

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: MICHAEL H. BLOOM
KAREN V. BLOOM

CASE NO. 94-60645

Debtor

Chapter 12

APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The matter is before the Court by way of an Order to Show Cause filed on August 19, 1998, by Michael H. Bloom (“Debtor”) and Karen V. Bloom (hereinafter referred to jointly as the “Debtors”). The Debtors seek, *inter alia*, to expunge the claim of Patrick Longo (“Longo”) or in the alternative, reclassify it as unsecured.

The matter was originally heard on September 22, 1998, at the Court’s regular motion term in Syracuse, New York. An evidentiary hearing was held on November 30, 1998, in Utica, New York, at which testimony was presented.

The Court provided the parties with an opportunity to file memoranda of law, and the matter was submitted for decision on December 30, 1998.

JURISDICTIONAL STATEMENT

The Court has jurisdiction over the parties and subject matter of this contested matter pursuant to 28 U.S.C. §§ 1334, 157(a), (b)(1) and (b)(2)(A), (B) and (O).

FACTS

On March 15, 1994, the Debtors filed a voluntary petition seeking relief pursuant to chapter 12 of the Bankruptcy Code (11 U.S.C. §§ 101-1330) (“Code”). According to the petition, the Debtors are in the business of dairy farming

The Debtor testified that he and Longo had a business relationship since 1991 or 1992. Under a verbal agreement, Longo was given the use of the Debtor’s equipment in connection with the planting and harvesting of corn and hay on land owned by Longo, as well as on land which they rented together. In exchange, Longo provided maintenance and repair services on the Debtor’s equipment with the Debtor supplying the parts.

In June 1997 one of the Debtor’s tractors, a John Deere 4440, developed problems while being operated by Richard Henderson, a retiree who testified that he had done work for both the Debtor and Longo. Longo examined the tractor and determined that the crankshaft was broken. The tractor was towed to Longo’s premises where it was taken apart and the engine removed.

According to Longo, he was prepared to order the crankshaft right away; however, it was the Debtor's testimony that he told Longo that it would be a couple of months before he would have the money to purchase the necessary parts.

The Debtor testified that approximately two weeks following the breakdown of the tractor the "air was stale" between the two and he removed all his parts from Longo's garage except a radiator and the tractor. According to the Debtor, Longo agreed to keep the tractor until the Debtor was able to purchase the parts but indicated to the Debtor that "it's going to cost you." The Debtor also testified that in September 1997 after he purchased the parts, he requested that Longo provide him with a written estimate of the cost of the repairs on the tractor. Although Longo indicated that he estimated the cost to be approximately \$2,000, he was unwilling to put anything in writing. At the hearing Longo explained that until he finished tearing down the tractor he did not want to be held to \$2,000.

The Debtor testified that in September 1997 he offered to pay Longo for the labor he had incurred in taking apart the tractor. However, according to the Debtor, Longo indicated that in addition to \$500 in labor, which was the Debtor's estimate of the cost of the repairs, the Debtor would also have to pay for storage. It was the Debtor's testimony that this was the first time that the issue of storage charges had arisen.

Longo testified that it was his normal practice to charge for storage if a particular piece of equipment remained on his premises for more than 30 days. In fine print at the bottom of the form used by Longo in connection with repairs is the statement that "An express lien is hereby acknowledged on the vehicle to secure the amount of the repairs thereto. I understand that this lien permits P&M Diesel Technologies, Inc. ("P&M") [Longo's company] to maintain possession

of my vehicle and to charge reasonable charges of \$20.00 per day until I pay my bill.” *See* Claimant’s Exhibit 1. However, Longo testified that under the arrangement he had with the Debtor he had never charged the Debtor for storage. It was Longo’s testimony that he started to view the Debtor as just like any other customer in September 1997 and decided at that time to start charging him for storage.

Admitted into evidence was Longo’s invoice dated June 1997. In addition to \$50.00 for the service call to the Debtors’ farm “to troubleshoot” and \$840.00 for further troubleshooting and time spent in disassembling the tractor to remove the engine, there are storage charges of \$4,780 for the period from July 1, 1997 to February 25, 1998. *See* Claimant’s Exhibit 1. The invoice is unsigned by the Debtor.

By letter dated February 18, 1998, Debtor’s counsel informed Longo’s attorney that the Debtor was prepared to pay Longo \$500, the amount estimated by the Debtor for the services performed by Longo up to that point and requested that Longo turn the tractor over to the Debtor. *See* Claimant’s Exhibit 2. After receiving no response to his letter, on March 11, 1998, Debtor’s counsel filed a motion seeking an order of contempt for an alleged violation of the automatic stay by Longo. In the motion the Debtor alleged a willingness to tender the monies to Longo for services rendered in connection with the repairs on the tractor. It was also alleged that Longo had demanded payment on all obligations owed to him, including payment on a loan he had made to the Debtors for the purchase of cows, before he would turn over the tractor. On April 17, 1998, opposition was filed on behalf of Longo asserting among other things that Longo/P&M were entitled to storage charges from July 1, 1997 to April 16, 1998 of \$5,800.

On April 28, 1998, the Court signed an Order requiring Long to release custody and

possession of the John Deere 4440 tractor to the Debtor upon payment of \$890.00. The Order also required that Longo permit the Debtor, his agents and/or employees to enter Longo's premises for purposes of removing the tractor. The Debtor testified that the tractor was picked up between May 5-10, 1998.¹ On June 22, 1998, the Court signed a Supplemental Order allowing Longo to file a proof of claim for storage charges in the amount of \$5,800 "without prejudice to the right of the Debtors to object thereto."

ARGUMENTS

It is the Debtors' position, as set forth in their memorandum of law, that Longo is not entitled to an administrative expense claim because the storage of the tractor by Longo was not an actual benefit to the estate. *See* Debtor's Memorandum of Law, filed November 30, 1998. On the other hand, it is Longo's position that the cost incurred in storing the tractor was "actual and necessary" to the preservation of this estate asset. *See* Letter of James P. McGinty, Esq., filed January 7, 1999.

DISCUSSION

Code § 101(5) defines "claim" as a right to payment 11 U.S.C. § 101(5). Longo asserts a claim for storage fees in connection with his possession of the Debtor's tractor. At the

¹ Longo acknowledged that he refused to allow the Debtor access to the premises and required that the Debtor remain in the truck while the tractor was being loaded on it.

time the tractor came into Longo's possession, neither party envisioned that storage fees would be incurred as they were both operating under the terms of the verbal agreement whereby the Debtor allowed Longo the use of his equipment and, in exchange, Longo provided maintenance on the Debtor's equipment, with the Debtor providing the parts required in connection with any maintenance and repairs. Although there was testimony that the crankshaft could have been delivered within a few days after the tractor was towed to Longo's premises for installation, the Debtor testified that he informed Longo that he would not have the monies to purchase a new crankshaft until August or September. It was sometime in September 1997, after the Debtor purchased the crankshaft and after their relationship had deteriorated, that Longo informed the Debtor that he expected to be paid for storing the tractor at his premises. Longo testified that this was the normal arrangement he had with his customers, directing the Court to the provision in P&M's invoice which allowed Longo to maintain possession of a vehicle until receipt of payment for any repairs to the vehicle. The Debtor testified that it was his understanding that Longo expected payment not only for the work performed on the tractor but also for the loan Longo had made to the Debtors for the purchase of cows before Longo would release the tractor. Apparently, the Debtor made no attempt to obtain the tractor until February 1998 when his attorney wrote Longo's requesting its return.

The Court concludes that a right to payment for storage fees did not arise until October 1, 1997, based on the evidence before it. There was no evidence presented by Longo with respect to when in September 1997 he informed the Debtor that their business arrangement had changed

and that he expected to receive payment for storing the tractor on his premises.² There is also no evidence of when Longo received the letter from Debtors' counsel requesting turnover of the tractor; however, Longo's invoice does identify storage charges through February 25, 1998, and it is clear that Longo was aware of the Debtors' demand that the tractor be released at that time.³ The Debtor should not have to pay storage fees for the period after February 25, 1998, when it was necessary for him to seek Court intervention in order to recover the tractor.

The question remains whether any claim Longo might have for storage charges is entitled to priority. Administrative expenses allowed pursuant to Code § 503(b) are given first priority for purposes of a distribution to unsecured creditors. 11 U.S.C. § 507(a)(1). Because such claims are paid ahead of other unsecured claims, contrary to the general principle of equality of distribution, administrative priorities are narrowly construed. *See Trustees of Amalgamated Ins. Fund v. McFarlin's, Inc.*, 789 F.2d 98, 100 (2d Cir.1986); *In re Keene Corp.*, 208 B.R. 112, 115 (Bankr. S.D.N.Y. 1997). In making the determination, the Court must examine (1) whether the obligation arose out of a postpetition transaction between the debtor and the creditor and (2) whether the transaction resulted in a direct benefit to the estate and the operation of its business. *See id.*; *see also In re Olga Coal Co.*, 194 B.R. 741, 746 (Bankr. S.D.N.Y. 1996).

As the entity seeking entitlement to an administrative expense claim, Longo has the burden of proving the elements by a preponderance of the evidence. *See In re Midway Airlines, Inc.*, 221

² Longo did acknowledge at the hearing that he had made a mistake on the invoice and that the storage charges should not have gone back to July 1, 1997, since it was not until sometime in September that he decided to start charging the Debtor for storage.

³The Court calculates that between October 1, 1997 and February 25, 1998 the tractor was stored for 148 days at \$20 per day or a total cost of \$2,960.

B.R. 411, 447 (Bankr. N.D.Ill. 1998) (citations omitted). There is no question that the storage fees, which Longo claims to be entitled to administrative priority, arose in connection with a postpetition transaction between the Debtor and Longo. The issue however, is whether the storage fees benefitted the estate as a whole in order for them to qualify as actual and necessary expenses. *See id.* (citations omitted).

Longo contends that storage of the Debtor's tractor at his premises preserved an asset of the estate. The Court can find no benefit to the estate as a whole that would warrant classifying the storage fees as an administrative expense. As the Debtor points out, he had space to store the tractor at his farm or a neighbor's as he had done previously. It was not necessary to have it stored at Longo's facility to preserve it. Longo apparently has received payment in full for the "trouble shooting" he performed on the tractor pursuant to the Court's Order of April 28, 1998. The Court finds no other benefit to the estate from services performed by Longo which would entitle him to payment as an administrative expense. This being the case, Longo is not entitled to payment for any storage charges pursuant to the Chapter 12 plan. Furthermore, as long as the chapter 12 case is pending, Longo is prohibited from taking action to collect the debt from property of the estate. *See* 11 USC § 362 (a)(3); *In re Bottone*, 226 B.R. 290, 297 (Bankr. D Mass 1998) (citations omitted); *In re Shuman*, 122 B.B. 317, 318 (Bankr. S.D. Ohio 1990) As a postpetition obligation, however, it will not be discharged. *See In re Smith*, 206 B.R. 113, 116 (Bankr. D.Md. 1997) (a chapter 13 case in which it was found that unpaid association charges arising after the date of the petition were postpetition obligations of the debtor which would not be discharged).

Based on the foregoing, it is hereby

ORDERED that Longo's claim for storage charges is not entitled to priority as an administrative claim and cannot be paid through Debtor's Chapter 12 plan.

Dated at Utica, New York

this 18th day of February, 1999

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge