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# BANKRUPTCY - CORPORATE REORGANIZATION - SECTION 77B - CHAPTER X OF THE CHANDLER ACT - RIGHT OF CREDITOR TO QUESTION THE GOOD FAITH OF A REORGANIZATION PETITION

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BANKRUPTCY — CORPORATE REORGANIZATION — SECTION 77B — CHAPTER X OF THE CHANDLER ACT — RIGHT OF CREDITOR TO QUESTION THE GOOD FAITH OF A REORGANIZATION PETITION — Appellants, two creditors of debtor, objected to the approval of a reorganization petition filed under Section 77B by appellees, who were also creditors of debtor, claiming that the petition was not filed in good faith. *Held*, that appellants had sufficient standing to question the approval of the petition, since any single creditor may raise the issue of the good faith of the petitioners. *Snyder v. Fenner*, (C. C. A. 3d, 1939) 101 F. (2d) 736.

Both Section 77B[1] and its successor, Chapter X of the Chandler Act,[2]

[1] 48 Stat. L. 912, 11 U. S. C. (1937), § 207 (a).
[2] 52 Stat. L. 887, §§ 141-144, 11 U. S. C. (Supp. 1938), §§ 541-544.

require the judge in whose court the reorganization petition is filed to dismiss the petition unless satisfied that it has been filed in good faith. As the court in the principal case points out,[3] good faith, although an ultimate fact to be proved by petitioners,[4] is not one of the material allegations required by the statute to be included in the petition.[5] Therefore the limitation of the right to controvert the material allegations of the petition to the three classes authorized by the statute to do so [6] should not apply to the issue of good faith. Since a finding of good faith is a condition precedent to the approval of the petition,[7] there is no reason why a single creditor should not be allowed to raise the point, for the trial judge himself must raise and determine the issue,[8] and he would be aided, not hindered, by any evidence presented by a creditor.[9] Despite the fact that there is little authority to support the court's position in the present case,[10] its decision seems preferable to an opposite conclusion. The court would probably reach the same result under Chapter X, although it has not yet received judicial interpretation, since § 206 provides: "The debtor, the indenture trustees, and

[3] Snyder v. Fenner, (C. C. A. 3d, 1939) 101 F. (2d) 736 at 738.

[4] It will be assumed the petition was filed in good faith in the absence of allegations to the contrary, or facts in the petition suggesting or showing a lack of good faith. Manati Sugar Co. v. Mock, (C. C. A. 2d, 1935) 75 F. (2d) 284.

[5] Section 77B (a) requires the petition to contain the following allegations: the requisite jurisdictional facts; the nature of the debtor's business; a brief description of the debtor's assets, liabilities, capital stock, and financial condition; if a prior proceeding is pending, the name of the court in which it is pending and the nature of the proceeding; facts showing the need for relief; that the debtor is insolvent or unable to meet its debts as they mature; that the debtor desires to effect a plan of reorganization.

[6] Section 77B (a). The three classes are: (1) the debtor; (2) three or more creditors who have provable claims which amount in the aggregate in excess of the value of the securities held by them, if any, to $1,000 or over; (3) stockholders holding 5 per centum in number of all shares of stock of any class of the debtor outstanding.

[7] In re Wisun & Golub, Inc., (C. C. A. 2d, 1936) 84 F. (2d) 1.

[8] The trial court must affirmatively find good faith before proceeding further. In re Grigsby-Grunow Co., (C. C. A. 7th, 1935) 77 F. (2d) 200.

[9] Section 77B (c) gives any creditor or stockholder the absolute right to be heard on the question of the permanent appointment of any trustee, and upon the proposed confirmation of any reorganization plan, with the privilege of intervening concerning such other questions arising in the proceeding as the judge shall determine. It is arguable that it is an abuse of the judge's discretion to deny a creditor the right to be heard on the question of good faith. However, the intervention clause has been declared to be applicable only after approval of the petition. In re Associated Gas & Electric Co., (D. C. N. Y. 1936) 14 F. Supp. 582. The purpose of the statutory limitation on a creditor's right to intervene is to prevent a single creditor from obstructing the proceeding. In re 211 East Delaware Place Building Corp., (D. C. Ill. 1936) 15 F. Supp. 947.

[10] Provident Mut. Life Ins. Co. of Philadelphia v. University Evangelical Lutheran Church of Seattle, (C. C. A. 10th, 1937) 90 F. (2d) 992, declared that a single creditor had the right to raise the question of good faith. Cf. In re Loeb Apartments, Inc., (C. C. A. 7th, 1937) 89 F. (2d) 461, which held that a bondholders' committee could not raise such a question, since the right to do so was limited to three or more creditors having claims aggregating $10,000 or more.

any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter." [11]

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[11] On the problem of what constitutes "good faith," see Gerdes, " 'Good Faith' in the Initiation of Proceedings under Section 77B of the Bankruptcy Act," 23 GEO. L. J. 418 (1935). And cf. the non-exclusive definition of "good faith" contained in § 146 of Chapter X of the Chandler Act.