

6/6/80

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

In the Matter of

IN BANKRUPTCY

KELLY TIRE SERVICE, INC.
Debtor

Adversary No. 80-0037

POMP'S TIRE & RECAP SERVICE,
INC.
Plaintiff

vs.

KELLY TIRE SERVICE, INC.
and LAWRENCE CARTER
Defendants.

FILED
JUN 6 1980
CLERK
U.S. BANKRUPTCY COURT

ORDER DENYING FEES AND COSTS

At Eau Claire, in said district, this 6th day of June,
1980.

The plaintiff in the above entitled action having moved to dismiss said action, and the Court having granted the motion; and the defendants at said time having made a request for costs and attorneys' fees pursuant to Section 523 (d) of the Bankruptcy Reform Act of 1978; and the attorneys having duly filed briefs relative to said costs; and the defendants having filed their claim with their brief as to their view of reasonable attorneys' fees; and the Court having duly considered the record and the briefs and the entire proceedings, and being fully advised in the premises, FINDS:

1. That the statute relating to the question involved herein is as follows:

"(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a) (2) of this section, and such debt is discharged, the Court shall grant judgment against such creditor and in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding to determine dischargeability, unless such granting of judgment would be clearly inequitable."

2. That this action is one of a business bankruptcy rather than an individual consumer bankruptcy.

3. That the statute provides reasonable attorneys' fees in actions in which dischargeability of a debt is involved in a consumer debt case.

4. That it is equitable that the matter of fees and costs be handled in the usual manner and that said statute does not apply to the present case.

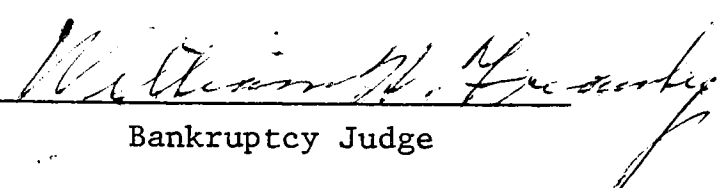
CONCLUSIONS OF LAW

That an Order be entered determining that the defendants are not entitled to reasonable attorneys' fees as claimed, or the amount so claimed under said statute, or as to any nominal attorneys' fees or disbursements.

O R D E R

NOW, THEREFORE, IT IS ORDERED: That the claim of the defendants for attorneys' fees and costs in the above entitled matter be and the same is hereby denied.

BY THE COURT:



Bankruptcy Judge