

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

MARGARET A. PIECUIL &
MICHAEL R. PIECUIL

BK 91-12372 K

Debtors

DECISION AND ORDER

I am persuaded that I have discretion to grant this motion for authorization for the debtors-in-possession to employ the firm of Damon and Morey. *In re Martin*, 817 F.2d 175 (1st Cir. 1987). Beyond that, this decision shall have no precedential effect whatsoever. The facts presented are unique and the Court is pressed to fashion unique relief.

The motion is granted with the limitations set forth below. The factors upon which I have based this decision are:

1. The debtors are individuals (as in *Martin*); consequently all of their assets are before the Court. This is in contradistinction to a corporate case, for example, in which attorneys fees might be guaranteed by principals whose assets are not before the Court.

2. The debtors intend to reorganize by selling or surrendering several of their eight income properties until their secured debt has been sufficiently reduced to permit conversion to Chapter 13. This may result in a revenue stream (available for payment of counsel and other administrative expenses) that diminishes in the rehabilitation process rather than increases. The debtors appear to be reorganizable on that basis.

3. The debtors had a longstanding attorney-client relationship with the firm; the firm is expert in Chapter 11 matters; and these two facts appear essential to the reorganizability of the debtors.

The restrictions upon the authorization conferred by this Order are as follows:

1. The note and mortgage shall not secure any prepetition fees not incurred in connection with the filing of the Chapter 11 petition.

2. The note and mortgage shall be valid only to the extent of fees subsequently allowed by the Court.

3. In seeking allowance of fees that are to be secured by the said Note and Mortgage, the application therefor shall append, in addition to the time sheets regularly required, an affidavit of the debtors summarizing all communications made or received as to the disposition or retention of properties upon which the firm holds a mortgage and summarizing all advice received from the firm, and also an affidavit of the firm in the same regards. I will specifically consider these affidavits in addressing fees that are to be secured by the Note and Mortgage.

4. This Order shall be effective upon the firm's filing of a blanket consent under 11 U.S.C. 363(f)(2), consenting to the sale of any property in the case upon which it holds a mortgage regardless of whether the price at which such property is to be sold is sufficient to satisfy its lien. Subject to further Order

of the Court, such consent will bind the firm throughout the case, regardless of whether the firm continues to represent the debtors, regardless of whether a Trustee is or is not appointed in the case, and regardless of any conversion to another chapter.

Dated: Buffalo, New York
December 3, 1991

/S/ MICHAEL J. KAPLAN

U.S.B.J.