UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

BEVERLY J. BEILMAN
d/b/a BEVERLY'S HOUSE OF FLOWERS
Debtor

Case No. 93-13632 K

This was a confirmed business Chapter 13 case that eventually converted to Chapter 7 after the Debtor incurred new post-confirmation trade debt. Among the new trade debt was liability for unemployment insurance premiums. This is an asset Chapter 7 case and the State Insurance Commissioner has asserted an administrative expense priority claim. The Trustee, Mr. Lawson, has objected to administrative expense status.

Although no one appeared in response to that objection, I raised *sua sponte* the question of why the claim should not be allowed administrative expense status, and directed the Trustee to brief the question.

The Court is persuaded that the Trustee's argument is precisely correct in this specific case. Despite the fact that this Debtor owned a business, the Plan and the Order confirming it specified only that $725 per month would be committed to creditors. The Trustee retained no interest in any of the Debtor's assets or any of the Debtor's earnings other than to that extent. The source of the Debtor's earnings was not mentioned in the Plan or the Order, and she committed nothing more than that sum to the claims of her creditors, to be paid from her own monthly income.

Clearly, the Trustee or creditors could have negotiated for a different plan by which the Debtor's inventory, receivables, fixtures, vehicles, etc. all would have been committed

to creditors, in which event this matter would have a different result. But the Plan and Order were of the standard, *pro forma,* "wage-earner" sort, and were totally blind to the source of the monthly payments.

It is important to note that the popular wisdom that "there are no post-confirmation administrative expense claims in a Chapter 13 case converted to a Chapter 7 case" is not necessarily true in all cases, and that it is not § 1327(b) "vesting" that determines the matter.

As § 1306 and Judge McGuire's analysis in *In re Wanderlich*, 36 B.R. 710 (Bankr. W.D.N.Y. 1984), make clear, the "estate" does not terminate by virtue of a confirmation and a "vesting." By the text of § 1306, it might seem that there is no distinction between property of the estate and property of the debtor in a confirmed Chapter 13 case. But to this Court it seems that in a confirmed case, the "estate" continues or ceases precisely to the extent that the Plan and Confirmation Order say it does. Just as § 1123(a)(5) permits a Chapter 11 plan to describe what will be paid from "property of the estate" and what will be paid by other means, § 1322(b)(8) permits the Plan to "provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor."

Confirmation of the plan circumscribes the further application of § 1306(a), not because of "vesting" (which, as Judge McGuire explained, is not the equivalent of abandonment) but because of the authority granted by § 1322(b)(8) to define what property will and will not be committed to the benefit of creditors, whether it is property of the estate or property of the

debtor.[1]

This result is also consistent with sound policy. If, for example, a business debtor's Plan depends on a particular supplier's willingness to extend credit in the future, and that supplier will grant credit if given administrative expense status in the event of conversion, there is absolutely no barrier to confirmation of a Plan that so provides -- the Plan may recognize that inventory and work-in-progress, for example, is committed to the benefit of creditors and that one who replenishes it on credit is entitled to § 503 treatment in the event of conversion.

The Objection to the claim of Chapter 13 administrative priority by the State Insurance Commissioner is sustained.

SO ORDERED.

Dated: Buffalo, New York
December , 1996

/s/ Michael J. Kaplan

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Michael J. Kaplan, U.S.B.J.

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[1]Whether in Chapter 13 or Chapter 11, "property of the estate" may be used personally by the debtor just as "property of the debtor" may be committed to the benefit of creditors. *See In re Bradley*, 185 B.R. 7 (Bankr. W.D.N.Y. 1995). Therefore, something must "cut off" the effect of § 1306, or else every post-confirmation debt of the debtor could be an administrative expense. Although the lack of consistent terminology within Chapter 13 is frustrating, the Court believes that § 1322(b)(8)'s authority to specify what will be committed to creditors and what will not be so committed, permits the plan to limit the effect of § 1306, and so limit the administrative expense liability of the estate, in the event of failure and conversion. Furthermore, although it seems that for purposes of 11 U.S.C. § 503(b), it should not matter whether it is "property of the debtor" or "property of the estate" that has been committed to the payment of creditors -- one who preserves or protects it probably should be treated as an administrative expense -- the distinction could be very important for other purposes, such as determining what the § 362 stay protects after confirmation. *See, e.g., In re Leavell*, 190 B.R. 536 (Bankr. E.D. Va. 1995).