

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

**In re The Company Store, Inc., Scandia Down Corporation,
Inc., Company Store Holdings, Inc., and Southern
California Comfort Corporation, Debtors**
Bankruptcy Case No. 92-21810-11 (Joint Administration)

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

June 2, 1993

William J. Rameker, for the debtor.

James P. Stephenson and Charles F. Webber, for parents of 13 of the models.

Thomas S. Utschig, United States Bankruptcy Judge.

**MEMORANDUM OPINION, FINDINGS OF FACT,
AND CONCLUSIONS OF LAW**

This matter is before the Court on an objection by one of the debtor corporations, The Company Store, Inc., to numerous claims filed in its bankruptcy proceeding. The debtor is represented by William J. Rameker. The claims at issue here were filed by the parents of numerous minors who did modeling work for the debtor. James P. Stephenson and Charles F. Webber are representing the parents of 13 of the models. The parties have submitted memoranda in support of their respective positions. Susan Seagren, mother of minor-model Latecia M. Seagren, also submitted a response brief to the debtor's objection.

Turning to the facts, the claims at issue here represent fees for modeling performed by numerous minors for the debtor's Fall 1992 catalog. Those minors and their respective claim numbers and amounts are as follows:

# 24	Kyle Boe	\$ 488.00
# 25	Olivia Richardson	632.50
# 26	Emily Branham	930.00
# 27	Joe Emerick	632.50
# 41	Jill Mikelson	632.50
# 56	David Vogelbacher	743.00
# 60	Lucas Ingram	488.00
# 64	London Sponsel	488.00
# 87	Jordan Shackelford	930.00
#101	LaTecia Seagren	488.00

#114	Luther Moore	488.00
#117	Alexandra Guzik	743.00
#137	Erica French	930.00
#143	William J. Hinz, Jr.	<u>632.50</u>
		\$9,246.00

The debtor had entered into an oral agreement with the Eleanor Moore Agency, Inc., of Minneapolis (hereinafter: Agency). The Agency referred the models to the debtor. They performed modeling services for the debtor over a three-day period -- February 5 - 7, 1992. The photography was performed by an independent photographer hired by the debtor.

On May 5, 1992, the Agency submitted invoices to the debtor totaling \$11,694. The debtor and its related entities filed a petition for relief under chapter 11 of the Bankruptcy Code on May 22, 1992. On June 17, 1992, the Agency filed a claim against the debtor totaling \$11,694, including a priority claim in the amount of \$9,246. The parents of the children who had performed the modeling services subsequently filed the proofs of claim listed previously, consisting of wage priority claims for the modeling services pursuant to 11 U.S.C. § 507(a)(3).

One of the grounds for the debtor's objections to the claims was that they were duplicative with the claim filed by the Agency. Andrea Hjelm, president of the Agency, responded to this objection by agreeing to waive the Agency's claim (claim #57) if she were allowed to subordinate it to the individual claims of the models.

At issue in this matter is whether the claims of the individual models are entitled to priority on the basis of 11 U.S.C. § 507. That provision provides in relevant part:

§ 507. Priorities

(a) The following expenses and claims have priority in the following order:

(1) First, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

(2) Second, unsecured claims allowed under section 502(f) of this title.

(3) Third, allowed unsecured claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay --

(A) earned by an individual within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) to the extent of \$2,000 for each such individual.

. . .

The claimant models argue that they are entitled to priority under § 507(a)(3) because they were employees of the debtor when they performed their modeling services. The debtor counters by asserting that the models were more like independent contractors when they performed their services and they are thus not entitled to priority under § 507(a)(3).

The Court has considered the arguments and precedent submitted by the parties and holds that a resolution of this question is unnecessary. This is because the claims of the models for priority status must fail on the basis of the clear statutory limitation found at 11 U.S.C. § 507(a)(3)(A). That provision limits priority status for wages to those claims for wages earned within 90 days of the bankruptcy filing. The "wages" at issue here were earned on February 5 - 7, 1992. The bankruptcy petition was filed on May 22, 1992. Thus the "wages" were earned outside of the 90-day limitation of § 507(a)(3)(A) and they are therefore not entitled to priority status.

Accordingly, the debtor's objection to the claims at issue is granted.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.