



SO ORDERED.

SIGNED this 31 day of August, 2011.

Dale L. Somers

Dale L. Somers
UNITED STATES BANKRUPTCY JUDGE

**Opinion designated for on-line use, but not print publication
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

JAMES BLAIR KIRBY,

DEBTOR.

**CASE NO. 03-16858
CHAPTER 12**

**MEMORANDUM OPINION AND JUDGMENT DENYING
DEBTOR'S MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSES**

Following hearing on June 21, 2011, and after opportunity to file additional briefs, the Court took under advisement Debtor's Motion for Allowance of Administrative Expenses (hereafter "Motion"). Debtor appeared by Dan W. Forker, Jr., of Forker Suter LLC. PHI Financial Services, Inc. (hereafter "PHI") opposed the Motion and appeared by

William A. Wells, of Young, Bogle, McCausland, Wells, & Blanchard, P.A. There were no other appearances. The Court has jurisdiction.¹

The material facts are uncontroverted.² On or about November 9, 2005, after this case was filed, PHI, without knowledge of the bankruptcy, extended credit to the Debtor for the purpose of acquisition of farm products used in Debtor's farming operation and necessary for such operation. The remaining balance owed PHI is approximately \$19,000. Debtor filed the Motion pursuant to § 503(a) for allowance of the balance as an administrative expense for the express purpose of discharging the claim. PHI objects, asserting the Debtor is not a proper person to seek allowance of the claim as an administrative expense.

The Court agrees with PHI and finds the Debtor is not the proper party to seek allowance of PHI's right to payment as an administrative expense. Section 503(a) of the Code provides "an entity" may file a request for payment of an administrative expense. "Entity" is defined by § 101(15) as including a "person, estate, trust, governmental unit,

¹ This Court has jurisdiction pursuant to 28 U.S.C. § 157(a) and §§ 1334(a) and (b) and the Standing Order of the United States District Court for the District of Kansas that exercised authority conferred by § 157(a) to refer to the District's Bankruptcy judges all matters under the Bankruptcy Code and all proceedings arising under the Code or arising in or related to a case under the Code, effective July 10, 1984. A motion for allowance of administrative expenses is a core proceeding which this Court may hear and determine as provided in 28 U.S.C. § 157(b)(2)(A) and (B). There is no objection to venue or jurisdiction over the parties.

² The facts are stated in Debtor's Motion (dkt. 245) and PHI's response (dkt. 250). Although having opportunity to do so, neither party filed a pleading objecting to the facts so stated.

and United States trustee." This would appear to include the Debtor. However, case law is to the contrary.

In *McNitt*,³ the court held that the debtor was not the proper party to file a motion for allowance of a federal tax claim as an administrative expense. Finding that § 503(a) did not adequately explain "whether one not entitled to payment may request payment on behalf of another,"⁴ the court relied upon the legislative history, which states:

"Subsection (a) of [§ 503] permits administrative expense claimants to file with the court a request for payment of an administrative expense."⁵ This history was found to make it "clear that only the entity possessing the administrative claim may request payment as an administrative claim."⁶

This Court agrees with the *McNitt* decision. Only PHI, not the Debtor, may move pursuant to § 503(a) for administrative claim treatment of Debtor's obligation to PHI. The Debtor's Motion is denied.

The foregoing constitute Findings of Fact and Conclusions of Law under Rules 7052 and 9014(c) of the Federal Rules of Bankruptcy Procedure which make Rule 52(a) of the Federal Rules of Civil Procedure applicable to this matter.

³ *In re McNitt*, 170 B.R. 706 (D. Idaho 1994).

⁴ *Id.* at 707.

⁵ *Id.*, quoting S. Rep. No. 95-989, 95th Cong., 2nd Sess. at p. 66.

⁶ *Id.* at 707.

JUDGMENT.

Judgment is hereby entered denying Debtor's Motion for Allowance of Administrative Expenses. The judgment based on this ruling will become effective when it is entered on the docket for this case, as provided by Federal Rule of Bankruptcy Procedure 9021.

IT IS SO ORDERED.

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