

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
STEPHEN E. KESSLER,) Bankruptcy Case No. 93-31315
)
Debtor.)
)
KARL VON EITZON and ERIKA)
VON EITZON; NORMAN R. BENDER)
and DONNA J. BENDER;)
SAUL L. STOCKMAN and)
FLORENCE K. STOCKMAN, as Trustees;)
and MARILOU DINAH,)
)
Plaintiffs,)
) Adversary Case No. 95-3007
DONALD HOAGLAND, Trustee,)
Intervening Plaintiff,)
)
vs.)
)
STEPHEN E. KESSLER,)
)
Defendant.)

OPINION

This matter having come before the Court on a Petition for Order of Contempt and a Motion for Reimbursement of Accounting Fees filed by the Plaintiffs; the Court, having heard arguments of the parties and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

On October 21, 1996, this Court entered a judgment against the Debtor/Defendant in favor of Plaintiffs determining certain claims of the Plaintiffs to be non-dischargeable pursuant to 11 U.S.C. §523. Pursuant to the terms of the judgment, the Debtor/Defendant, Stephen E. Kessler, was ordered to make certain periodic payments to satisfy the judgment in the amount of \$42,000. Pursuant to this Court's Order, the judgment amount was to carry interest at the rate of 6 % per annum, and payments did, in fact, begin in

December 1996.

The record of this proceeding reflects that there have been numerous instances in which the Debtor/Defendant has had difficulty in making the payments as required by the October 21, 1996, Order; however, the accounting provided by the Plaintiffs, on January 3, 2001, does establish that the Debtor/Defendant has paid considerable sums toward the judgment at this time. Although this matter has been before the Court on previous occasions where the Plaintiffs requested an order of contempt against the Debtor/Defendant for his failure to pay, the Debtor/Defendant has always been able to avoid an order of contempt by making payments as directed by the Court.

In the instant matters before the Court, Plaintiffs are requesting that the Debtor/Defendant be ordered to pay attorney's fees and accounting fees as a sanction for his failure to make recent payments toward the judgment. Plaintiffs are requesting that a sum of \$5,679 be ordered to be paid by the Debtor/Defendant as and for attorney's fees and \$2,500 be paid for accounting fees.

In reviewing the Motion for Reimbursement of Accounting Fees, the Court is unable to find that there was any basis for involving an accountant in this matter. The amount of the judgment entered against the Debtor/ Defendant and the simple interest provision of that judgment do not lend themselves to the need for the expertise of a professional accountant. In reviewing the accounting supplied by the Plaintiffs, the Court finds that the amortization of the judgment debt is a simple matter that could have well been handled by the Plaintiffs' attorney. In reviewing the itemization of the fees provided by the accountant, Jack L. McGregor, the Court finds that it is unable to approve said fees as a sanction against the Debtor/Defendant in this matter.

Turning to the issue of attorney's fees, the Court notes that the Plaintiffs' attorney is requesting that a fee in the sum of \$5,679 be assessed against the Debtor/Defendant as a sanction. While the Court is cognizant of the fact that the Plaintiffs' attorney has had to appear on numerous occasions before the Court to prompt the Debtor/Defendant's payment on the judgment, the Court must conclude that the sum requested

as a sanction is excessive. In reviewing the record of this proceeding, the Court concludes that an additional attorney fee in the amount of \$1,000 is appropriate under the circumstances. The Court further finds that said amount should be allowed as a sanction against the Debtor/Defendant and added to the amounts due under the judgment.

At this point in time, the Court has reviewed the accounting submitted by the Plaintiffs and finds that the principal in the amount of \$4,200 is still owing on the judgment with interest in the amount of \$4,315.95. When adding the attorney's fees of \$1,000 awarded to Plaintiffs' attorney, the Court finds that the total sum of \$9,515.95 remains unpaid on the judgment; that that sum should continue to carry interest at the rate of 6% per annum; and the Debtor/ Defendant should remit a payment in the sum of \$2, 100 as against the total sum due and owing within 30 days of the date of this Opinion.

ENTERED: March 5, 2001

/s/ GERALD D. FINES
United States Bankruptcy Judge