

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

CARADA, LTD.

Case No. 99-15838 K

Debtor

To: All Counsel who appeared on May 10, 2000

MEMORANDUM OF DECISION

From the Bench the Court ruled on May 10, 2000, that Mr. James T. Sandoro is a “party in interest,” entitled to prosecute a motion to dismiss or convert this case. This memorandum sets forth the Court’s reasoning.

The Debtor confuses a “party in interest” with a “creditor.” Although a “creditor” must have a “claim” against the Debtor (or against the Debtor’s property), a “party in interest” is a broader term that includes, but is not limited to “a creditor.”

Among those who are not “creditors” but who are undeniably “parties in interest” are landlords of a debtor, tenants of a debtor, joint venturers with a debtor, parties to other executory contracts that are not yet breached, co-owners of property with the debtor (including co-plaintiffs in any sort of cause of action), and persons asserting a claim of ownership of property, adverse to the debtor.

In light of this list, and particularly the last item thereon, the assertion that when it is the Debtor who is asserting a claim adverse to an owner, the owner has no standing here, is

clearly wrong.

But taking a step further, it seems to this Court that anyone sued for anything by a Chapter 11 debtor (or by one who thereafter elects to become a Chapter 11 debtor) is a “party in interest” in the Chapter 11 case. The Debtor has asserted rights adverse to the defendant. Obviously, the defendant defends. That one who defends a claim brought by a debtor should have no standing while the standing of one who has a claim against the debtor is undoubted (however small the claim against the debtor might be) would miss the point. Except as to a mere stakeholder, litigation is, by definition, the assertion of adverse claims of right or entitlement.

Whether the non-debtor party is the plaintiff or the defendant makes no difference. That party is a “party in interest” in the Chapter 11 proceeding. The Motion now shall be heard on the merits, as scheduled in open Court.

SO ORDERED.

Dated: Buffalo, New York
May 11, 2000

/s/ Michael J. Kaplan

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