asserted that he was entitled to \$3,750 in quantum meruit for the sale of the piano and/or \$7,000 in storage charges,

insurance, transport, maintenance, and tuning.

On July 27, 2004, the Court held a hearing on the objection to claim and the response. The Court denied the trustee's objection to claim without prejudice for failure to provide at least 30 days notice under Rule 3007 and for failure to give notice using Official Form 20B (Docket #43). The Court also indicated that Corcoran's filings would be stricken pursuant to Rule 9011 unless an amended filing was signed by an attorney admitted to practice in the Northern District of Ohio and filed with the Court no later than August 3, 2004 (Docket #41 & #42). On August 4, 2004, the Court struck Corcoran's two filings pursuant to Rule 9011(a) (Docket #47 & #48).¹

On August 24, 2004, the Chapter 7 trustee again filed an objection (Docket #51) to Corcoran's claim (Claim #12). The objection to claim was duly noticed (Docket #52) for a hearing on September 28, 2004, with responses due by September 21, 2004. When no response was timely filed, the Court indicated that the objection would be sustained and no hearing would be held. On September 23, 2004, the Chapter 7 trustee sent a proposed agreed order to the Court by e-mail.

¹ On August 3, 2004, Corcoran moved the district court for admission pro hac vice. Misc. Case No. 1:04-mc-00057. In a five page order dated August 4, 2004, the Honorable Donald C. Nugent, United States District Judge, denied Corcoran's motion for permission to appear pro hac vice.

The proposed agreed order, which the Court has not entered, would have resulted in James Corcoran's claim being allowed as a priority administrative claim in the amount of \$1,500 for services and efforts of Corcoran that purportedly benefitted the estate.

DISCUSSION

The allowance of prepetition claims is governed by Section 502 of the Bankruptcy Code. Under Section 502(g), a claim arising from the rejection of an executory contract shall be determined and shall be allowed "the same as if such claim had arisen before the date of the filing of the petition." Under Section 365(d)(1), an executory contract is "deemed rejected" if it is not assumed or rejected within 60 days after the filing of the bankruptcy petition.

In this case, whatever executory contract existed with Corcoran Fine Arts Ltd., Inc., was not scheduled, but the trustee eventually became aware of Corcoran and his intent to sell debtor's piano. *See* Docket #23 at Exhibit F. Nothing in the record currently before the Court indicates that the trustee ever intended to assume a contract with Corcoran Fine Arts Ltd., Inc., to sell the piano. Instead the trustee informed Corcoran, on or about June 30, 2003, that the trustee intended to sell the piano himself. *Id.* Under Sections 365 and 502(g) the party to the contract would presumably have a *prepetition* claim for breach of that contract, which may well

include expenses for storage, shipping, and advertising, whether prepetition or postpetition. Since the debtor's contract was with Corcoran Fine Arts Ltd., Inc., *see* Docket #14 at Exhibit A, and the proof of claim was filed by Corcoran personally, *see* Claim #12, it is unclear how Corcoran himself would be entitled to any claim against the estate.

The allowance of *postpetition* claims is governed by Section 503 of the Bankruptcy Code. In the present case, Corcoran never filed a request for administrative expenses. He did file a notice of motion for payment of administrative claim (Docket #30), but he never filed the underlying motion. In any event, the notice of motion for payment (Docket #30) was eventually stricken for failure to comply with Rule 9011(a) (Docket #47). Accordingly, no such request is presently before the Court. In addition, to the extent that the request is for the professional services and related expenses of an auctioneer, no request for employment of such professional has ever been made as required under Sections 327 and 330.

Because [the broker] received neither preapproval nor *nunc pro tunc* approval, Section 503(b)(2) does not apply. Moreover, a broker or other professional generally may not avoid the requirements of Sections 327 and 330 by seeking administrative expense allowance under Section 503(b)(1)(A) rather than Section 503(b)(2).

In re Keren Ltd. Partnership, 189 F.3d 86, 88 (2d Cir. 1999) (per curiam); *accord*

In re Aultman Enterprises, 264 B.R. 485, 489 (E.D. Tenn. 2001) (“A trustee or debtor-in-possession may not employ an attorney, accountant, or other professional person without the court’s express approval.”); *In re Mansfield Tire & Rubber Co.*, 65 B.R. 446, 465-66 (Bankr. N.D. Ohio 1986):

[P]rofessional services performed for a bankruptcy estate are compensable out of the assets of the estate *only* if authorized by the court prior to the services being rendered. Designating such claims “administrative expenses” hardly alters the result. . . . [Section 503(b)] calls into play Sections 327 and 1103 in accordance with which the court’s approval is necessary for the hiring of such professional services.

(citations omitted).

Furthermore, Corcoran’s conduct with respect to this bankruptcy proceeding has been anything but professional. In addition to using abusive language with Court personnel, Corcoran has caused others, including the trustee and the Court, to incur additional time and effort, which might well justify the subordination of any administrative expense claim under Section 510(c) even if such a postpetition claim were allowed. *See generally United States v. Noland*, 517 U.S. 535, 538 (1996) (noting that judge-made doctrine of equitable subordination “was generally triggered by a showing that the creditor had engaged in ‘some type of inequitable conduct’ ”) (citing *In re Mobile Steel Co.*, 563 F.2d 692, 700 (5th Cir. 1977)).

In short, while the Court is reluctant to second guess the trustee's performance of his duties under Section 704(5) -- "if a purpose would be served, . . . object to the allowance of any claim that is improper" -- the Court will not allow the compromise of a *prepetition* claim that results in the award of a *postpetition* administrative expense claim, particularly when: (1) the request for allowance of administrative expenses was stricken (Docket #47), (2) the professional services were performed without Court approval as required under Sections 327 and 330, and (3) the professional's abusive conduct and bullying tactics might well justify the subordination of any administrative claim under Section 510(c).

CONCLUSION

For the foregoing reasons, the Court declines to enter the proposed agreed order submitted by the Chapter 7 trustee and the creditor James Corcoran, which would have allowed Corcoran an administrative expense claim of \$1,500. The Court will hear oral argument on the trustee's objection to claim (Docket #51) and any response filed on or before January 4, 2005, during the Court's regular Chapters 7 and 11 motion docket at 10:00 A.M. on January 11, 2005.

IT IS SO ORDERED.

/s/ Arthur I. Harris 12/13/2004
Arthur I. Harris
United States Bankruptcy Judge