

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

IN RE:)	In Proceedings
)	Under Chapter 11
L. P. MAUN, M.D., LTD.,)	
)	No. BK 86-31038
Debtor.)	
GARY KRAUSS,)	
)	
Movant,)	
)	
v.)	
)	
L. P. MAUN, M.D., LTD.,)	
)	
Respondents.)	

O R D E R

This matter is before the Court on motion by Gary Krauss for an order finding debtor in contempt for violation of the cash collateral order. The relevant facts are as follows:

On October 1986, debtor filed its petition under Chapter 11 of the Bankruptcy Code. On January 15, 1987 debtor filed separate motions for orders authorizing debtor to use cash collateral. In those motions debtor acknowledged the liens held by three creditors (including Krauss) against its accounts receivable. Krauss had previously filed a proof of claim for \$22,350.00 for professional services he rendered on debtor's behalf.

On March 20, 1987 Krauss filed an objection to use of cash collateral and motion for adequate protection. Subsequently, negotiations were held involving all the parties which resulted in the entry of a stipulated cash collateral order by this Court on June 18, 1987.

The cash collateral order provided, inter alia, for monthly payments of \$3,500.00 to be paid by debtor to Krauss until Krauss was "paid in full." No dollar amount was specified. The order further provided in paragraph H that in the event of default by debtor, Krauss would have the right to receive the monthly payments out of a restricted savings account established under paragraph E of the same order.

On August 28, 1987 Krauss filed the present motion in which he alleges that he has a lien against debtor's accounts receivable for \$22,350.00 plus interest, attorney's fees and costs. He further alleges that debtor violated the June 18, 1987 cash collateral order in that debtor had only made on \$3,500.00 payment to Krauss up to that time. The motion asks the Court (1) for an order finding debtor in contempt for violation of the cash collateral order, (2) to require debtor to comply with the cash collateral order and "pay the arrearage of \$17,500.00 to Gary Krauss," and (3) prohibit debtor from any further use of the cash collateral until debtor is in full compliance with the cash collateral order. Notably, Krauss did not request interest, attorney's fees or costs in his prayer for relief.

By the time of the hearing on the motion, debtor had paid \$20,000.00 to Krauss under the cash collateral order. At the hearing, Krauss argued for the first time that he was entitled to pre- and post-judgment interest, attorney's fees and costs pursuant to §506(b) of the Bankruptcy Code. Debtor responded that other remedies other besides contempt were available to Krauss under the cash collateral order which he had not attempted to exhaust.

Debtor also claimed that Krauss had not asked for interest,

attorney's fees and costs until just prior to the hearing, at a point when his claim was nearly paid off. During the hearing, debtor tendered a check for \$2,350.00, the amount still owed by debtor on Krauss' claim, but Krauss refused to accept the check in payment in full and instead continued to ask for interest, attorney's fees and costs.

Contempt is appropriate "where an unequivocal judicial command is callously ignored," United States v. Board of Education of the City of Chicago, 799 F.2d 281, 296 (7th Cir. 1986), see also, Ferrell v. Pierce, 785 F.2d 1372, 1378 (7th Cir. 1986), and its use should be involved only when the right of its use is clear. In re Continental Marine Corp., 35 B.R. 990, 992 (Bankr. E.D. Mo. 1984).

In the present case, contempt is not warranted because by the time of the hearing, debtor had paid all but a small portion of Krauss' claim. Accordingly, debtor's "violation" of the cash collateral order was not so serious as to justify the use of the Court's contempt power, if any, to enforce the order.

The remaining issue to be addressed by the Court is whether Krauss is entitled to interest, attorney's fees and costs under §506(b). In relevant part, §506(b) provides as follows:

(b) To the extent that an allowed secured claim is secured by property the value of which...is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

Krauss argues that he is entitled to interest, attorney's fees and costs because (1) the debt is oversecured, (2) the note and security agreement on which his claim is based provide for interest, attorney's

fees and costs, and (3) the fees requested are reasonable.

Until the hearing on the motion, Krauss never made any claim for interest, attorney's fees or costs under §506(b). Krauss' proof of claim, filed October 21, 1986, requests \$22,350.00 for accounting services he rendered for debtor. There is no claim for interest, attorney's fees or costs. Although Krauss now alleges that his request for interest, fees and costs is based on a note and a security agreement, he only attached a copy of the security agreement to his proof of claim. Therefore, he has failed to prove that he is entitled to interest, attorney's fees or costs.

The June 18, 1987 cash collateral order made no mention of interest, attorney's fees or costs. It only provided that Krauss be paid \$3,500.00 a month until he was "paid in full." The amount Krauss expected to be paid by the debtor was obviously the amount of his proof of claim as evidenced by the present motion in which Krauss only asks for the balance still owed to him on the \$22,350.00 claim. Krauss does not ask for interest, attorney's fees or costs in the motion.

Debtor has already paid \$20,000.00 to Krauss and has tendered the remaining monies due him. Krauss failed to bargain for interest, attorney's fees or costs in the cash collateral case order and he failed to request such fees throughout most of the case. Krauss first requested interest, attorney's fees and costs at the hearing on this motion, when debtor had almost paid off its entire obligation to him. Given these facts, the Court finds that it would be improper to award Krauss additional compensation for interest, attorney's fees and costs under §506(b). Therefore, debtor need only pay Krauss the remaining \$2,350.00 to fulfill its obligation to him under the June 18, 1987 cash

collateral order.

IT IS ORDERED that the motion for order finding debtor in contempt for violation of cash collateral order filed by Gary Krauss is DENIED.

IT IS FURTHER ORDERED that debtor shall pay Gary Krauss \$2,350.00 in satisfaction of its obligation to Krauss under the cash collateral order entered by this Court on June 18, 1987.

_____/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: February 5, 1988