UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

In re:

CARDINAL CORPORATION OF STANLEY, WISCONSIN, INC.,

Debtors.

Case Number:

EF11-85-01655

ORDER

The court having this day entered its memorandum opinion, findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS ORDERED that the Carlile Company claim for an administrative expense is hereby denied.

Dated: July 25, 1986.

BY THE COURT:

William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney Michael McKim
Attorney Erwin Steiner

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MEMORANDUM OPINION
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The Carlile Company (Carlile), by Michael McKim, has brought this motion requesting that a portion of the debt owed by the debtor to Carlile be given administrative expense priority pursuant to 11 U.S.C. § 503(b)(1)(A). The debtor appears by Erwin Steiner and objects to the motion. A hearing was held on this matter on June 23, 1986, and the issues have been submitted for determination by briefs.

Carlile is an insurance agency and has caused several insurance policies that cover property of the debtor to be issued. These policies were issued by various insurance companies to the debtor. Carlile is not a party to any of these insurance policy contracts. The debtor and Carlile agree that they are bound by a parol contract; however, the exact terms of this contract remain somewhat uncertain.

Carlile initially came before the court in this case by moving for relief from the 11 U.S.C. § 362 automatic stay so that it could cause the various insurance policies to be cancelled.

None of the insurance companies that were parties to the actual insurance policies were joined in that motion. The hearing on such motion was held on Janury 17, 1986. At the hearing, Carlile and the debtor agreed that they were bound by a parol contract and that the contract was an executory contract. The court decided that matter on procedural grounds. The court held that, under the circumstances, a party to an executory contract must first seek relief under 11 U.S.C. § 365. The court explicitly decided not to determine the issue of whether Carlile was entitled to an administrative expense priority. 11 U.S.C. § 503(b).

Carlile now moves the court requesting that it be granted an administrative expense priority for the insurance coverage provided to the debtor post-petition. 11 U.S.C. § 503(b)(1)(A) and § 507(a)(1). The debtor objects to the motion. The debtor argues that the obligation owed to Carlile arose pre-petition and, therefore, the debt cannot be allowed as an administrative expense priority. In re Boogaart of Florida, 23 B.R. 157 (Bankr. S.D. Fla. 1982). Carlile argues that the debtor received post-petition benefits from the insurance coverage. Carlile asserts that the post-petition insurance coverage was an actual and necessary expense of the bankruptcy estate. Hence, it argues that the cost of the post-petition insurance coverage should be awarded administrative expense priority.

The insurance policies were procured by Carlile for the debtor prior to the date of the filing of the debtor's bankruptcy

petition on August 26, 1985. The debtor apparently did not have sufficient funds to make the premium payments. Carlile agreed to advance the necessary funding to initiate the insurance policies. The debtor and Carlile agreed to a plan by which the debtor was to repay Carlile. This plan of repayment was not documented into a written agreement. The insurance policies all expired of their own terms by the end of April, 1986. The debtor was provided with insurance coverage for the full duration of the policies.

Initially, it is necessary to examine the nature of the relationship between Carlile and the debtor. The court found some of the terms of this relationship in its order of February 10, 1986.

> The payment plan by which the debtor was to pay Carlile was never documented into a written agreement. However, the testimony revealed that the debtor was to make payments on account. These payments were to be made to an account comprised of the cumulative amounts due on seven insurance policies. The payments were to consist of a 25% down payment due on April 1, 1985, and nine monthly payments commencing June 1, 1985. The account was to accrue interest at a rate of 1½% per month. The payment to Century Indemnity Company for primary property damage was to be paid in one payment. This payment was due prior to the filing of the bankruptcy petition.

In re Cardinal Corporation, (Bankr. W.D. Wis. 85-01655 Feb. 10, 1986). All of the terms of this parol contract have apparently not been presented before the court.

The amount of the cumulative insurance premiums that the debtor originally agreed to pay was $150,446.88. The debtor paid $34,000.00 to Carlile prior to filing its bankruptcy petition.

Carlile paid $80,170.00 to the insurance companies pre-petition and $7,766.04 post-petition. Carlile asserts that it is still obligated to the insurance companies for the balance due on the premiums. However, this is an obligation owed to the insurance companies and not an obligation owed to the debtor. The insurance coverage was issued and has expired. Carlile asserts that the per diem value of the combined insurance coverage was $412.19. Carlile further asserts that the post-petition insurance coverage was a benefit to the bankruptcy estate as well as an actual and necessary cost of the estate to the extent of $89,857.42.

The contract entered into by Carlile and the debtor may be considered an executory contract. However, the primary duty incurred by the debtor was simply an obligation to pay. Carlile's duties appear to be those duties of an insurance agency. In addition, Carlile offered to advance funds to secure insurance policies for the debtor with the expectation that the debtor would reimburse it for the amounts paid. Carlile also charged interest against the indebtedness at a rate of 1½% monthly. What is ultimately established by this situation is a creditor-debtor relationship. Carlile loaned the debtor financing to buy insurance. By this method Carlile kept the debtor as a customer. The obligation created by this procedure is an unsecured debt.

The money was advanced by Carlile to procure the insurance coverage for the debtor prior to the filing of the bankruptcy petition. The insurance policies were also all issued pre-

petition. The obligation of the debtor to pay was a pre-petition obligation. Only post-petition obligations can qualify for administrative expense priority under 11 U.S.C. § 503(b)(1)(A). In re Alchar Hardware Co., 759 F.2d 867, 869 (11th Cir. 1985). "Only those obligations of a debtor's estate which arise post-petition ... are entitled to treatment as administrative expenses." In re Boogaart of Florida, 23 B.R.157, (Bankr. S.D. Fla. 1982). The obligations owed to Carlile arose pre-petition and are not entitled to an administrative expense priority under 11 U.S.C. § 503(b)(1)(A).

Carlile asserts that the debtor was provided with the benefit of post-petition insurance coverage. It further asserts that such insurance coverage was an actual and necessary expense of the bankruptcy estate. Carlile argues that it should be remunerated by the debtor for the value of the post-petition insurance coverage provided. One of the problems with this argument is that Carlile was not a party to the actual insurance policies. In this sense, Carlile did not provide insurance to the debtors. Also the insurance policies were all issued pre-petition. The insurance policies are similar to goods purchased pre-petition. Even though payment for a good is not due until after a debtor has filed his bankruptcy petition, the good is property of the bankruptcy estate if received pre-petition, and the obligation to pay is not an administrative expense. In re World Fashions, Inc., 24 B.R. 452 (Bankr. N.D. Ga. 1982).

The court also notes that Carlile is an insurance agency. Carlile advanced financing to the debtor for the purpose of keeping a client. Carlile needs clients to make money. The court has not been presented with any information relating to what percentage of insurance premiums Carlile receives as a commission for procuring insurance policies. To this extent Carlile was acting on its own behalf. It certainly was not acting on behalf of the bankruptcy estate which was not yet in existence. A claimant acting in his own behalf is not entitled to be awarded a claim for an administrative expense. In re McK, 14 B.R. 518 (Bankr. W.D. Wis. 1981).

It is the conclusion of the court that the obligation owed by the debtor to Carlile arose pre-petition and Carlile's claim for an administrative expense should be denied.

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

Dated: July 25, 1986.

BY THE COURT:

William H. Frawley
U.S. Bankruptcy Judge