

UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF WISCONSIN

IN RE:

MADISON HOTEL ASSOCIATES,  
a Limited Partnership,  
Debtor.

FILED

APR 01 1992

CLERK, U.S.  
BANKRUPTCY COURT  
CASE NO.

IN BANKRUPTCY NO.:

MM11-90-00698

STATEMENT OF REASONS

On March 2, 1992 a hearing was held on the objection of TCF Bank Savings fsb ("TCF") to the claim of Foley & Lardner, S.C. ("Foley"). At the conclusion of the hearing the parties were invited to submit briefs addressing the issue of whether the post-confirmation amendment of the debtor's schedule A-3 by which Foley's claim was increased from \$50,465.26 to \$62,074.56 should be disallowed as prejudicial, and Foley's claim be limited to its originally scheduled amount of \$50,465.26. Upon due consideration of the briefs submitted by the parties, I conclude that TCF's objection to Foley's claim must be denied.

Federal Rule of Bankruptcy Procedure 1009(a) provides:

A . . . schedule . . . may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, after notice and a hearing, the court may order any . . . schedule . . . to be amended and the clerk shall give notice of the amendment to entities designated by the court.

Application of Rule 1009 is not unqualified. "Courts may refuse to allow amendments where the debtor has acted in bad faith, where creditors have detrimentally relied on the original documents, or where property has been concealed." In re Carley Capital Group, No. MM11-89-00587, slip op at 8 (Bankr WD Wis June 13, 1991) (citations omitted).

This is not a case in which property has been concealed by the debtor. However, TCF suggests that "[b]ecause Foley & Lardner has a close relationship with the debtor, and because the Debtor has no financial stake in the outcome of the case,<sup>1</sup> Foley & Lardner was able to persuade the Debtor to amend its schedules." There is no evidence that the amendment is a result of bad faith collusion between Foley and the debtor. The \$11,609.30 amendment was sought when a clerical error in computing Foley's fees was discovered and communicated to the debtor. The debtor amended its schedule A-3 in the manner provided under Rule 1009. That amendment must be allowed unless TCF can establish that it has relied on the prior schedule to its detriment.

In that regard, TCF has submitted the affidavit of one of its vice presidents, Jerry Sherman. Insofar as reliance is concerned, Mr. Sherman attests that TCF's plan proposing to pay all the debtor's creditors one hundred percent of their claims was based upon its study of all scheduled claims and timely-filed proofs of claim. Mr. Sherman avers that "[t]he failure of the Debtor and Foley & Lardner to disclose and assert the additional claim of \$11,609.30 was prejudicial to TCF because we were unable to

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<sup>1</sup>Pursuant to the terms of the confirmed plan, the debtor's hotel real property was deeded to TCF in satisfaction of TCF's secured claim and \$72,000.00 of its unsecured claim. The plan further provided for payment in full of all creditors except "interest holders," who were allowed to retain their interests. The payment was to be made first from funds of the debtor's estate, then from funds generated by the continued operation of the hotel, and finally from TCF. It is therefore TCF's responsibility to pay in the event that the previous two sources of payment prove insufficient to pay outstanding claims.

consider it prior to executing the Stipulation<sup>2</sup> and obtaining confirmation of the Plan." The inability to learn the total of claims from the unamended schedules prior to execution of the Stipulation was, however, a risk willingly assumed by TCF. TCF is charged with knowledge that Rule 1009 gives the debtor a broad right to amend. In light of the total amount of claims scheduled, the filing of an amendment changing the amount of the Foley & Lardner claim thus does not qualify as prejudicial to TCF.

Mr. Sherman further affirms that "[i]f TCF had been aware of Foley & Lardner's additional claim, the additional claim might have affected the outcome of the negotiations with respect to the Stipulation and the payments agreed to by TCF." Any prejudice associated with a possible change in the outcome of negotiations is merely speculative.

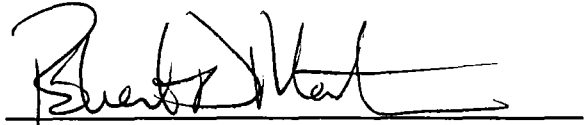
It is no doubt true that if the amendment is allowed and Foley's claim increased to \$62,074.56, TCF's exposure will increase by \$11,609.30. TCF has not, however, established that it will be required to invest additional sums in order to fulfill plan provisions. Even assuming that it were required to do so, where claims other than TCF's approximate \$1.8 million, an increase of up to \$11,609.30 is de minimis. TCF is not materially prejudiced by the amendment which increases its potential exposure by well less than one percent, particularly where, as here, claims disallowed since confirmation of the plan far exceed the amount of

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<sup>2</sup>The "Stipulation for Confirmation" provided for a \$75,000.00 payment to Foley in addition to payment in full of its scheduled claim.

the amendment. The amendment is allowed, and TCF's objection to Foley's claim is accordingly denied.

Dated April 1, 1992.

  
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ROBERT D. MARTIN  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT

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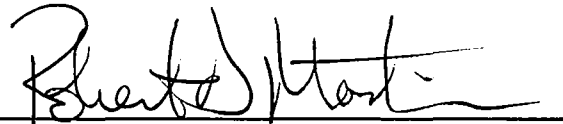
ORDER

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The court having this day entered its Statement of Reasons in  
the above-entitled matter,

IT IS HEREBY ORDERED that the objection of TCF Bank Savings  
fsb to the claim of Foley & Lardner, S.C. is denied.

Dated April 1, 1992.



ROBERT D. MARTIN  
UNITED STATES BANKRUPTCY JUDGE

IN RE:

IN BANKRUPTCY NO.:

MADISON HOTEL ASSOCIATES,  
a Limited Partnership,  
Debtor.

MM11-90-00698

STATEMENT OF REASONS AND ORDER

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Copies of this Statement of Reasons and Order were mailed to the following parties on April 1, 1992:

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