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BANKRUPTCY-JURISDICTION OF BANKRUPTCY COURT TO DETERMINE ATTORNEYS' FEES FOR SERVICES RENDERED IN CHAPTER X REORGANIZATION PROCEEDINGS

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RECENT DECISIONS

BANKRUPTCY—JURISDICTION OF BANKRUPTCY COURT TO DETERMINE ATTORNEYS' FEES FOR SERVICES RENDERED IN CHAPTER X REORGANIZATION PROCEEDINGS—A committee for preferred stockholders entered into an agreement with petitioners, wherein it was provided that certain shares of stock of the debtor corporation, placed in escrow with the committee by four preferred shareholders, would be delivered to petitioners as added compensation for their services in the reorganization proceeding. Pursuant to this agreement petitioners performed valuable services connected with the reorganization. The bankruptcy court allowed petitioners $37,500 from the debtor's estate, but held it had no jurisdiction to pass on the amount of the allowance which should be paid under the escrow agreement.[1] Petitioners then sued in a state court for specific performance of the escrow agreement. On certiorari to the Supreme Court of the United States from a holding that the state court was without jurisdiction over the subject matter,[2] *held*, affirmed (three justices dissenting). The bankruptcy court had exclusive jurisdiction over petitioners' claim by virtue of section 221(4), chapter X of the Bankruptcy Act. *Leiman v. Guttman*, (U.S. 1949) 69 S.Ct. 371.

The practice under equity reorganization was to fix all fees and allowances connected with reorganization by private contract outside of court control.[3] This gave rise to serious abuses with the possible result that the effective amount received by creditors and stockholders under the plan was determined not by the court but by reorganization managers and committees.[4] Consequently, court control of fees was provided for by Congress in the Bankruptcy Act, first in section 77 B,[5] and later in chapter X.[6] The latter, designed to strengthen section 77 B,[7] gives the federal judge exclusive jurisdiction to fix all fees for services compensable out of the debtor's estate,[8] and no stockholder or creditor can by private agreement bind the court to pay allowances out of the estate.[9] The question of the principal case is whether Congress intended that the bankruptcy court should regulate the terms of a private agreement for the payment of fees from non-estate funds. Under section 212 of chapter X[10] the court has broad control over general protective com-

[1] In re Pittsburgh Terminal Coal Corp., (D.C. Pa. 1947) 69 F. Supp. 656.

[2] Leiman v. Guttman, 297 N.Y. 201, 78 N.E. (2d) 472 (1948).

[3] See Part VIII, Protective Committee Report, Securities and Exchange Commission, pp. 232 et seq. (1940).

[4] 1 STANFORD L. REV. 336 (1949).

[5] 48 Stat. L. 912 (1934), 11 U.S.C. (1946) § 207.

[6] 52 Stat. L. 897 (1938), 11 U.S.C. (1946) § 621.

[7] SEN. REP. No. 1916, 75th Cong., 3rd sess., pp. 22, 36 (1938). H. REP. No. 1409, 75th Cong., 1st sess., p. 45 (1937).

[8] Bankruptcy Act, § 242, 52 Stat. L. 900 (1938), 11 U.S.C. (1946) § 642; Woods v. City National Bank & Trust Co. of Chicago, 312 U.S. 262, 61 S.Ct. 493 (1941); Brown v. Gerdes, 321 U.S. 178, 64 S.Ct. 487 (1944).

[9] Silver v. Scullin Steel Co., (C.C.A. 8th, 1938) 98 F. (2d) 503.

[10] 52 Stat. L. 895 (1938), 11 U.S.C. (1946) § 612.

mittee agreements and can set aside any provision which it finds to be unfair or inconsistent with public policy.[11] Section 221(4) of chapter X[12] provides that before confirmation of a plan, the court must determine that all payments made or promised by any person for services in connection with the proceedings[13] have been disclosed, and that all such payments are reasonable.[14] Aside from clear statutory authority, the legislative history of section 221(4) supports the comprehensive view that all private agreements incidental to reorganization were meant to be subject to court control.[15] Chapter X's broad purpose of policing the net return to all security holders from a reorganization can be accomplished only if excessive fees and allowances are controlled. The impact of excessive fees on the whole reorganization plan is the same whether they are charged directly against estate funds, shareholders' stock deposited with a protective committee, or private funds of the shareholders.[16] Since the court finds the determination of allowances to be an integral part of confirmation of a plan, it follows that this authority cannot be delegated by the bankruptcy court.[17] A question remains, however, as to the procedure to be followed by the bankruptcy court under section 221(4). By implication it appears that the judge, once he has determined the reasonable value of the services rendered, can issue a decree for this amount against a party who may not be present in the bankruptcy court. This may pose a constitutional issue not raised in the principal case. However, since the bankruptcy clause of the Constitution has been liberally construed to make the United States one jurisdiction for purpose of service of process,[18] it may well be held that any interested party in a corporate reorganization is within the jurisdiction of the bankruptcy court for all purposes.

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[11] See 6 COLLIER ON BANKRUPTCY, 14th ed., § 9.31 (1947).

[12] 52 Stat. L. 897 (1938), 11 U.S.C. (1946) § 621.

[13] In Matter of P-R Holding Corp., (C.C.A. 2d, 1945) 147 F. (2d) 895, the court refused to inquire into a private contract because it was not made in connection with the reorganization.

[14] In Woods v. City National Bank & Trust Co. of Chicago, 312 U.S. 262, 61 S.Ct. 493 (1941), dictum in the Court's opinion interpreted section 221(4) in the same manner as in the principal case.

[15] Notes 3 and 7, supra. 6 COLLIER ON BANKRUPTCY, 14th ed., § 11.09 (1947). Under section 77B the court set aside a contingent fee agreement, substituted its own determination of the fees, and ordered this amount to be paid from private funds of note-holders. In re McCrory Stores Corp. (C.C.A. 2d, 1937) 91 F. (2d) 1947.

[16] In dissenting, Justice Jackson states that chapter X applies only to agreements which charge allowances against the estate, or against stock deposited under a stock deposit agreement, both of which are under court control. Principal case at 378. His reasoning seems to be that the inequality in bargaining power between the shareholder and a protective committee is not present in a private agreement like that here involved.

[17] Brown v. Gerdes, 321 U.S. 178, 64 S.Ct. 487 (1944); Wright v. City Nat. Bank & Trust Co., (C.C.A. 6th, 1939) 104 F. (2d) 285.

[18] 6 COLLIER ON BANKRUPTCY, 14th ed., § 0.10 (1947); Matter of Greyling Realty Corp., (C.C.A. 2d, 1935), 74 F. (2d) 734.