

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division**

In re R. J. REYNOLDS-PATRICK) Case No. 03-01297-WA4-11
COUNTY MEMORIAL HOSPITAL, INC.,)
)
Debtor,)
)
)
_____)

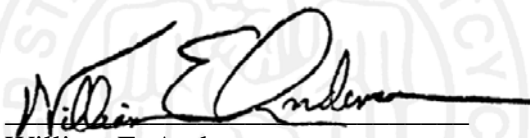
ORDER

For the reason stated in the accompanying memorandum, the objection of National Emergency Services, Inc., to the report of sale of assets by R. J. Reynolds-Patrick County Memorial Hospital, Inc., is overruled except to the extent to which the sale includes the accounts receivable designated as the “Excluded Accounts” in, and listed in Exhibit A attached to, the Stipulation and Consent Order, entered on docket as docket #337 in case no. 99-03471. National Emergency Services, Inc., has a security interest in the Excluded Accounts in the priority provided in the Stipulation and Consent Order.

So Ordered.

Upon entry of this Order the Clerk shall forward a copy to the debtor, Michael E. Hastings, Esq., counsel for the debtor, Howard J. Beck, Jr., counsel for National Emergency Services, Inc., Roy M. Terry, Jr. Esq., trustee for the Reorganization Trust, and the United States trustee.

Entered on this 29th day of August, 2005.



William E. Anderson
United States Bankruptcy Judge



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In re R. J. REYNOLDS-PATRICK) Case No. 03-01297-WA4-11
COUNTY MEMORIAL HOSPITAL, INC.,)
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MEMORANDUM

This matter comes before the court on an objection National Emergency Services, Inc., (“NES”) to a report of sale of assets by R.J. Reynolds-Patrick County Memorial Hospital, Inc., (“the Debtor”). The Debtor opposes the motion. NES, through its motion, briefs and exhibits, has improperly attempted to transform this dispute into a motion for reconsideration of its previously adjudicated claim in this case.

This court has jurisdiction over this matter. 28 U.S.C. § 1334(a) & 157(a). This is a core proceeding. This court may enter a final order. The objection to the report of sale will be overruled, except to the extent that it does not comply with this Court’s determination of the

nature and amount of the claim of NES.

Facts

In 1999, the Debtor filed a petition with the Clerk of this Court initiating a chapter 11 bankruptcy case (the case is designated as “Reynolds I”). In Reynolds I, NES held an allowed secured claim against the Debtor in the amount of \$426,400.24.¹ A plan was confirmed in Reynolds I (“the Reynolds I Plan”) which, among other things, provided for the creation of a trust, the R. J. Reynolds - Patrick County Memorial Hospital, Inc., Organization Trust (“the Reorganization Trust”). The Reynolds I Plan provided that certain claims of the Debtor would be paid by the assets of the Reorganization Trust.

The Debtor, NES, the Unsecured Creditors Committee and Buddy Williams, a secured creditor of the debtor, entered into a stipulated agreement (“the Reynolds I Stipulated Agreement”) which was memorialized in an order of this Court (“the Reynolds I Stipulated Order”). Under the Reynolds I Stipulated Agreement, NES agreed to permit the Debtor to give Mr. Williams a security interest in the Debtor’s assets in order to induce him to pay off a debt in the amount of approximately \$2,000,000.00 which debt was secured by the Debtor’s assets. In return NES (1) was to be paid \$40,000.00 by the Debtor before confirmation; (2) was allowed a “priority claim pursuant to § 507(b) of the bankruptcy Code in the amount of \$160,000”, (“the NES Priority Claim”) which was to be paid without interest from the Reorganization Trust, subordinated only to the administrative expenses of the Reorganization Trust and to the

¹ It is unclear whether NES’s security interest was of any value, that it, it is unclear whether the collateral was of sufficient value to satisfy any senior liens or the lien of NES.

\$40,000[.00] claim of the Debtor's accountants"²; and (3) was allowed a general unsecured claim in the amount of \$426,400.24, less the \$40,000.00 payment and less any payments made to NES by the Reorganization Trust. The Debtor paid its accountants the \$40,000.00 debt in full. The Debtor also paid NES \$40,000.00.

On March 9, 2003, this Court confirmed a plan of reorganization ("the Reynolds I Plan"). The Stipulated Order was incorporated into and made apart of the order confirming the Reynolds I Plan. Because all provisions in an order confirming a plan are made a part of the plan, the Stipulated Order was also incorporated into and made a part of the Reynolds I Plan. The Reynolds I Plan provided that the NES Priority Claim was secured, or partially secured, by an assignment to NES of certain accounts receivable of the debtor (designated as the "Excluded Accounts" in the Stipulated Order). The Debtor agreed to attempt to collect the Excluded Accounts for NES. A list of the Excluded Accounts was attached to the Stipulated Order as Exhibit A.

Reynolds I was closed on March 26, 2003. On March 27, 2003, the Debtor filed the above-styled case ("Reynolds II"). NES filed a proof of claim in Reynolds II, designated as Claim #32, in the amount of \$426,400.24 ("Claim #32"). Of that amount, NES asserted that \$160,000.00 was entitled to priority status in Reynolds II as an administrative claim under 11 U.S.C. § 507(b).

On September 11, 2003, this Court issued an order in Reynolds II concerning Claim #32 ("the Claim #32 Order") holding as follows: (1) NES has a claim in Reynolds II in the total

² This court has previously ruled that the "507(b) priority claim" is held against the Reorganization Trust, not the Debtor.

amount of \$386,400.24 (= \$426,400.24 - \$40,000.00³); (2) NES has a right to payment from the Reorganization Trust in the amount of \$120,000.00 (\$160,000.00 less the \$40,000.00 which has been paid); (3) any payment beyond the \$40,000.00 made by the Reorganization Trust to NES shall result in an equal reduction in its claim of \$386,400.24 in Reynolds II; and (4) the claim of NES in Reynolds II is a general unsecured claim except to the extent that it is secured by the Excluded Accounts⁴ as listed in the attachment to the Stipulated Agreement. Also on September 11, 2003, this Court denied NES's motion for payment of an administrative expense in Reynolds II. NES did not appeal the Claim #32 Order.

During the pendency of Reynolds II, the debtor entered into an agreement to sell substantially all of its assets. Under the agreement the buyer agreed to pay the Debtor a net of \$1,956,196.92 from the gross sales price of \$1,970,000.00. The Order on the Sale provided that, upon closing, interested parties would have sixty days to file and resolve any objections to the secured status of any person or entity holding a lien or purposed lien against the assets that were to be sold.⁵ On March 11, 2005, NES filed an objection to the Report of the Sale ("the Objection to the Report of Sale").⁶ NES objected to the report of sale "because, although not entirely clear, it appears that the claim of NES has been ignored in the proposed distribution of the sales

³ The \$40,000.00 adjustment is based on the payment in that amount to NES by the Debtor in Reynolds I before confirmation of the Reynolds I Plan.

⁴ The value of the Excluded Accounts has never been formally determined by the court in either Reynolds I or Reynolds II. The parties, however, seem to agree that the Excluded Accounts now have no value. It would appear that the Claim #32 is unsecured in its entirety. At the hearing on this matter NES asserted that it believed that the Excluded Accounts had substantial value at the time that it entered into the Stipulated Agreement. It is not clear how that assertion has any bearing on the matter before the court. The Stipulated Agreement has been incorporated into the Reynolds I Plan by the order confirming that plan and an order confirming a plan may only be vacated by motion filed within 180 days of the date of confirmation and then only for fraud. See 11 U.S.C. § 1144.

⁵ The Report of Sale is entered on docket as docket #278 in this case.

⁶ The Objection to Report of Sale is entered on docket as docket #295 in this case.

proceeds for the sale of the Debtor's assets."⁷

NES attached a number of exhibits to the Objection to the Report of Sale. Exhibit A was the official form (Form B10) that is used when filing of a proof of claim ("the Alleged First Amended Proof of Claim"). In the Objection to Report of Sale, NES stated that it had "attached as Exhibit A hereto an Amended Proof of Claim reflecting its status as a secured creditor."⁸ In the Alleged First Amended Proof of Claim, NES indicated that it based its assertion that its claim was secured on the provision of the Stipulated Agreement in Reynolds I granting a security interest in the Excluded Accounts. On June 2, 2005, NES filed an objection to the debtor's third amended plan of confirmation in Reynolds II.⁹

NES never filed the Alleged First Amended Proof of Claim other than as an exhibit attached to the Objection to Report of Sale.¹⁰ This fact notwithstanding, on June 9, 2005, the Debtor filed an objection to the "Secured Claim of National Emergency Services (Claim #32 as amended by claim filed March 11, 2005)".¹¹ A Hearing was scheduled for, and held, on June 22, 2005, on the Debtor's objection to "claim #32 as amended" (the Alleged First Amended Proof of Claim). A briefing schedule was set. On July 8, 2005, NES, in lieu of filing a brief in support of its Objection to Report of Sale, filed a pleading entitled "Second Amended Claim and

⁷ Objection to Report of sale, docket #295, p. [2], ¶ 5.

⁸ Objection to Report of sale, docket #295, p. [2], ¶ 6.

⁹ Entered on Docket as Docket #335.

¹⁰ NES filed the Objection to Report of Claim and the attached exhibits either through the mail or over the counter. The Clerk, correctly, did not process Exhibit A as a Proof of Claim. Exhibit A was clearly marked as such. It is not the responsibility of the Clerk to either question a filing or assume that a filer wishes its pleading to be treated in a manner other than indicated.

¹¹ Entered on Docket as Docket #338.

Memorandum in Support of Allowance Thereof” (the NES Brief”). The NES Brief was filed electronically. NES attached a copy of yet another proof of claim (“the Alleged Second Amended Proof of Claim”) to the NES Brief.

On July 25, 2005, the Debtor filed a responsive brief to the NES Brief.¹²

Discussion

The procedural posture of this dispute has taken on the character of the Gordian Knot. Before the Court is an objection to a sale, based on the assertion that the sale does not provide for the treatment of a claim. The objection has morphed into a dispute over two proofs of claim that NES never made a part of the record in this case.

NES filed a proof of claim (Claim #32), and the Court ruled on an objection to that claim. Then NES filed the Objection to Report of Sale and attached the Alleged First Amended Proof of Claim as an exhibit to the objection but never registered that amended claim. Then, after the matter was heard and treated by the parties as an objection to the Alleged First Amended Proof of Claim, NES attached another amended proof of claim (the Alleged Second Amended Proof of Claim) to its brief, but, once again, did not take the steps necessary to file that proof of claim.

There are, then, two matters before the court: (1) the objection by NES to the debtor’s report of sale; and (2) the Debtor’s objections to the Alleged First Amended Proof of Claim and the Alleged Second Amended Proof of Claim.

The Objection to the Report of Sale. We begin with the Objection to the Report of Sale. NES first asserts that it agreed to subordinate its position in [Reynolds I] in return for an

¹² Entered on Docket as Docket #358.

administrative expense status in [Reynolds II]’’.¹³ As noted, this Court previously issued an order in this case, Reynolds II declaring that NES does not have a claim for administrative expense in Reynolds II. NES neither appealed that ruling nor asked this Court to reconsider that ruling. Nor does this Court know of any reason to revisit it now. NES does not have an administrative claim in Reynolds II.

NES also asserts as follows in the Objection to Report of Sale:

Case law supports the proposition that when a Debtor files a second bankruptcy case after obtaining confirmation of a Chapter 11 Plan in the first case, all claims in the new case are determined by their status at the time of the new filing. Such being the case, NES went into [Reynolds II] in the same capacity as it went into [Reynolds I]; that is, as a secured creditor with a lien on the Debtor’s receivables.¹⁴

Taking this paragraph on its face, NES seems to assert that its claim in Reynolds II should *not* be determined by its treatment under the plan in Reynolds I because applicable law provides that a claim in a second chapter 11 case *is* determined by its treatment in the plan in a first chapter 11 case. Needless to say, this argument makes no sense.

Perhaps there is another implied premise embedded in NES’s argument. In defense of Claim #32, NES previously argued that it should not be bound by the Settlement Agreement because, allegedly, the Debtor breached some of its obligations under that agreement. Perhaps that is what NES is arguing here. If that is the premise of NES’s argument, the argument must still fail. If either the Reorganization Trust or the debtor in Reynolds I breached an obligation to NES, then NES may bring an action based on that breach. What NES cannot do is unilaterally declare the Stipulated Agreement in Reynolds I to be void and of no effect. NES has a claim

¹³ Objection to Report of Sale, p. [2], ¶ 6.

¹⁴ Objection to Report of Sale, p. [2], ¶ 8.

against the Reorganization Trust for \$120,000.00 to be paid after the administrative claims of the Reorganization Trust. NES also has an unsecured claim in Reynolds II against the debtor for \$386,400.24 less any amount paid by the Reorganization Trust and less any amounts collected on the Excluded Accounts. That claim will be treated under the plan in Reynolds II with all other unsecured claims of the Debtor. As stated in the Claim #32 Order, that is what NES bargained for and that is what it got.

As discussed above, NES has a security interest in the Excluded Accounts. If the Excluded Accounts are part of the assets that the debtor has sold, then NES has a claim on the proceeds to the extent of the value of the Excluded Accounts in the same priority that it held that security interest. Accordingly, the Objection to the Report of Sale is overruled except to the extent that the sale attempts to affect NES's security interest in the Excluded Accounts.

The Alleged First and Second Amended Proofs of Claim. The attempt of NES to obtain an order regarding its claim in this case must fail for two reasons. First, a proper motion for reconsideration of the Claim #32 Order is not properly before the Court. Second, neither Alleged First Amended Proof of Claim nor the Alleged Second Amended Proof of Claim has been properly filed with the Clerk.

To the extent that NES, through the Objection to the Report of Sale and accompanying exhibits and briefs, is attempting to have this court revisit the September 11, 2003, order in Reynolds II partially disallowing Claim #32, the matter is improperly before the Court. The Claim #32 Order provided that the claim of NES in Reynolds II should be allowed in a certain amount and in a certain character. NES never appealed that order. Further, NES neither filed the necessary pleadings nor made the necessary arguments to bring the matter back before this

Court.¹⁵

To the extent that NES is seeking to have this Court rule on its claim again by filing the Alleged First and Second Proofs of Claim as exhibits, the matter is also improperly before the Court. The Alleged First Amended Proof of Claim was filed as an attachment, clearly marked Exhibit A, to the Objection to the Report of Sale. NES never took steps to have that alleged claim entered on the claims registry in Reynolds II. Nor is it the responsibility of the Clerk to examine pleadings looking for attachments that might be registered as claims. NES never properly filed the Alleged First Amended Proof of Claim. Accordingly, any objection to it is not yet ripe for consideration.

Even if NES had properly filed the proof of claim, this court would be inclined to disallow it to the extent that varied from the holding in the September 11, 2003, order. To the extent that it is the veiled intention of NES to have this Court reconsider that order, the matter is not properly before this court. NES has not filed any pleadings formally asking this court to reconsider the Claim #32 Order.

The same is true for the Alleged Second Amended Proof of Claim. When a pleading is filed electronically, the filing party is responsible for docketing the pleading. NES designated the NES Brief as a memorandum on the docket entry. NES failed to register the Alleged Second Amended Proof of Claim separately in the claims docket. So that claim was never entered on the claims registry. Accordingly, any objection to that claim is not yet ripe for adjudication.

Conclusion.


¹⁵ A bankruptcy court may reconsider its allowance or disallowance of a claim for cause. See 11 U.S.C. § 502(j) and Fed. R. Bankr. P. 3008. A bankruptcy court may reconsider any order, including an order allowing or disallowing a claim, under certain circumstances. See Fed. R. Civ. P. 60 as made applicable by Fed. R. Bankr. P. 9024.

The Objection to the Report of Sale is overruled, except to the extent to which the sale includes the accounts receivable designated as the “Excluded Accounts” in, and listed in Exhibit A attached to, the Stipulation and Consent Order, entered on docket as docket #337 in case no. 99-03471. NES has a security interest in the Excluded Accounts in the priority provided in The Stipulation and Consent Order.

The Debtor’s objection to the alleged proofs of claims of National Emergency Services, Inc, as attached to Objection to Report of Sale (filed March 11, 2005, and docketed as docket #295 in this case) on, and the Second Amended Claim and Memorandum in Support of Allowance Thereof (filed July 8, 2005, and docketed as docket #351 in this case), is denied because it is yet ripe because neither proof of claim was ever properly filed with the Clerk of the Court.

Upon entry of this Memorandum the Clerk shall forward a copy to the debtor, Michael E. Hastings, Esq., Howard Beck, Esq., counsel for National Emergency Services, Inc., and the United States trustee.

Entered on this 29th day of August, 2005.



William E. Anderson
United States Bankruptcy Judge

