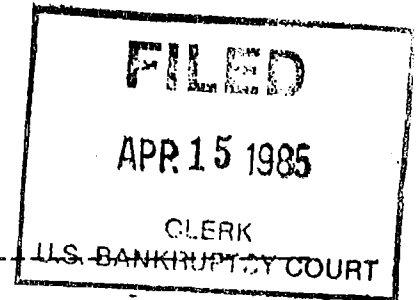


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

LA CROSSE GLASS CO., INC.

LF11-84-00877

Debtor.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER ALLOWING CLAIM

La Crosse Glass Co., Inc. (hereinafter LCG), by Attorney Donald J. Harman, having filed an objection to claim; and hearings having been held from time to time; and LCG appearing by counsel; and Wisconsin State Carpenters Pension Fund, Wisconsin State Carpenters Welfare Fund, Greater Wisconsin Carpenters Bargaining Unit Vacation Fund, and Greater Wisconsin Carpenters Bargaining Unit Apprenticeship and Journeyman Training Fund (hereinafter "Funds") appearing by Attorney Susan J. M. Bauman; the Court, being fully advised in the premises, FINDS THAT:

1. On January 10, 1983, the Funds obtained a judgment against LCG on claims arising in the period October 1, 1980, through October 31, 1982. Funds v. LCG, 82-C-581 (W.D.Wis.).

2. Before and after the judgment, the Funds and LCG engaged in negotiations regarding Funds claims arising before and after October 31, 1982.

3. These negotiations culminated in July and August of 1983 (all communication between the parties was by letter between counsel except where indicated).

4. On July 1, 1983, LCG proposed "to cash out their [current] obligation to the various funds" for approximately \$13,700--the total amount it claimed was then in arrearage, without interest or penalties (at about the same time the Funds claimed that \$18,607.50 plus additional interest was outstanding on the judgment alone).

5. On July 5, 1983, the Funds' attorney informed LCG that the proposal would be considered by the Funds' Employer Accounts Committee on August 1, 1983, and strongly recommended:

that another proposal be made which includes interest and a substantial down payment on the debt. In lieu of down payment, if a certified check for the settlement amount (plus interest) is received by July 28, 1983, I will hold it in my trust account until the Trustees have acted. Should the offer be rejected, the check will be returned. Should the offer be accepted, the matter will be closed, assuming all contributions are timely hereafter.

6. On Thursday, July 28, 1983, LCG's attorney informed the Funds that "[w]ith respect to [the] letter of July 5, La Crosse Glass offers to pay the sum of \$15,000 in complete satisfaction of the judgment now held by" the Funds and that "I have the \$15,000.00 in my trust account should the offer be accepted. All you need do is notify me and you will receive the money by return mail."

7. Thereafter, LCG's attorney received a telephone call from Jean Oldenburg, a non-lawyer in the office of the Funds'

attorney, who "told [him] that she did not know whether or not the offer contained in the July 28, 1983, letter would be accepted by [the Funds] but that [he] should send the check for \$15,000.00 at once because there was to be a meeting of the trustees of the [Funds] who would then decide whether or not the \$15,000.00 would be acceptable to them to settle all outstanding claims of the [Funds] against the debtor." Affidavit of Donald J. Harman (filed March 27, 1985)

8. LCG's attorney disclaims knowledge of any other telephonic communication between LCG and the Funds. The Funds apparently assert that, on Tuesday, August 2, 1983, Cline Cagle, their Audit Supervisor, called LCG's attorney and told him "that the \$15,000 was accepted in full satisfaction of the judgment" at the Monday, August 1, 1983, Employer Accounts Committee meeting. October 25, 1983, Letter of Susan J. M. Bauman (filed with Mr. Harman's affidavit as Exhibit "W").

9. On Tuesday, August 2, 1983, LCG's attorney made out a \$15,000 check payable to the Funds from his trust account. On the front of the check, in the space marked "FOR _____", he wrote: "In Satisfaction of Judgment #82-C-581".

10. On August 3, 1983, LCG's attorney sent the check to the Fund's attorney with a cover letter which provided, in pertinent part:

Attn: Jean Oldenburg

Dear Ms. Bauman:

Please find enclosed my trust account check for \$15,000.00 in complete satisfaction of the judgment in favor of Wisconsin Carpenter's Fund, et al and against La Crosse Glass Co., Inc., Case No. 82-C-581 which was entered on January 10, 1983 in the United States District Court for the Western District of Wisconsin. This check also satisfies the arrearages occurring after the Entry of Judgment of the various funds, so that after applying this amount to the account of La Crosse Glass, they are current in the obligation to their funds.

This check is being sent to you in trust, the condition of trust being that you get from your client, the Wisconsin Carpenters Funds, et al, a satisfaction of the aforesaid Judgment prior to the time that you negotiate this check.

If you have any questions don't hesitate to call me. I appreciate your efforts in trying to resolve this matter to the satisfaction of Wisconsin State Carpenters Fund and La Crosse Glass.

11. The Funds negotiated the check and, on August 17, 1983, filed a satisfaction of judgment in case 82-C-581 (W.D.Wis).

12. In November or December of 1983, the Funds commenced an action against LCG for claims arising in the period November 1, 1982, through the date of entry of judgment. Funds v. LCG, 83-C-987-C (W.D.Wis.)

13. On May 4, 1984, LCG filed for relief under Chapter 11 of the Bankruptcy Code.

14. On September 24, 1984, the Funds' second suit was dismissed on the stipulation that "all outstanding issues between the parties will be resolved by the Bankruptcy Court."

15. "The position of [LCG] is that [LCG] owed money to the [Funds] but is substantially less than claimed." Objection to Claim (filed Feb. 14, 1985).

Discussion

16. The principal dispute between the parties involves the terms of the compromise agreement entered into in August of 1983.

17. "A compromise agreement is a contract . . ."
15A Am.Jur.2d Compromise and Settlement sec. 7 (1976).

18. "The formation of a contract generally contemplates an offer and acceptance . . . An offer must be definite and certain. An offer is judged by its objective manifestations, not by any . . . subjective . . . intentions of the offeror." 17 Am.Jur.2d Contracts sec. 31 (1964) (footnotes omitted).

19. On July 1, 1983, LCG offered \$13,700 to the Funds to settle all outstanding arrearages.

20. On July 28, 1983--in response to the Funds' attorney's advice to improve upon the original offer--LCG made a definite and certain superseding offer of \$15,000 to satisfy the Funds' judgment.

21. The subsequent conversation between LCG's attorney and a non-lawyer in the Funds' attorney's office--which was not initiated by the LCG attorney---did not affect the July 28 offer.

22. Assuming that the Funds did not directly communicate their August 1 acceptance, LCG was free to amend or withdraw its July 28 offer until the \$15,000 check was negotiated. See id. at sec. 35.

23. The only objective indication that LCG's August 2nd check and August 3rd cover letter were intended to be a superseding offer was the sentence buried at the end of the first paragraph stating, ipse dixit, that the check "satisfies" post-judgment arrearages. There was no mention of a new offer or proposal.

24. In all other respects, the check and letter--apparently sent in response to a request for a settlement check--were directed toward effectuating the terms of the July 28 offer. There was, for example, no request for a release of post-judgment claims.

25. In short, the August 3rd cover letter was not a definite and certain superseding offer and, viewed objectively, the Funds accepted LCG's July 28 offer by negotiating the LCG check and filing a satisfaction of judgment.

CONCLUSION OF LAW

The Funds' claim should be allowed in the amount of all unpaid arrearages, interest, penalties and other charges due for the period November 1, 1982, to May 4, 1984. (The Court assumes that the parties' accountants will determine this amount.)

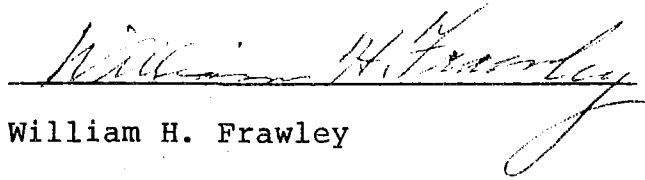
ORDER

IT IS ORDERED THAT the claim of Wisconsin State Carpenters Pension Fund, Wisconsin State Carpenters Welfare Fund, Greater Wisconsin Carpenters Bargaining Unit Vacation Fund and Greater

Wisconsin Carpenters Bargaining Unit Apprenticeship and
Journeyman Training Fund be, and the same hereby is, ALLOWED to
the extent of all unpaid arrearages, interest, penalties and
other charges due for the period November 1, 1982, to May 4,
1984.

Dated: April 15, 1985.

BY THE COURT:

A handwritten signature in cursive script, reading "William H. Frawley", is written over a horizontal line.

William H. Frawley

U. S. Bankruptcy Judge

cc: Attorney Donald J. Harman
Attorney Susan J. M. Bauman