

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

In re:)
)
PETITION OF JACKSON SUSTAINABILITY) Case No. 21-00061
COOPERATIVE TO DETERMINE IF A.)
CERTIFICATE OF CONVENIENCE AND.)
NECESSITY IS NEEDED.)

**APPLICANT'S RESPONSE ARGUMENT TO MOTION TO ASSESS
FEES AND EXPENSES IN THIS CASE**

Comes the Applicant, Jackson Sustainability Cooperative, and files this response regarding moves the motion pending before the Commission to assess fees and expenses regarding s the petition to determine if a Certificate of Convenience and Necessity Is Needed. The Applicant filed a petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Tennessee, case number 23-10645, on May 24, 2023. Brian Glass, the duly appointed Chapter 7 Trustee, has been informed of this motion and has no objection to the relief sought herein. The bankruptcy petition heretofore referred did not list the pending claim for fees and expenses as contingent, unliquidated, and disputed because it assumed that the claim was solely against Jackson Sustainability Cooperative and not against counsel nor any of the business' shareholders. On June 8, 2023, Mr. Glass as Trustee, filed a non-asset report stating that he did not discover any assets for the benefit of creditors (D.E. 8), and the Jackson Sustainability Cooperative bankruptcy was closed on July 5, 2023 (D.E. 11) that the estate had been fully administered.

Because Jackson Sustainability's bankruptcy was a no-asset estate, a debtor does not have a "pecuniary interest" in Trustee's asset distribution. In other words, Debtors have no standing because there will be no assets left over after distribution to creditors—and that means nothing left for the Debtors. Section 502(a) of the Bankruptcy Code allows any party in interest to object to a proof of claim. 11 U.S.C. § 502(a) (2013). "Typically, a Debtor has no standing to

object to claims or orders relating to them because the debtor does not have a **pecuniary interest** in the distribution of the assets of the estate. This is because an objection to a proposed distribution only affects how much each creditor will receive and does not affect the debtor's rights." Keiffer v. Riske (In re Kieffer-Mickes, Inc.), 226 B.R. 204, 208–09 (B.A.P. 8th Cir. 1998) (citations omitted) (emphasis added); see also Cult Awareness Network, Inc. v. Beal (In re Cult Awareness Network, Inc.), 151 F.3d 605, 607 (7th Cir. 1992) ("Debtors, particularly Chapter 7 debtors, rarely have such a pecuniary interest because no matter how the estate's assets are dispersed by the trustee, no assets will revert to the debtor."). In re Rake, 363 B.R. 146, 151 (Bankr. D. Idaho 2007). It also extends to Debtors' objections to a Trustee's Final Report. Blodgett v. Stoebner (In re T.G. Morgan, Inc.), 394 B.R. 478, 483 (B.A.P. 8th Cir. 2008); In re Muldoon, No. 03-21332, 2009 WL 161657, *6 (Bankr. D. Kan. Jan. 23, 2009).

The Eighth Circuit Bankruptcy Appellate Panel has explained the rationale for the standing rule as follows:

The question of standing generally challenges whether a party is the proper one to request an adjudication of a particular issue.

....

The debtor's entitlement to notice of the hearing on the approval of settlement, does not, however, give the debtor standing to challenge the settlement or the bankruptcy court's order entered over his objection. The Bankruptcy Code does not contain an explicit grant or limitation on . . . standing, yet many courts, including us, have looked to pre-code law to determine standing and have utilized the "person aggrieved" test. To have standing . . . the person aggrieved test requires that the appellant must have been directly and adversely affected pecuniarily by the order.

....

Debtors, particularly chapter 7 debtors, rarely have a pecuniary interest because how the estate's assets are disbursed by the trustee has no pecuniary effect on the debtor. There is an established "exception" to that rule, which is not so much an exception as a careful application of the pecuniary interest requirement. Occasionally, a trustee might be able to satisfy all allowed claims and have money left over. This would entitle the debtor to a distribution of the balance under 11 U.S.C. § 726(a)(6). If the debtor can show a reasonable possibility of a surplus after satisfying all debts, then the debtor has shown a pecuniary interest and has standing to object to a

bankruptcy order. Under this criterion, it is doubtful that the debtor in this case had any right to object to the bankruptcy court's approval of the settlement, much less a right to appeal such approval.

Nangle v. Surratt (In re Nangle), 288 B.R. 213, 216 (B.A.P. 8th Cir. 2003)

(citations omitted). Under Nangle, the test is whether the debtor has a “pecuniary interest.” Id. The B.A.P. ruled in Nangle that generally a debtor has no pecuniary interest and thus no standing. Id. However, Nangle specifically noted that the pecuniary interest test is satisfied if the trustee is “able to satisfy all allowed claims and have money left over.” Id. This money goes to the debtor, and thus there is a pecuniary interest.

A sufficient pecuniary interest, however, is not limited solely to situations where a debtor can show a surplus after payment of allowed claims. One such exception is where there is a surplus if the contested claims are disallowed. In re Kieffer-Mickes, 226 B.R. at 209. There is a pecuniary interest when debtor shows that there is property that may be the subject of an allowed exemption. See Wyatt v. Nowlin (In re Wyatt), 338 B.R. 76 (Bankr. W.D. Mo. 2006); In re Rake, 363 B.R. at 151. If, for example, the settlement would result in proceeds that may be exempt or partially exempt, then the debtor would have a pecuniary interest in the settlement. In re Rake, 363 B.R. at 151.

Courts generally have also found that debtor can also have a pecuniary interest where the claim involved will not be discharged. In re Zendeli, Bankr. No. 10-60669, 2012 WL 1565305, at *1 (Bankr. W.D. Mo. May 2, 2012); Menick v. Hoffman, 205 F.2d 365 (9th Cir. 1953) (specifically discussing tax claims); In re: Cherne, 514 B.R. 616, 621 (Bankr. D. Idaho 2014); In re Lona, 393 B.R. 1, 4 (Bankr. N.D. Cal. 2008); Willard v. O'Neil (In re Willard), 240 B.R. 664, 668

(Bankr. D. Conn. 1999). As Judge Federman noted in his thoughtful opinion on this issue:

To the extent that a nondischargeable claim is satisfied in some measure by a distribution, it is in the debtor's interest to maximize that distribution so that the debtor will be relieved from some or all of the claim of that creditor which would survive the bankruptcy case. . . . [T]he allowance or disallowance of a claim may, under certain circumstances, have an adverse effect on the debtor, regardless of whether the debtor stands to directly receive any funds from the estate. In such cases, the debtor has standing to object to such claims.

In re Zendeli, 2012 WL 1565305, at *1 (citing 4 Collier on Bankruptcy, § 502.02[02][c] (Alan N. Resnick & Henry J. Somme reds., 16th ed.)).

The Bankruptcy Code provides that certain tax debts cannot be discharged in bankruptcy. 11 U.S.C. § 523(a)(1) (2014). Section 523(a)(1)(A) specifies that tax debts falling under § 507(a)(3) and (8) will not be discharged. Thus, these nondischargeable taxes include income taxes and “trust fund taxes.” Id. § 507(a)(3) & (8); see also In re Weiss, Bankr. No. 06-21677, 2013 WL 6726502, at * 3–*4 (Bankr. D. Kan. Dec. 19, 2013). Section 507(a)(8) gives priority to (1) income taxes due three years before filing the petition, and (2) “allowed unsecured claims of governmental units . . . for—(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity.” 11 U.S.C. § 507(a)(8)(A) & (C). Section 507(a)(8)(C) includes § 6672 liabilities (the “responsible person” taxes). See In re Weiss, 2013 WL 6726502.

The nondischargeable tax debts under § 523(a)(1)(A) do not require the taxing authority to file a proof of claim. 11 U.S.C. § 523(a)(1)(A) (explaining that a tax debt is nondischargeable “whether or not a claim for such tax was filed or allowed”). However, the debtor is not obligated to file a proof of claim on a creditor's behalf. Fed. R. Bankr. P. 3004 (“If a creditor does not timely file a proof of claim . . . the debtor or trustee **may** file a proof of the claim within 30 days after the expiration of the time for filing.”

(emphasis added)); see also 3 Bankruptcy Desk Guide § 22:49. “The drafters chose ‘may’ rather than ‘must’ to avoid any implication that a debtor *must* file a proof of claim on behalf of a creditor. ‘May file within . . .’ means that the person need not file, but must act within the time specified if he elects to file.” In re Danielson, 981 F.2d 296, 298 (7th Cir. 1992), abrogated on other grounds by Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd.P’ship, 507 U.S. 380 (1993).

It made no difference if Jackson Sustainability Cooperative filed a claim for these creditors or not or whether the Debtor disputed any of these. At the end of the day, if Jackson Sustainability Cooperative is assessed with the fees and expenses from this case, then (based on the Bankruptcy Trustee’s no asset report), then the assessment is non-collectible which may be the impetus for seeking collection against Mr. Beam and Mr. Emberling.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the September 29, 2023, the foregoing document was served on the following persons via U.S. Mail, Postage Prepaid: John A. Beam, III, Equitus Law Alliance, PLLC, P.O. Box 280240, Nashville, Tn 37208; Larry L. Cash and Mark W. Smith; Miller & Martin PLLC, 832 Georgia Avenue, Suite 1200, Chattanooga, Tennessee 37402; Henry Walker and Austin McMullen, Bradley Arant Boult Cummings, LLP, 1600 Division Street, Suite 700, Nashville, Tn 37203; Kimberly Bolton, Office Of The General Counsel; Tennessee Valley Authority, 400 West Summit Hill Drive; Knoxville, Tn 37902-1401; Jeremy L. Elrod, Tennessee Municipal Electric Power Association, 212 Overlook Circle, Suite 205, Brentwood, Tn 37027; W. Brantley Phillips, Jr. and Matthew J. Sinbeck, Bass Berry and Sims, 150 3rd Avenue North, Nashville, Tn 37201.

/s/Steven L. Lefkovitz