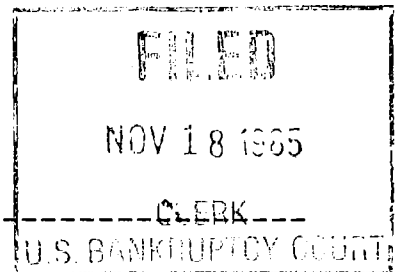


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



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In re:

Case Number:

MARIE KOLMER,

EF7-84-01939

Debtor.  
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ORDER DENYING OBJECTION TO TRUSTEE'S RETENTION OF AN ATTORNEY

Trustee Peter F. Herrell has requested a court order authorizing him to retain Attorney Terrence J. Byrne to initiate action under 11 U.S.C. § 544(b). The purpose of such action would be to recover property for the estate thought to be fraudulently transferred by debtor Marie Kolmer to her husband. The debtor has objected to the trustee's request based on her assertion that Attorney Byrne has a conflict of interest.

A hearing on the trustee's request was held on September 23, 1985. The debtor appeared by Attorney Peter E. Grosskopf. The trustee and Attorney Byrne appeared personally. The parties have also submitted briefs on this matter with the court.

Debtor's objection is based on the fact that until recently Attorney Byrne represented major creditors in this case, Marvin and Kathleen Dietsche, in an adversary proceeding against debtor. She also contends that Attorney Byrne has represented the Dietsches in a state court action involving the debtor as an adversary. Debtor also notes that under the proposed contingency fee agreement the Dietsches are to advance the costs and expenses

of the recovery action. Under these circumstances, debtor asserts that Attorney Byrne cannot provide impartial and disinterested representation of the trustee.

11 U.S.C. § 327(a) provides that a trustee, with court approval, may retain attorneys or other professional persons that do not hold or represent an adverse interest to the estate, and are disinterested persons. This court has not been reluctant to exercise its inherent power to regulate the admission, practice and discipline of attorneys where there is a conflict of interest. See In re Goetz, 43 B.R. 849 (Bankr W.D.Wis. 1984).

Upon review of the facts of this case, the court is of the opinion that Attorney Byrne does not hold or represent an adverse interest to the estate and is a disinterested person. Attorney Byrne is being retained solely to pursue the issue of a potential fraudulent conveyance. His work will in no way concern the dispute between debtor and the Dietsches. That matter will be addressed by the court, without Attorney Byrne's involvement, in its review of debtor's objection to the Dietsche claim. Attorney Byrne's past work for the Dietsches does not prevent him from fairly and impartially representing the estate in a fraudulent conveyance action.

The fact that the Dietsches will be responsible for advancing the costs of litigating any fraudulent conveyance action does not create a conflict. Trustee has testified that the estate is without resources to fund such an action. Since the Dietsches are major creditors it is understandable that they would fund the

fraudulent conveyance action. They will be given no preference as a creditor because of the arrangement. No conflict can be attributed to the fee arrangement.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

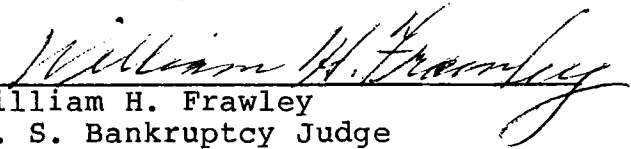
ORDER

IT IS ORDERED THAT debtor's objection to the trustee's retention of Attorney Terrence J. Byrne for the purpose of initiating a fraudulent conveyance action is denied.

IT IS FURTHER ORDERED THAT the trustee's retention of Attorney Byrne, according to the submitted retainer agreement, is approved.

Dated: November 18, 1985.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney Peter E. Grosskopf  
Attorney Peter F. Herrell  
Attorney Terrence J. Byrne