UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

FEREE PLASTICS, INC. Case No. 92-10135 K

Debtor

ORDER DENYING ALLOWANCE OF CLAIM
AS ADMINISTRATIVE EXPENSE

From at least February 6, 1992 (at the latest) and until certain real estate at 1961 Transit Road was "hammered down" by this Court to a different party at open auction, Donald Enderby sought to purchase the property. The Bankrupt Debtor, Feree Plastics, Inc. had hired Enderby to find a buyer for the property and to look after the property, and by February 6, Enderby had determined that there were sufficient rental prospects to make feasible his own purchase of the property.

He now asks the Court to approve his payment for repairs and improvements he made to the property from the filing of Feree's Chapter 7 Petition on January 15, 1992 until March 15, 1992. See Claim #17.

In the case of *In re Piecuil*, 145 B.R. 777 (Bankr. W.D.N.Y. 1992), this Court examined retroactive approval of the employment of professionals, for purposes of their compensation from the bankruptcy estate. The Court there demonstrated solicitude for non-lawyer professionals who clearly had been employed to perform work for the Trustee or Debtor-in-Possession and who had no other source of payment to look to other than the

estate. The governing law and underlying principles were set forth therein in detail.

The Court here finds that the applicant Don Enderby Realty, Inc. had neither a mandate from the Trustee nor a reasonable expectation of payment from the estate.

Mr. Enderby's claim is not new to the Court. On April 15, 1992 he verified his then-attorney's Objections (on Enderby's behalf) to the Trustee's proposal to sell this real estate. It was claimed therein that Enderby "supplied labor and materials having a fair market value of not less than $40,000 and for which he filed a Notice of Reduced Claim of $27,129.46 in consideration of purchasing the property." He claimed to be:

> "A. Administration Creditor ...
>
> "B. Lienor...
>
> "C. Purchaser/Owner in actual possession
>
> "D. ... Leasor [sic] of 45,000 sq.ft. of said premises to Microdish, Ltd. ...
>
> "E. Contractor in possession under contract to insulate, rewire, heat ... , and
>
> "F. Equitable owner in actual possession of said premises under said substantially performed Contract of Sale ...

Attached thereto was a copy of a Notice of Mechanics Lien signed by Mr. Enderby and filed with the Niagara County Clerk on April 14, 1992. It claimed that the "lienor" was employed by Trustee, Daniel E. Brick, Esq., and that the agreed price and value

of the labor performed and materials furnished was $711,629.46, of which approximately $15,000 was cost of materials.

Five days earlier (April 9, 1992) another of Mr. Enderby's attorneys signed on Enderby's behalf a Proof of Claim for $27,129.46 for expenditures "incurred with the consent and knowledge of the Trustee...." That was filed on April 10, 1992. Attached thereto was a April 7, 1992 letter to the attorney from Enderby breaking out the claim as follows:

"Amount Invoiced	$ 20,941.22
Overhead at 20%	4,188.24
Attorney's Fees	2,000.00
Total claim	$ 27,129.46"

That letter stated "Because of the Trustee's attitude and non-compliance with his promises, I feel justified in charging for my overhead and certainly for your fees."

Currently before the Court is Enderby's claim for an administrative expense allowance in the amount of $24,173.80. After appropriate notice, this came on for a hearing on June 3, 1993.

Mr. Enderby's testimony was not convincing. He broke his current claim down into essentially two elements: $3,000 for winterization and $24,000 in electrical work. He was certain that Mr. Brick authorized his efforts at every step along the way, until cross-examination brought out that he never received even verbal approval directly from Mr. Brick to incur the $24,000 expense, but was supposedly told by his attorney that Mr. Brick had approved the

expense. (His attorney did not take the stand to corroborate his client's testimony, and Mr. Brick flatly denies ever talking to Enderby's attorney about that $24,000 expense.)

Mr. Enderby testified that he made no offer to purchase the property until mid-March, 1992. Then he was shown a purchase offer he faxed to Mr. Brick on February 6, 1992, a mere three weeks after the bankruptcy filing.

Mr. Enderby reminded the Court that these events occurred over a year ago and that they are not fresh in his mind. But Mr. Enderby testified that he had never "billed" the new owner for the work he did on the property, and then when confronted with an April 1, 1993 letter he sent to the new owner stated that the date must be wrong -- that that must have been April 2, 1992. He then decided that indeed this was sent just two months ago.

Mr. Enderby testified that his first contacts with Mr. Brick sought approval of a $3,000 expense for winterization, and that it was after he received that approval and did some of that work that it was discovered that the $24,000 worth of electrical work had to be done. But the very receipts Enderby provides to document his claim begin with $2472.77 for testing work done by H.V.E.S. Electrical on January 15 and January 16, 1992, the very day the Feree case was filed and the day after, when it is not likely that Mr. Brick could yet even have been selected to be Trustee in the case. Also, $500 was paid to "Tony Krug" on January 16, 1992 for troubleshooting the high-voltage service. Thus,

Enderby's own documentation belies his testimony (that he first drained boilers, etc., and then discovered the need for electrical work).

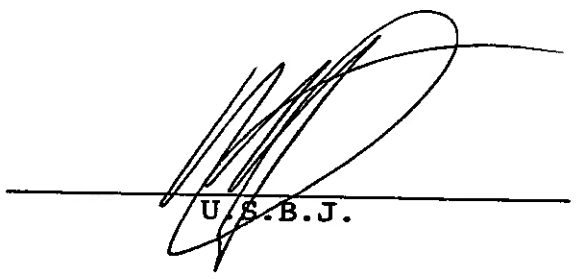
Suffice it to say that this Court finds that Mr. Enderby had no mandate from Mr. Brick to obligate the estate as to any work claimed.

Finally, even if Enderby proved that work was done with the "knowledge and consent" of the Trustee, that is a far cry from proof that the Trustee had promised payment from the estate where, as here, the claimant had a self-interest in preserving and protecting the premises.

The claim is denied as an administrative expense.[1]

SO ORDERED.

Dated: Buffalo, New York
June 14, 1993



[1]The Court has not been asked to disallow the claim as a general unsecured claim, and cannot make any ruling in that regard on the record at Bar, since the question of whether Mr. Enderby would have such a claim turns on his dealings with Feree Plastics, and not on his dealings with Mr. Brick. The Court notes the chameleon-like character of Mr. Enderby's claim, as recited above. The claim has been lodged in changing capacities, amounts, and chronologies.