

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION**

**IN RE: BELL FAMILY TRUST
(Debtor)**

**CASE NO. 02-bk-50477
CHAPTER 7**

**MARY SUSAN BELL and
SUE BELL HOLDINGS, L.L.C.,
(Plaintiffs)**

**ADVERSARY PROCEEDING
NUMBER _____**

versus

**W. SIMMONS SANDOZ, AS TRUSTEE OF
THE CHAPTER 7 ESTATE OF THE BELL FAMILY TRUST**

**ADVERSARY PROCEEDING FOR
RELIEF FROM JUDGMENT OR ORDER PURSUANT TO FRCP 60,
MADE APPLICABLE BY RULE 9024**

**and CONSOLIDATION OF TRUSTEE'S OBJECTIONS TO PROOFS OF CLAIM
OF SUE BELL AND SUE BELL HOLDINGS, L.L.C.**

Now into court through undersigned counsel comes MARY SUSAN BELL and SUE BELL HOLDINGS, L.L.C., plaintiffs in the captioned adversary proceeding who move this Honorable Court for relief and allege as follows in support thereof:

CONSOLIDATION OF CLAIM OBJECTIONS

1.

Plaintiffs' request that the chapter 7 trustee's objections (docket entry 88,89,90 02-50477) to proofs of claim of Sue Bell and Sue Bell Holdings LLC in the captioned case be consolidated for consideration with this action for relief under Rule 60. A separate motion for this relief is contemporaneously filed in connection herewith in the captioned chapter 7 case and this adversary proceeding seeking entry of an appropriate order.

2.

The objections to the proofs of claim filed by the trustee state no basis upon which the alleged ground of “disputed” is based upon, not even one sentence. No memorandum was filed by the trustee in connection with the claim objections that might supplement or put the claimants on notice as to the grounds for the trustee’s “dispute” of the proofs of claim. Claim litigation is a contested proceeding and a litigant in federal court is not required to guess what the allegations of a contested proceeding might be. Based on the history of this case, the issues that would be raised in proof of claim litigation between the captioned parties are anticipated to relate to some part of the multiple issues litigated thus far between these parties, and therefore that will relate to the Rule 60 relief requested as below more fully described. However, the trustee must actually state grounds for objections to proofs of claim in order to overcome the prima facie evidence of the validity of the claims as filed, and that has not yet occurred here.

IT IS REQUESTED that this Honorable Court order the trustee to amend its objection to the proofs of claim and state a claim for relief under 11 USC §502(b) by sufficiently describing the grounds for which the objections are filed. Otherwise, the trustee needs to pay all claims filed by Mary Sue Bell and Sue Bell Holdings LLC.

RELIEF UNDER RULE 60(b)

3.

Made defendant herein the chapter 7 trustee, W. Simmons Sandoz, in his capacity as the representative of the chapter 7 estate known as The Bell Family Trust.

4.

Jurisdiction for relief under Federal Rule of Civil Procedure 60, made applicable in bankruptcy under Rule 9024, is asserted in the captioned adversary proceeding pursuant to 28 USC §1334 and by referral to the bankruptcy court under 28 USC §157(a). This proceeding is core proceeding under 28 USC §157(b)(1), (2)(A), (B), and (O).

5.

This action for relief under Rule 60(b) is timely. In this proceeding Ms. Bell's action is being brought *in response to* the trustee's objection to her proofs of claim because those objections served to highlight the inequitable effect and in certain respects inappropriate course of the administration of this chapter 7 estate by the trustee and/or his legal counsels, and the orders obtained from the bankruptcy court in connection therewith. The bankruptcy trial judge's decision (Honorable Judge Jerry Schiff) was appealed and that decision was ultimately modified by the Fifth Circuit. The Fifth Circuit's judgment was filed into the Fifth Circuit record and thereafter entered on the docket on March 31, 2008, case 02-05045 docket # 212 .

6.

The current status of this case administration: The following proofs of claim were filed by creditors against this estate.

~Three claims in favor of Vermilion Parish as priority in the amounts of \$273.52, \$270.86, and \$267.70.

~An unsecured claim for Stan Gauthier, II, attorney, that is disallowed as a result of the settlement of the trustee's claim against Mr. Gauthier.

~The claims of Sue Bell to which the trustee has now objected and the "claims" asserted *as a beneficiary of the trust* by two of the siblings of Sue Bell to which the trustee has not

objected.

There has been over \$341,000.00 in cash collected by the bankruptcy trustee from monthly mineral royalty checks to date. It appears that no amounts have been distributed to creditors by the trustee other than his attorney's fees.

7.

Two of the Bell siblings filed claims for their alleged unknown and unliquidated interest as beneficiaries of the trust. The beneficiaries of this state law spendthrift trust are not creditors of this bankruptcy estate, they are not even creditors of the trust. It was unproductive for the trustee to object to the claims filed by Sue Bell yet not these beneficiary "claims" if the trustee is really attempting to conclude the administration of this estate. As the trustee has sought to hire the former counsels of these beneficiaries, it is not likely there is any intent to object to their claims considering the actual conflict of interest there.

8.

At the conclusion of the bankruptcy case administration the beneficiaries still have their same percent of beneficiary interests that existed when the trust was formed, and they are still beneficiaries when the bankruptcy case is closed. The bankruptcy trustee could not and did not alter those rights.

9.

The following assets are purportedly being "administered" by the chapter 7 trustee. At the time of commencement of the bankruptcy case the trust assets consisted of an unencumbered tract of land of about 103.5 acres. Prior to the bankruptcy case the trustee of the trust, Sue Bell transferred a different 184.5 acres plus the house on one acre (upon which she held a note and recorded mortgage confirmed by the federal PSI, other evidence and testimony in this case that

she paid the forfeiture) to Sue Bell Holdings LLC for services performed by her and her company for the trust. The bankruptcy estate has taken and exercised control over the entire original 289 acre tract plus mineral royalties (property far in excess of the monetary judgment value obtained by the bankruptcy trustee.)

10.

The Bell Family Trust did not have unreasonably small capital per the case evidence and testimony of both experts who testified the trust had reasonable capital, at exhibits 49 and 50. The Bell Family Trust was solvent at the time of the transfer to Sue Bell Holdings and remained solvent thereafter. Trustee's law firms should not have perpetuated litigation on these issues therefore. See docket entries 26 and 87 with exhibits 29, 47 through 51 attached. This issue of insolvency was addressed in 02-05045 from 5/14/03 docket 26 to 12/16/03 docket 87. A minute entry order dismissed all causes of action relating to insolvency with prejudice in Sue Bell's favor.

11.

Further, the adverse judgment against Sue Bell and Sue Bell Holdings LLC is a monetary judgment for damages, determining that there should be a fixed value repaid to the trust. See exhibit 48. However, the bankruptcy estate has *taken possession and exercised control* over the entire original 289 acre tract plus mineral royalties (property of a value far in excess of the judgment). Therefore, it was wrong for the bankruptcy estate to recover a monetary judgment, a temporary mineral concursus, and actual land that exceeds the value of its judgment. Relief is therefore requested from the prior orders and judgments of this court that have resulted in this inequitable and overreaching result. See post trial reasons, at exhibit 46 page 14. Bell won a decision on an earlier motion for summary judgment; the remedy is one of damages rather than

avoidance of the transaction, at 02-05045 docket 56 exhibit 48 page 6. This decision of monetary damages was confirmed by the later post trial reasons, at 02-05045, docket 141 at exhibit 46 page 14 (plaintiff is entitled to judgment against Ms. Bell for the amount of \$266,000, \$162,214.96 and \$18,009.97. A monetary judgment acknowledged by Jefferey Ackermann's reply to the 5th Circuit Court of Appeal.

12.

The impropriety of continued administration of this estate: As a matter of state law the bankruptcy trustee cannot liquidate or terminate a spendthrift trust and distribute such assets to beneficiaries. The bankruptcy trustee would be administering the assets of the trust for purpose of a distribution to creditors of the trust. Certainly the chapter 7 trustee did not intend to conduct a case administration that consisted of nothing but litigation against Sue Bell in order to pay the claims of Sue Bell. It is clear that the trustee's law firms have generated an exorbitant amount of professional fees conducting such litigation, meanwhile mineral royalties of \$341,000 have accumulated to date.

13.

If instead this bankruptcy case has actually been about generating value for the beneficiaries, rather than the small amount of creditor claims, that has not occurred either. No distributions of trust income have been made to the beneficiaries by the bankruptcy trustee, nor does it appear that the bankruptcy trustee was appointed or is acting as the trustee of the spendthrift trust for such purpose. However, over \$100,000 was withdrawn from the mineral royalties for the stated purpose of putting the trust assets into production, but that never occurred and an accounting of the use of those proceeds needs to be made. Instead, over the course of the years the legal actions on behalf of the bankruptcy estate has caused extensive loss to the value

of the assets of the trust and Sue Bell Holdings LLC (loss of income production, lack of maintenance of the house, water well, and overgrown lands throughout the bankruptcy estate's control of the 289 acres) and yielded the most unreasonable contingency fee order ever created for professionals of an estate with such small creditor claims. See October 11, 2006 order at docket #62 02-50477.

14.

The bankruptcy trustee obtained possession and control of the assets of Sue Bell Holdings based on a "translative" motion and order (02-0545 doc 151, at exhibit 27) the indicated purpose of which was to put these assets into commercial production for whoever prevailed after appeal, at exhibit 27. No commercial production ever occurred, causing a tremendous loss of income, and the accounting for the use of the \$100,000 for mineral royalties has not occurred. Yet possession and control has remained with the bankruptcy trustee as if this were some sort of prejudgment seizure, further emphasizing the inequitable and overreaching result that has occurred in the case under the judgments to date.

15.

Despite the bankruptcy estate's use of funds from the mineral interests and exercise of control over all assets for several years, there has been no disclosure by the bankruptcy estate or the trust in any of the bankruptcy trustee's pleadings concerning income production, other operations, insurance, or tax consequences.

16.

Unfortunately, it appears that the trustee's attorney in this case holds a personal grudge against Sue Bell, resulting in an unprofessional atmosphere and multiple conflicts of interest.

Jeffery Ackermann drafted Sue Bell's application as a professional for the estate in the Omnicraft Industries bankruptcy case and Mr. Sandoz was also the trustee of that case. In her capacity as a professional of that estate Sue Bell provided a report against Mr. Ackerman and he was sued for negligence and malpractice, at Exhibits 19 through 23.

17.

Some extent of the litigation in the captioned case appears not to be directed toward the best interest of creditors, Sue Bell being one of those creditors, but instead about generating professional fees attacking Sue Bell. In the state court litigation preceding this bankruptcy case and then during the captioned bankruptcy case instances of this conduct have occurred. The trustee's law firms through Jeffery Ackerman, filed a frivolous report against Sue Bell falsely accusing her of abuse of the elderly, see VOA dismissal, at Exhibit 11. He also falsely accused her of improper interdiction of her father, at Exhibit 12 when it was actually his client that was found to have taken improper actions, at Exhibit 13. He also falsely accused her of criminal action in his Fifth Circuit appeal brief, at Exhibit 14; he had knowledge that his alleged concealment never occurred and had been verified in trial testimony previously, at Exhibit 15.

18.

In this case there have been communications and pleadings submitted on behalf of the estate and trustee that have been misleading and inappropriate. For example, the trustee's law firms' submission of an over reaching form of judgment for the monetary award submitted by counsel in contrast to the court's reasons for decisions, at Exhibit 46. Trustee's counsel submitted pleadings and a letter to the Fifth Circuit, at Exhibits 16 and 17, regarding the confusion created by the scope of that form of judgment. Further, there was an undisclosed adverse interest held by the trustee's law firms in this bankruptcy case as a result of the damages

caused by the TRO that was obtained by Mr. Ackerman and Marcantel, at Exhibits 24, 25, and 26. The attorneys did not disclose their conflict and adverse interest. The Court requested that information on the issue of damages be provided to the trustee and Sue Bell did that, but there has been no indication of action or investigation by the trustee of these issues.

19.

The type of overreaching conduct that has occurred in this case purported on behalf of the bankruptcy estate does not appear to be isolated and therefore bringing these matters to the court also may serve a deterrence purpose before this Honorable Court. In the case of Norris P. Radar, Western District bankruptcy case 04-52912 it was stated in pleadings as follows:

“Jeffrey Ackermann has misrepresented facts in the matter, lied to undersigned counsel, and acted so unprofessionally that this Court should hold both the attorney and his client in contempt.” Case 04-52912 - Docket #143, page 3 of 7, attached at exhibit 30.

“If the Court would like testimony under oath, undersigned counsel, the Raders and Pat Garrity would be more than happy to do so. Hopefully Jeffrey Ackermann will state under oath what he is alleging in his July 27, 2005 “Omnibus Response” and if so would he be committing perjury.” Case 04-52912 – Docket # 143, page 3 of 7, attached at exhibit 30.

“Undersigned counsel in over forty (40) years in practice of law has never encountered such a belligerent and unprofessional litigant as has been the case in the captioned matter.” Docket #143, page 3 of 7, attached at exhibit 30.

“Wherein Jeffrey Ackermann, without authority of any party whomsoever appeared as counsel for Norris Radar.” Docket #129, page 4 of 7 attached exhibit 31.

“This action by Jeffrey Ackermann is a violation of La Rules of Professional Conduct and otherwise.” Docket #129, page 4 of 7 attached at exhibit 31.

“The misrepresentations of Jeffrey Ackermann to undersigned counsel regarding the position of Paul Debaillion in this matter and later discovered fact that Mega urging of the suit complained of was really for his own benefit in attempting to have a “wedge” to negotiate a settlement.” Docket # 129, page 4 of 7, attached at exhibit 31.

Then more recently in the case of Rodney Poche, Western District Bankruptcy case #07-51183, there are allegations of impropriety by Jeffrey Ackermann of the Durio, McGoffin, Stagg, Ackermann Law Firm presented therein.

20.

The continued administration of this bankruptcy estate and the unreasonableness of the retention of and fee awards of professionals is requested to be investigated by the Office of the U.S. Trustee in this case.

IN CONCLUSION, it is requested that this Honorable Court grant Sue Bell and Sue Bell Holdings relief under Rule 60 and such other relief as appropriate to bring this case administration to a proper conclusion.

RESPECTFULLY SUBMITTED:

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