

5-4-78
WHF

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In the Matter of

IN BANKRUPTCY

SIPPL BROTHERS DEPARTMENT
STORE, INC.

No. 75-1468 Vol.

Bankrupt.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER RE FEES OF ATTORNEY FOR BANKRUPT

The above named corporation having duly filed bankruptcy on the 30th day of October, 1975, by Thomas G. Sazama, its attorney; and the trustee having filed his final account, and notice of final meeting having been given to the creditors and parties in interest on January 16, 1978; and the final hearing having been held on the 26th day of January, 1978, at which time two creditors of said bankrupt appeared and objected to the fees claimed by the attorney for the bankrupt and the attorney for the trustee; and the matter of the attorney fees of Thomas G. Sazama, attorney for the bankrupt, having been adjourned to the 2nd day of March, 1978, for the reason that he was unable to be present at the hearing on January 26, 1978; and said attorney having filed an application for attorney fees and expenses in the total amount of \$4,839.38 less a credit of \$1,250.00 which was paid prior to adjudication, leaving a balance due of \$3,589.38 of which amount \$263.38 represented expenses and disbursements; and that John E. Bliss, an attorney for Wausau, Wisconsin, having filed an objection to the fees of the attorney for the bankrupt on behalf of his client but not having appeared at the final hearing; that at the hearing on March 2, 1978, bankrupt's attorney testified as to his account, and at the end of said hearing Attorney Patrick Crooks moved that the Court enter an order directing that the unpaid amount claimed by Mr. Sazama be ordered paid by James Sippl and his wife and not out of the corporate bankruptcy assets; and the Court having reserved a ruling thereon, and having noticed the matter for further hearing on April 20, 1978, upon application of James Sippl to determine

the reasonableness of the fee and the question of entering an order voiding any further amount owed by him to said bankrupt's attorney; and the appearances at said hearing on April 20, 1978, being Thomas G. Sazama in person and James Sippl in person and by Arthur L. Eberlein, his attorney; and the Court having heard the testimony of the witnesses, and having duly considered all of the record and pleadings on file herein, and having considered the arguments of counsel and the memorandums submitted to the Court, FINDS:

1. That Thomas G. Sazama is an attorney at law duly licensed in the State of Wisconsin and practicing law in the City of Merrill, Wisconsin; that on or about the 18th day of August, 1975 he was employed by the president of the above named bankrupt corporation to render certain services relative to the bankrupt's business involving certain lawsuits then pending and ultimately resulting in the bankruptcy of said corporation and the filing of schedules therefor with the Court on October 30, 1975.

2. That said Thomas G. Sazama has filed with his application for fees an itemized list of services rendered commencing on August 18, 1975, and ending on December 12, 1977, showing a summary of the work done on each day with the amount thereof based on a charge of \$40.00 per hour, which was by agreement he had made with the president of the bankrupt corporation.

3. That the reasonable hourly charge for legal services in the Wausau-Merrill area at the time of the commencement of said services and to the termination thereof was \$40.00 to \$50.00 per hour.

4. That the payment on October 1, 1975, in the amount of \$500.00 referred to as "retainer" constituted a reasonable payment for preliminary services relative to pending suits, supplementary proceedings and judgments involved in said corporate matters.

5. That the sum of \$750.00 paid on October 15, 1975, is a reasonable amount for the filing of the corporate bankruptcy proceedings.

6. That the usual fee for corporate bankruptcy proceedings at said time was \$500.00 but there was certain additional work as

evidenced by the file and the testimony which warranted the payment of the said sum of \$750.00.

7. That William E. Kaplan was appointed trustee in said matter and that William E. Kaplan was also appointed attorney for the trustee acting for himself in said proceedings.

8. That said Thomas G. Sazama was at no time appointed as attorney for the trustee by any order or appointment of the Court and that any and all charges by Mr. Sazama for legal services following the filing of the bankruptcy schedules are not proper charges against the bankruptcy assets in this proceedings in view of his non-appointment and another attorney having been named the attorney for the trustee.

9. That the disbursements itemized by Mr. Sazama from September 8, 1975, through November 13, 1975, being the date of the first meeting of creditors, in the total sum of \$192.41 should be allowed at the sum of \$144.41 based on a reduction for photocopies from fifty cents to twenty-five cents per page.

10. That at the hearing on April 20, 1978, a written agreement by James G. Sippl and Lily Etta Sippl for the payment to Thomas G. Sazama for any services rendered in said matters, being Exhibit #1, was duly filed.

11. That James G. Sippl was the sole stockholder in said corporation.

12. That Section 60 (d) of the Bankruptcy Act provides for a review by the Court on its own motion, or upon other application for review, of all attorney fees paid to the attorney for the bankrupt, and including a provision that if any debtor shall agree orally or in writing to pay money or transfer property to an attorney at law after the filing, the transaction may be examined as to the reasonableness thereof, and any excess obligation shall be cancelled, or if any excess payment or transfer has been made, returned to the bankrupt.

13. That the written agreement to pay said attorney's fees is not by the bankrupt, which was a corporation, but by its officers.

14. That the general rule provides that this provision does not include payments made or to be made by third persons. (See Collier on Bankruptcy, Second Edition, pages 464-465.)

15. That said section above referred to does not permit the Court to order a third party to pay the attorney fees in said proceedings as moved by Mr. Crooks.

CONCLUSIONS OF LAW

That an order be entered:

1. Approving the original payment of \$1,250.00 to Attorney Sazama but that the remaining sum of \$3,326.00 for fees be denied.

2. That Attorney Sazama be reimbursed for disbursements in the sum of \$144.41.

3. That the motion of Attorney Crooks directing the payment by Mr. Sippl personally be denied.

4. That the request of James Sippl for a determination of reasonable fees be dismissed, leaving it to the matter of a State Court action for any determination of liability arising out of said agreement (Exhibit #1) to pay said fees.

O R D E R

NOW, THEREFORE, IT IS ORDERED:

1. That the sum of \$500.00 paid to Thomas G. Sazama for services prior to the filing of the bankruptcy schedules is hereby approved.

2. That the sum of \$750.00 paid to Thomas G. Sazama for services rendered in the preparation of the bankruptcy schedules is hereby approved. (See page 7 of the transcript of testimony of hearing on March 2, 1978.)

3. That Thomas G. Sazama be paid the sum of \$144.41 for disbursements in said proceedings.

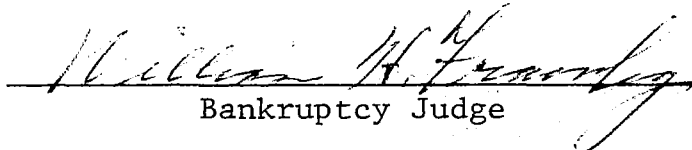
4. That the motion of Patrick Crooks to direct James Sippl to pay said attorney fees above the amounts allowed by the Court be and the same is hereby in all respects denied.

5. That the additional sum of \$3,326.00 for attorney fees claimed as an expense of said bankruptcy by Mr. Sazama be and the same is hereby denied as a proper claim herein, and that the remaining disbursements in the sum of \$118.97 are denied as an expense of administration herein.

6. That the application of James Sippl for re-examination as to the reasonableness of any fees and the obligation to pay the same is hereby dismissed and left to the determination of a State Court proceedings.

Dated: May 4, 1978.

BY THE COURT:


Bankruptcy Judge

5-4-78
WHF

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In the Matter of

IN BANKRUPTCY

SIPPL BROTHERS DEPARTMENT
STORE, INC.

No. 75-1468 Vol.

Bankrupt.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DETERMINING ATTORNEY FEES AND
DISBURSEMENTS PAYABLE TO ATTORNEY FOR TRUSTEE

A final hearing having been held in the above entitled matter on the 26th day of January, 1978, to hear the final account of the trustee, William E. Kaplan; and notice having been duly given to creditors showing the summary of the final account and the claim of William E. Kaplan for trustee's fees in the sum of \$703.50 and expenses in the sum of \$150.29, as well as his claim for attorney fees as attorney for the trustee in the sum of \$10,801.25; that at the time of said hearing two creditors appeared and objected to the reasonableness of said attorney fees; and the Court having heard the testimony of Mr. Kaplan, and having taken the matter under advisement pending the hearing on the objections to the fees claimed by the attorney for the bankrupt corporation; and the appearances at the final hearing being William E. Kaplan as trustee and as his attorney, and James E. Low of the firm of Crooks, Crooks & Low representing Myron Sippl; and the Court having duly considered the application for fees filed by Mr. Kaplan, and his testimony, and having duly considered the entire record file and the arguments of counsel; and the Court being fully informed in the premises, FINDS:

1. That said corporation was duly adjudicated a bankrupt on the 30th day of October, 1975, and that at the first meeting of creditors on November 13, 1975, William E. Kaplan, an attorney of Wausau, Wisconsin, was duly appointed as trustee herein by the Court.

2. That Mr. Kaplan duly filed his bond and upon his application was appointed as attorney to act for said trustee.

3. That the bankruptcy proceedings involved herein were routine and not extra-ordinary in any manner and the principal assets of the bankruptcy were funds received for preferences and liquidation of certain stocks and cash from said bankrupt corporation.

4. That prior to the date of the bankruptcy the assets of the bankrupt corporation had been sold, including the real estate and business assets, in a separate voluntary proceedings and at which time certain preferences by virtue of judgments and other payments were duly made.

5. That this is a matter that requires a distinction between what services are to be rendered by the trustee and what duties he should perform relative to his office as trustee, and what charges he can make for services rendered as an attorney when so acting.

6. That the law is well established that a trustee cannot charge attorney rates for what he should do as the trustee in said proceedings.

7. That the charge of Mr. Kaplan in the sum of \$10,801.25 is based upon an application for attorney fees in which he claims, and testified, that he expended a total of 139½ hours at the rate of \$65.00 per hour, being his regular charge in said matter; and he further alleges that he devoted 3½ days for trial and hearings on motions, and that the fair and reasonable value of said services is the sum of \$500.00 per day.

8. That said attorney testified he did not know the average or going hourly rate in the Wausau area.

9. That the Court will find that \$50.00 was the average rate at the close of the proceedings in 1977, and that the hourly rate varied from \$40.00 to \$50.00 per hour at the commencement of said proceedings.

10. That the record and file will show that the trustee was asked to add the time involved to his itemized statement, which he did and which is on file herein.

11. That had not the creditors appeared and objected to the attorney fees, the Court would have been required by its duty and oath to review the claim for attorney fees herein.

12. That the total amount of assets realized by the trustee is the sum of \$28,850.08 and consist of the following: \$7,500.00 of this amount was realized out of a litigated action for preference against Myron Sippl which was in the amount of \$9,000.00 and settled for \$7,500.00; \$5,203.60 cash from James Sippl, being funds turned over from the business to the trustee after his appointment; \$1,900.00 cash from Robert Sippl which was from the settlement of an action based upon a complaint by the trustee consisting of two pages and which complaint asks for the sum of \$2,046.35 plus interest. No trial was held. \$8,660.08 cash received from retirement of United Grocers stock; no action, no trial and compromised by the trustee; \$2,400.00 cash from Record-Herald, Inc; no action, no trial, payment upon letter demanding repayment of preference; \$1,082.05 cash from Terwilliger Law Firm, escrow account re sale; no action; no trial. \$1,904.35 cash from Internal Revenue Service; no action; and \$200.00 cash by assignment from James Sippl for cash surrender value of a life insurance policy to be paid out of the distributive claim of Mr. Sippl in these proceedings.

13. That a summary from the record, attached hereto and marked "Exhibit A," shows a listing of the various proceedings and legal applications and pleadings made by Mr. Kaplan with long hand writing on the pages of each.

14. That there is nothing unusual in these proceedings requiring any special expertise in bankruptcy law or trial practice; that the trustee's work included the marshalling of all of the assets excepting the claim of Robert Sippl and Myron Sippl, and that the claim of the petitioner shows:

"ATTENDING TRIALS AND MOTIONS

Actual Hours

09-16-76	Myron Sippl, trial	3-0
04-21-77	Hearing re: Objections to Claims	1-½
06-23-77	Myron Sippl, trial continued	2-½
08-18-77	Hearing on James Sippl and Lillie Sippl Claims	1-0 "

15. That there are fourteen factors to be taken into consideration in determining and awarding attorney fees where the trustee is also the attorney, as in these proceedings, which are as follows: (1) The time and labor required; (2) The novelty and difficulty of the questions; (3) The skill requisite to perform the legal services properly; (4) The preclusion of other employment by the attorney due to acceptance of the case; (5) The customary fee; (6) Whether the fee is fixed or contingent; (7) Time limitations imposed by the client or other circumstances; (8) The amount involved and the results obtained; (9) The experience, reputation and ability of the attorneys; (10) The "undesirability" of the case; (11) The nature and length of the professional relationship with the client; (12) Awards in similar cases; (13) The strong policy of the Bankruptcy Act that estates be administered economically; and (14) There should not be duplicative fees in the event of non-legal services where there is a trustee who performs services. In the Matter of Slide Mountain Corporation, Bankruptcy Court Decisions, page 1379 (c-24) dated 3/16/78.

16. That petitioner has claimed the entire amount as hereinabove stated as attorney's time spent on attorney's work, and has advised the Court that he realizes the Court will make an adjustment of the claim but that the claim is based upon the 139½ hours plus the court proceedings at the rate of \$65.00 per hour, and thus the Court must make the findings as to the basis of the fee in light of the above requirements.

17. This being a normal and regular administration or liquidation similar to a probate matter, and there being nothing unusual or requiring any special skill or preclusion of other employment or time limitation, and not requiring any extra-ordinary

experience, reputation or the ability of the attorney, and there being nothing "undesirable" about the case, and the length of the professional relationship of the client not being a determining factor, the basis of the charge for attorney fees in this case should be: (a) The trial of the Myron Sippl preference matter which resulted in a recovery of \$7,500.00; (b) the preparation of the complaint in the Robert Sippl matter; (c) preparation of trustee's various objections to claims; (d) preparation of the applications and orders for sale of property, settlements and abandonment of assets.

18. That from a careful determination by the Court of the entire record of these proceedings, the time and labor required, the customary type of fee, the fee not being fixed or contingent, the amount involved and the results obtained, namely the \$7,500.00 in the Myron Sippl matter, and the remaining items to be covered having been trustee work rather than attorney work, the awards in similar cases (See Collier on Bankruptcy, Volume 3A, page 1483, 1485, 1489 and 1492; Remington on Bankruptcy, Volume 6, page 248 and subsequent pages; and American Jurisprudence 2d, Volume 9, pages 486, 1145, 1146 and 1147) the strong policy of the Bankruptcy Act that estates be administered economically, the examination to prohibit duplicate fees, and the actual time spent in the trial of the Myron Sippl case and other periodic court appearances, the sum of \$3,500.00 is a reasonable and proper amount for legal services rendered in said proceedings.

19. That the disbursements claimed by said applicant in the sum of \$150.29 are reasonable.

CONCLUSIONS OF LAW

That an order be entered determining that William E. Kaplan, attorney for trustee, be paid the sum of \$3,500.00 attorney's fees plus his disbursements in the sum of \$150.29 as claimed in his final account.

"EXHIBIT A"

SIPPL BROS. DEPARTMENT STORE, INC.

Re: Claim of Record-Herald

Trustee's Objection to Claim 1 pg
Amended Objection to Claim 1 pg
Trustee's Brief 6 pgs

Re: Claim Against Robert Sippl

Complaint 2 pgs
Order Authorizing Settlement of Claim 2 pgs

Re: Claim of James G. Sippl, Jr.

Trustee's Objection to Claim 1 pg
Order Allowing Claim 1 pg

Re: Trustee's Objection to Claim of James G. Sippl (\$750.00) 1 pg
Trustee's Objection to Claim of James G. Sippl (\$2,685.85) 1 pg
Trustee's Objection to Claim of James G. Sippl (\$245.34) 1 pg
Trustee's Objection to Claim of James G. Sippl (Unspecified Amount) 1 pg

Re: Trustee's Objection to Claim of Lily Etta Sippl (\$2,685.85) 1 pg

Re: Trustee's Objection to Claim of James G. Sippl & Lily
Etta Sippl (\$1,736.25) 1 pg
Trustee's Objection to Claim of James G. Sippl & Lily
Etta Sippl (\$5,904.16) 1 pg

Re: Claim Against Terwilliger, Wakeen, Piehler, Conway & Klingberg

Trustee's Petition to Approve Settlement of Claim and
Order Approving Settlement 3 pgs

Re: Claim Against Myron Sippl

Complaint 2 pgs
Trustee's Petition for and Order Authorizing Payment of
Witness Fee 2 pgs
Plaintiff's Brief 7 pgs
Trustee's Petition for Compromise Settlement and Order
Approving Compromise Settlement 3 pgs

Re: Miscellaneous Pleadings & Reports

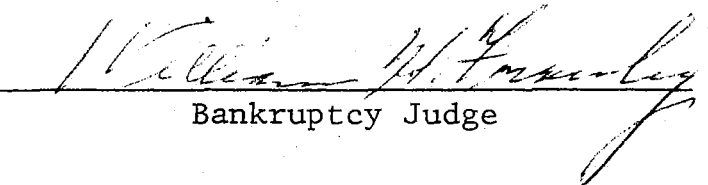
Trustee's Petition for Compromise Claim against United Grocers
and Order Authorizing Compromise 2 pgs
Petition for Appointment of Attorney for Trustee, Affidavit
in Support thereof and Order Appointing Attorney 1 pg
Petition for Extension of Time to File Objections to Discharge
and Order Extending Time 2 pgs
Petition and Order Authorizing Abandonment of Property 1 pg
** Petition for Authority to Sell Personal Property and
Order Authorizing Sale 2 pgs
Petition and Order Authorizing Payment of Expenses 2 pgs
Petition and Order Authorizing Payment of Expenses 2 pgs
Report of Trustee 1 pg
Inventory and Report of Appraiser 1 pg
Petition and Statement of Services Rendered 6 pgs
Final Account 2 pgs
** Appointment and Oath of Appraiser 1 pg
Report of Appraiser 1 pg

O R D E R

NOW, THEREFORE, IT IS ORDERED: That William E. Kaplan, attorney for trustee in the above entitled matter, be and he is hereby allowed the sum of \$3,500.00 attorney's fees and the sum of \$150.29 disbursements in said matter in addition to his regular trustee's fees herein.

Dated: May 4, 1978.

BY THE COURT:


Bankruptcy Judge