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

IN RE:)
)
MOLDING SYSTEMS ENGINEERING   )   Bankruptcy Case No. 03-61159
CORPORATION, d/b/a MOLDING   )
SYSTEMS ILLINOIS CORP., a/k/a   )
MOLDING SYSTEMS CORP.,   )
)
                        Debtor.   )

OPINION

This matter having come before the Court on a Objection to Claim of John Hower filed by

the Debtor; Creditor, John Hower's Response to Debtor's Objection to Claim; and Debtor's Reply

to John Hower's Response to Debtor's Objection to Claim of John Hower; the Court, having heard

arguments of counsel 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.

The material facts in this matter are not in dispute. Creditor, John Hower, initiated a lawsuit

against the Debtor Corporation in the Circuit Court of Cook County, Illinois, in Case No. 97-L-2473,

in 1997. The case was subsequently transferred to the Circuit Court of Clay County, Illinois, on

February 2, 1998, and received a Clay County case number of 98-L-3. On or about September 2,

1999, Creditor, John Hower, filed his own personal bankruptcy in the United States Bankruptcy

Court for the Middle District of Florida, and he failed to disclose the existence of the litigation

against the Debtor in his personal bankruptcy, even though that litigation clearly had value at the

time. Creditor Hower has come before this Court and continued his pattern of non-disclosure in

submitting his own offer to buy the Debtor's business by assuming all outstanding obligations

against the Debtor, which he clearly could not have done given his own financial history.

Creditor Hower seeks to convince this Court that, while he did not disclose the pending litigation against the Debtor in his personal bankruptcy petition, he did disclose the litigation to his bankruptcy trustee. There is no credible evidence of this disclosure, and this Court finds that Creditor Hower has taken inconsistent positions as to his claim against the Debtor Corporation in his personal bankruptcy case and in Debtor's bankruptcy case. This Court finds it very troubling that Creditor Hower would seek to attempt to override a valid bid for the purchase of the Debtor Corporation's assets with a bid of his own that, in hindsight, he clearly had no wherewithal to carry through.

Under the doctrine of "judicial estoppel," parties are prevented from assuming inconsistent positions in litigation. Brandon v. Interfirst Corp., 858 F.2d 266 (5th Cir. 1988). The purpose of this doctrine is to protect the integrity of the judicial process by preventing parties from playing fast and loose with the Court to suit their self interests. See: In re Superior Crewboats, Inc., 2004 WL 1375712 (June 18, 2004), *citing* In re Coastal Plains, Inc., 179 F.3d 197 (5th Cir. 1999). This Court wholly agrees with the First Circuit Court of Appeals decision Payless Wholesale Distributors, Inc. v. Calberto Culver (P.R.), Inc., 989 F.2d 570 (1st Cir. 1993), where the Court noted that "a long-standing tenet of bankruptcy law requires one seeking benefits under its terms to satisfy a companion duty to schedule, for the benefit of creditors, all his interests and property rights." The conduct exhibited by Creditor Hower is exactly the type of conduct that the First Circuit Court of Appeals found objectionable in applying the doctrine of judicial estoppel. Creditor Hower has attempted to distinguish the Payless case; however, the Court finds that that attempt has failed. In fact, this Court finds that Creditor Hower's conduct, in concealing from his creditors a lawsuit that he had already

filed, is far worse than failing to disclose a claim that had not yet ripened into a lawsuit, as was the case in <u>Superior Crewboats, Inc.</u>, <u>supra</u>. For this reason, the Court finds that the objection to claim of Creditor, John Hower, should be allowed and that Creditor Hower's claim should be stricken in total.

ENTERED: August 13, 2004.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge