



SO ORDERED,

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: July 31, 2018**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

ALABAMA-MISSISSIPPI FARM INC.,

CASE NO. 16-01156-NPO

DEBTOR.

CHAPTER 7

**ORDER DENYING MOTION FOR
PAYMENT OF CLAIM AND DENYING MOTION FOR INTERIM DISTRIBUTION**

This matter came before the Court for hearing on June 27, 2018 (the “Hearing”), on the Motion for Payment of Claim (the “Motion for Payment”) (Dkt. 241) filed by William Harrison (“Harrison”); the Trustee’s Response to Motion for Payment of Claim (the “Trustee’s Response to Motion for Payment”) (Dkt. 256) filed by the chapter 7 trustee, Stephen Smith (the “Trustee”); the Response and Objection to Motion for Payment of Claim (“Reach’s Response to Motion for Payment”) (Dkt. 258, 259) filed by Reach, Inc. (“Reach”); the Motion for Interim Distribution (the “Motion for Interim Distribution”) (Dkt. 254) filed by the Trustee; the Response and Objection to Motion for Interim Distribution (“Reach’s Response to Motion for Interim Distribution”) (Dkt. 269, 270) filed by Reach; and the Limited Objection to Motion for Interim Distribution (the “Limited Objection”) (Dkt. 271) filed by the Law Offices of Craig M. Geno, PLLC (the “Debtor’s Attorney”) in the above-referenced bankruptcy case (the “Bankruptcy Case”). At the Hearing, Jeff D. Rawlings represented Harrison; Eileen N. Shaffer and Jim F. Spencer, Jr. represented the

Trustee; and Henry L. Penick and Jerald D. Crawford represented Reach. Jarret P. Nichols appeared on behalf of the Debtor's Attorney. During the Hearing, the Trustee introduced into evidence four (4) exhibits, and the Trustee testified on his own behalf. No other witnesses testified at the Hearing. The Court ruled from the bench, denying the Motion for Payment and denying the Motion for Interim Distribution for the reasons set forth below.

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Notices of the Motion for Payment and Motion for Interim Distribution were proper under the circumstances.

Facts

1. On March 31, 2016, the debtor, Alabama-Mississippi Farm Inc. (the "Debtor"), filed a petition for relief under chapter 11 of the U.S. Bankruptcy Code. (Dkt. 1).
2. On June 29, 2016, the Court converted the Bankruptcy Case to chapter 7 (Dkt. 57), and the Trustee was appointed to administer the bankruptcy estate.
3. On November 3, 2016, Harrison filed in the Bankruptcy Case a proof of claim ("POC 2-1") (Bankr. Cl. 2-1) on behalf of himself, Bruce L. Johnson ("Johnson"), and Michael L. King ("King"), asserting a claim in the amount of \$10,074,062.00 secured by real property in Newton County, Mississippi (the "Newton County Property").
4. On May 19, 2017, the Trustee sold the Newton County Property for \$726,000.00 (Dkt. 134). The Court confirmed the sale of the Newton County Property on June 22, 2017. (Dkt. 154).

5. On March 29, 2018, the Court issued the Order Dismissing Order to Show Cause; Sustaining Trustee's Objection to Proof of Claim No. 11 Filed by Bruce L. Johnson; Sustaining Trustee's Objection to Proof of Claim No. 13 Filed by William Harrison on Behalf of Johnson, Et Al; and Sustaining Trustee's Objection to Proof of Claim No. 2 Filed on Behalf of William Harrison, Bruce Johnson and Michael L. King (the "Order Sustaining Trustee's Objection to POC 2-1"), allowing POC 2-1 as a general unsecured claim and holding that any disbursement made to the claimants be made in equal shares of one-third (1/3) of the total disbursement. (Dkt. 239).

6. On April 6, 2018, Harrison filed the Motion for Payment, asserting that the Trustee has not yet disbursed the funds received from the sale of the Newton County Property and that "11 months is more than enough time to complete the administrative duties relating to the sales [sic] proceeds." (Dkt. 241). Additionally, Harrison requested the Court to order the Trustee to pay his allowed unsecured claim immediately. (Bankr. Cl. 2-1).

7. On April 25, 2018, the Trustee filed the Motion for Interim Distribution, asserting that he is holding approximately \$471,000.00 for the estate, POC 2-1 is the only allowed claim in the Bankruptcy Case, and an interim distribution to the claimants in the amount of \$315,000.00 will not harm the estate.

8. On April 26, 2018, the Trustee filed the Trustee's Response to Motion for Payment, proposing to pay \$105,000.00 to each claimant, Harrison, Johnson, and King, in accordance with the Order Sustaining Trustee's Objection to POC 2-1.

9. On May 1, 2018, Reach filed Reach's Response to Motion for Payment, objecting to the payment of any claims in the Bankruptcy Case until the outcome of related adversary proceeding 17-00038-NPO, in which Reach, *inter alia*, sought a stay of the sale of the Newton County Property.

10. On May 16, 2018, Reach filed Reach's Response to Motion for Interim Distribution, opposing payment of any claims in the Bankruptcy Case while this Court's Memorandum Opinion and Order on Complaint to Stay Sale of Real Property (Case No. 17-00038-NPO, Dkt. 23) is on appeal before the U.S. District Court for the Southern District of Mississippi (the "District Court Case"). (Case No. 3:18-cv-00350-DPJ-FKB).

11. That same day, the Debtor's Attorney filed the Limited Objection, asserting that it will have an administrative expense claim from services rendered in the chapter 11 phase of the Bankruptcy Case that will be higher in priority than POC 2-1 and objecting to any disbursement of funds until its claim is approved and paid. (Dkt. 271).

Discussion

Three (3) proofs of claim have been filed in the Bankruptcy Case: (1) a claim for quarterly fees filed by the U.S. Trustee, which the Trustee paid in full on March 15, 2018; (2) POC 2-1 in the amount of \$10,074,062.00; and (3) a claim of \$2,356,000.00 filed by Reach, which the Court disallowed on July 5, 2017 in its Order Regarding Trustee's Amended Objection to Proof of Claim No. 3 Filed by Reach, Inc. (Dkt. 158; Exs. 1 & 3). With respect to estate funds, the Trustee has received \$725,974.56 and has disbursed \$255,763.27. The Trustee holds \$470,211.29 currently and is pursuing a legal malpractice claim with an estimated value of \$250,000.00 for the estate. (Exs. 2 & 3).

In support of the Motion for Interim Distribution, the Trustee testified at the Hearing that he proposed to make an interim disbursement to the claimants and that the estate would have adequate funds to administer the estate if he made a disbursement of \$315,000.00. The Trustee further testified that the interim disbursement would not affect the estate's ability to pay the Debtor's Attorney's administrative expense claim and that the interim disbursement would be in

the best interests of the estate and its creditors because it would decrease the estate's bank account fees.

Upon further examination by the Court, the Trustee testified that he would not have considered making an interim distribution if he had not been asked to do so by Harrison in the Motion for Payment because risks remain in the Bankruptcy Case. For example, the Debtor neither filed a schedule of unpaid debts in the Bankruptcy Case nor filed and transmitted a final report and account to the United States Trustee after the Court converted the case to chapter 7. Rule 1019 of the Federal Rules of Bankruptcy Procedure provides:

Unless the court directs otherwise, if a chapter 11 . . . case is converted to chapter 7, the debtor in possession . . . shall:

(i) not later than 14 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account[.]

FED. R. BANKR. P. 1019(5)(A). Accordingly, the Debtor should file a schedule of unpaid debts incurred after the commencement of, but before the conversion of, the Bankruptcy Case, including the name and address of each holder of a claim (the "Schedule of Unpaid Debts") within fourteen (14) days of the date of this Order and file and transmit to the United States Trustee a final report and account of the chapter 11 proceeding within fourteen (14) days of the date of this Order.

Moreover, when the Court converted the Bankruptcy Case to chapter 7, the proof of claim filing deadline for all creditors other than governmental units changed to November 5, 2016. (Dkt. 69). The notice setting the proof of claim filing deadline (the "POC Filing Deadline"), however, does not provide notice to entities listed on the Schedule of Unpaid Debts of their deadline to

request payment for administrative expense claims from the chapter 11 proceeding. Rule 1019 of the Federal Rules of Bankruptcy Procedure provides:

A request for payment of an administrative expense incurred before conversion of the case is timely filed under § 503(a) of the Code if it is filed before conversion or at a time fixed by the court . . . Upon the filing of the schedule of unpaid debts incurred after commencement of the case and before conversion, the clerk, or some other person as the court may direct, shall give notice to those entities listed on the schedule of the time for filing a request for payment of an administrative expense and . . . the time for filing a claim

FED. R. BANKR. P. 1019(6). Since counsel for the Trustee stated at the Hearing that interested parties have received only the notice of the POC Filing Deadline, the Trustee should notify those entities listed on the Schedule of Unpaid Debts that they have ninety (90) days from the date of the notice to file a request for payment of an administrative expense incurred during the chapter 11 proceeding.

Further, Pruitt & Pruitt, P.A. informed the Trustee shortly before the Hearing that it is owed attorney's fees for assisting Harrison, Johnson, and King in obtaining a default judgment against the Debtor in an Alabama state court. Additionally, the Trustee testified that he will be unable to close the Bankruptcy Case until the legal malpractice claim is resolved. Thus, considerable time still exists in which a creditor could assert a late-filed claim in the Bankruptcy Case. Finally, the Trustee testified that there is an above-average risk that the Debtor's books and records are inaccurate, which increases the probability that some creditors may be unaware of the Bankruptcy Case and may appear later in the Bankruptcy Case seeking distributions from the Trustee.

In closing argument, Reach argued that an interim distribution would be inappropriate while the District Court Case is pending. More specifically, Reach maintains that the Newton County Property is not property of the Debtor's estate. This argument, however, fails because the Court's ruling disallowing Reach's proof of claim in the Bankruptcy Case is a final and non-

appealable order. See Memorandum Opinion and Order on Complaint to Stay Sale of Real Property (Dkt. 23), *Reach, Inc. v. Stephen Smith, Trustee, for the Estate of Alabama-Mississippi Farm, Inc. (In re Alabama-Mississippi Farm, Inc.)*, Adv. Proc. No. 17-00038-NPO (Bankr. S.D. Miss. May 14, 2018); Memorandum Opinion and Order Granting Appellee Alabama-Mississippi Farm, Inc.'s Motion [2] to Dismiss Appeal (Dkt. 7), *Creditor Reach, Inc. v. Alabama-Mississippi Farm, Inc.*, No. 3:17-cv-00564-HSO-JCG (S.D. Miss. Dec. 21, 2017). Indeed, when cross-examined by Reach, the Trustee testified that the District Court Case poses little risk to making an interim distribution to the claimants because Reach may not receive “a second bite at the apple.” Regardless of the District Court Case, the Court found that the Motion for Payment and the Motion for Interim Distribution should be denied for the reasons discussed above.

After fully considering the matter, the Court concluded at the Hearing that the Motion for Payment and the Motion for Interim Distribution should be denied without prejudice. Ordinarily, distribution is not commenced in a chapter 7 case until approval of the trustee's final report and accounting. See 11 U.S.C. § 726(a); *Sec. State Bank v. IRS (In re Van Gerpen)*, 267 F.3d 453, 457 (5th Cir. 2001). While the Court understands that the Bankruptcy Case has been pending for more than two (2) years and that Harrison, Johnson, and King have been waiting to receive a disbursement on POC 2-1, the Court finds that the risks outweigh the benefits of the Trustee making a disbursement in the Bankruptcy Case at this time. To the extent the parties can alleviate the risks discussed above, the parties may ask the Court to consider again whether an interim disbursement pursuant to 11 U.S.C. §§ 105 and 726(a) would be appropriate.

Conclusion

For the above and foregoing reasons, the Court concluded at the Hearing that the Motion for Payment and the Motion for Interim Distribution should be denied without prejudice.

IT IS, THEREFORE, ORDERED that the Motion for Payment is hereby denied without prejudice.

IT IS FURTHER ORDERED that the Motion for Interim Distribution is hereby denied without prejudice.

IT IS FURTHER ORDERED that the Debtor file the Schedule of Unpaid Debts within fourteen (14) days of the date of this Order.

IT IS FURTHER ORDERED that the Debtor file and transmit to the United States Trustee a final report and account of the chapter 11 proceedings within fourteen (14) days of the date of this Order.

IT IS FURTHER ORDERED that the Trustee, within fourteen (14) days of the filing of the Schedule of Unpaid Debts, notify all entities listed on the Schedule of Unpaid Debts that they have ninety (90) days from the date of such notice to file a request for payment of administrative expenses incurred during the chapter 11 proceeding.

##END OF ORDER##