UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

ALFRED L. SENFT and
BARBARA SENFT

Case No. 92-12645 K

Debtors

In re

ALFRED M. SENFT

Case No. 91-12825 K

Debtor

MEMORANDUM OF DECISION

This is a confirmed Chapter 12 case in which Manufacturers and Traders Trust Company ("M & T") is an oversecured creditor seeking allowance of its attorneys' fees pursuant to 11 U.S.C. § 506(b) and the agreement underlying the debt. Its attorneys, Hodgson, Russ, Andrews, Woods & Goodyear ("the Firm") have submitted time sheets supporting a request of $14,937.32 in professional fees and $755.00 in disbursements. The Debtor questions the allowability of compensation for time spent with regard to "cash collateral" Orders that were never obtained.

I note an extensive amount of time claimed spent in researching the issue of "milk as proceeds" for "cash collateral" purposes, and in office conferences in that regard. What is troublesome about this is that after "CRS" spent more than five hours on this matter on 7/30/91 and 8/1/91, "GHG" and "WHG" apparently each "reviewed research" in the early days of August, 1991. Subsequently "DRE" reviewed the file. Then on 12/9/91 "BAT" (a paralegal) researched "cash collateral and adequate protection."

On 12/11/91 "DRE" reviewed the cases regarding "milk proceeds as cash collateral."

And it is indeed true that a great deal of time is charged for preparation of motions, etc. regarding the cash collateral issue.

However, the teaching of *In re Continental Vending Machine Corp.* 543 F.2d 986 (2d Cir. 1976) and *In re United Merchants and Manufacturers, Inc.* 674 F.2d 134 (2d Cir. 1982) is that the Court's role in approving § 506(b) allowances should be very different from its role with regard to § 330 allowances. Addressing unsecured creditors' claims for collection costs pursuant to loan agreement provisions, the Court in *United Merchants* case stated, "The controlling inquiry is whether, considering all relevant factors ..., the creditor reasonably believed that the services employed were necessary to protect his interests in the debtor's property." (674 F.2d 134, at 140.) It based this statement upon its earlier holding in *Continental Vending*. That earlier case stands for the proposition that contractual provisions for attorneys' fees are to be applied in accordance with state law, not bankruptcy law (though the language of the contract provision itself might be construed narrowly to comport with bankruptcy policy.) (See 543 F.2d 986, at 993, 994.)

The District Court for the District of Connecticut carefully analyzed those decisions in *In re Wonder Corp. of America* 82 B.R. 186 (Bkrtcy. 1988) and concluded that the "rule of reason"

described in the Circuit cases really connotes a federal law policy, rather than a state law policy, and it set forth the standards for use under § 506(b) as follows:

> ...[T]he time for which fees are claimed must have been spent prudently and efficiently with an eye towards the overarching policy of avoiding the waste of the debtor's estate; ...and the court, relying on its accumulated expertise and familiarity with such matters, may evaluate the complexity of the case and the skill and efficiency with which it was handled." (82 B.R. 186, at 191.) (Citations omitted.)

Similarly, there is substantial caselaw outside the Circuit[1], to the effect that the Bankruptcy Court is afforded wide discretion in the matter of § 506(b) allowances.

I do not think that *Wonder Corp.* suggests that an oversecured creditor may not be awarded § 506(b) compensation for asserting its rights in a manner that is inconsistent with preservation of the debtor's estate. I interpret that case as standing for the proposition that needless obstruction of the reorganization process will not be compensable from the estate, and I agree with that proposition.

I am not only bound by the Circuit Court's decisions cited above, but agree with them. And I disagree with the view espoused outside this Circuit to the effect that an oversecured creditor's § 506(b) claims must be assessed in a manner not very different from § 330 allowances.

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[1]See Collier on Bankruptcy, 15th Ed., ¶ 506.05, fn. 26 - fn. 29.

Congress has said that bankruptcy "is mainly a procedural device," which applies bankruptcy principles and rules toward rehabilitation or toward the assembling and liquidating of assets, "but generally leaving undisturbed [the] legal relationships that existed before bankruptcy."[2] Section 506(b), when properly applied, is a remaining example of this concept.

It is important to note that in this case M & T ultimately settled its opposition to the Chapter 12 Plan. While I will not hesitate to utilize whatever authority is accorded me under law to disallow § 506(b) applications which manifest needless obstruction of rehabilitation efforts, or those which reflect a level of zeal and diligence that rises to unreasonableness or gouging, nothing is suggested in this case that is inconsistent with the rule of reason enunciated in the *Continental Vending* and *United Merchants* cases.

The application is allowed in full, $15,692.32.

IT IS SO ORDERED.

Dated: Buffalo, New York
February 19, 1992

/S/ MICHAEL J. KAPLAN
U.S.B.J.

[2]H.Rept. No. 95-595, 97th Cong., 1st Sess. (1977), p. 10.