UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

In re Aaron Ferer & Sons Co.

427 F. Supp. 350 (D. Neb. 1977) · No. BK. 74-0-482 · Decided February 28, 1977

SUMMARY

The United States District Court for the District of Nebraska affirmed a bankruptcy court's award of $244,505 in attorney's fees to counsel for a Chapter XI debtor-in-possession. The court held that the bankruptcy court did not abuse its discretion by granting a rehearing, receiving additional evidence, or considering factors beyond hourly rates and hours worked in setting the fee award.

CASE DETAILS

COURT	United States District Court for the District of Nebraska
WRITING FOR THE COURT	Schatz, District Judge
JURISDICTION	Nebraska
DECIDED	February 28, 1977
DOCKET	BK. 74-0-482
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the bankruptcy court's memorandum and order allowing attorney's fees to counsel for the debtor-in-possession.
STANDARD OF REVIEW	A bankruptcy court's decision to grant a rehearing or new trial is reviewed for abuse of discretion. Fee allowances are entitled to great weight and will not be disturbed absent clear error, an error of law, or an abuse of discretion.
PRECEDENTIAL VALUE	Published federal district court memorandum opinion; persuasive authority within the district and relevant to deferential review of bankruptcy fee awards.
PARTIES	Max Schwartzman and Sons, Inc. v. Aaron Ferer & Sons Co., debtor-in-possession

TOPICS

bankruptcy · appellate procedure · standard of review · motion for reconsideration · chapter 11

PRACTICE AREAS

Bankruptcy | Federal appellate procedure | Attorney's fees

QUESTIONS PRESENTED

1. Whether the bankruptcy court abused its discretion by granting counsel a rehearing and permitting additional evidence on the attorney's-fee issue.
2. Whether the bankruptcy court's award of $244,505.00 in attorney's fees was excessive or otherwise erroneous.

HOLDINGS

1. The bankruptcy court properly granted a rehearing and permitted additional testimony because the motion was based on an error of law in the original fee determination, not merely an attempt to relitigate the same matter.
2. The attorney's-fee award was not excessive, and the bankruptcy court did not clearly err, commit legal error, or abuse its discretion in awarding $244,505.00.

KEY QUOTATIONS

> *"A wide range of discretion rests with the trial court in the granting or the refusing of a new trial and appellate review of the ruling is very limited."* (427 F. Supp. at 352)

> *"As a general rule, the findings of the bankruptcy court, particularly with regard to fee allowances, are entitled to and should be accorded great weight by the district court on review."* (427 F. Supp. at 354)

> *"Before an appellate court is warranted in holding that the sound judicial discretion resting in the trial court has been abused in the matter of fixing counsel fees, the evidence, including the testimony of experts, and the facts as to the nature of the work, the amount in controversy, are involved, the intricacy or novelty of the legal questions presented, the duration of the services, the ability of counsel, and the results attained through the service rendered, ought to be such as to convince the court that the amount allowed nisi is manifestly insufficient or excessive."* (427 F. Supp. at 355)

FACTUAL BACKGROUND

Aaron Ferer & Sons Co. operated as a debtor-in-possession in a Chapter XI arrangement proceeding lasting approximately sixteen and a half months. Its two law firms sought compensation based on substantial documented hours and hourly rates, initially receiving reduced awards from the bankruptcy court. On rehearing, after additional evidence was presented, the bankruptcy court considered the attorneys' skill, time devoted, contingent nature of compensation, delay in payment, overhead, results obtained, and the successful confirmation of the arrangement, and awarded the fees requested.

PROCEDURAL HISTORY

Aaron Ferer & Sons Co. filed a Chapter XI petition on April 24, 1974. After an initial fee award on October 1, 1975, the bankruptcy court granted the debtor's counsel a rehearing, accepted additional evidence, vacated the prior fee award in part, and allowed total attorney's fees of $244,505.00. Max Schwartzman and Sons, Inc. appealed, arguing that the rehearing was improper and that the fees were excessive. The district court affirmed.

DISPOSITION

affirmed

CASES CITED

- Sanden v. Mayo Clinic, 495 F.2d 221, 226 (8th Cir. 1974)
- In re American Range & Foundry Co., 41 F.2d 845, 847 (D. Minn. 1930)
- In re Melhado, 1 F. Supp. 591 (E.D. Pa. 1932)
- In re Fineman, 32 F. Supp. 212 (D. Md. 1940)
- In re Valentine, 139 F. Supp. 576, 577 (D. Md. 1956)
- In re Midwest Engineering and Equipment Co., 440 F.2d 326, 328 (7th Cir. 1971)
- In re Paramount Merrick, Inc., 252 F.2d 482 (2d Cir. 1958)
- Miller v. Robinson, 378 F.2d 2 (9th Cir. 1967)
- In re Dole Co., 244 F. Supp. 751 (D.D.C. 1965)
- Tracy v. Spitzer-Rorick Trust & Savings Bank, 12 F.2d 755, 756-57 (8th Cir. 1926)