

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re

TIMBER CREEK, INC.,

Case No. 95-28309-K

Debtor.

Chapter 11

**SUA SPONTE ORDER DENYING DEBTOR'S "APPLICATION...FOR LEAVE TO PAY
FILING FEE IN INSTALLMENTS" COMBINED WITH NOTICE OF THE ENTRY THEREOF**

It appears to the Court, on its own initiative, that on August 9, 1995, the above-named debtor, Timber Creek, Inc., ("Debtor") filed an original petition under chapter 11 of the Bankruptcy Code accompanied by, inter alia, an "Application...For Leave To Pay Filing Fee In Installments."

The ultimate question for judicial determination here is whether the word "individual" as contemplated under 28 U.S.C. § 1930 and FED. R. BANKR. P. 1006(b)(1) may include other entities. For the reasons mentioned hereinafter, the Court holds for purposes of 28 U.S.C. § 1930 and FED. R. BANKR. P.1006(b) that the word "individual" does not include a corporate (or partnership) debtor.

By virtue of 28 U.S.C. § 157(b)(2)(A) this is a core proceeding.

Based on consideration of the case record as a whole, the court renders the following findings of fact and conclusions of law in accordance with FED. R. BANKR. P. 7052.

The relevant background facts may be briefly summarized as follows. Debtor is a corporate entity engaged in the furniture manufacturing business. At the time the debtor commenced this chapter 11 case, it also filed an accompanying application pursuant to FED. R. BANKR. P. 1006(b)(1) seeking to pay the \$800.00 filing fee required by 28 U.S.C. § 1930(a)(3) in installments. Debtor's schedules reflect that it has assets valued at \$320,818.00. No compelling justification was articulated by the debtor that would warrant approval to pay the filing fee in installments, assuming arguendo that a corporate debtor may be considered an "individual" as contemplated in 28 U.S.C. § 1930 and FED. R. BANK. P. 1006(b)(1).

28 U.S.C. § 1930(a)(3) requires the payment of an \$800.00 filing fee on the commencement of a chapter 11 case (that does not concern a railroad, as defined in section 101 of title 11). However, 28 U.S.C. § 1930 additionally provides that an *individual* commencing a voluntary case under title 11 may pay the filing fee in installments.

To effectuate this installment payment provision, FED. R. BANKR. P. 1006(b),¹ styled "Payment Of Filing Fee In Installments," contains the procedure for the payment of fees in installments. Specifically, this Rule states as follows:

"(1) *Application for Permission to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application stating that the debtor is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

"(2) *Action on Application.* Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

"(3) *Postponement of Attorney's Fees.* The filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney or any other person who renders services to the debtor in connection with the case."

Black's Law Dictionary, Revised Fourth Edition, page 913, defines the word "individual" as follows:

¹FED. R. BANKR. P. 1006 is derived from former Bankr. Rule 107.

"As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or nature person as distinguished from a partnership, corporation, or association; *but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons.* *State v. Bell Telephone Co.*, 36 Ohio St. 310, 38 Am.Rep. 583."

Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define the word "individual."² A reading of 28 U.S.C. § 1930 and FED. R. BANKR. P. 1006(b) suggests that a narrow and literal construction should be applied here.³ This is not the appropriate situation for the word "individual" to include an artificial person (e.g., a corporation).

Considering a totality of the particular facts and circumstances and applicable law, the corporate debtor's installment fee application pursuant to FED. R. BANKR. P. 1006(b)(1) is hereby denied. Accordingly,

IT IS ORDERED that the chapter 11 corporate debtor's instant application seeking to pay the filing fee required by 28 U.S.C. § 1930(a)(3) in installments pursuant to FED. R. BANKR. P. 1006(b)(1) is hereby denied.

BY THE COURT

DAVID S. KENNEDY
CHIEF UNITED STATES BANKRUPTCY JUDGE

DATE: September 8, 1995

cc: Thomas Newton, Esquire
Attorney for Debtor

²Section 101(9) of the Bankruptcy Code defines the word "corporation;" and section 101(41) defines the word "person."

³For a similar discussion of the individual - corporation dichotomy for purposes of 11 U.S.C. § 362(h), see, for example, *In re Chateaugay Corp.*, 920 F.2d 183 (2d Cir. 1990) holding that section 362(h) of the Bankruptcy Code does not apply to corporate debtors. Conversely, see, for example, *In re Better Homes of Virginia, Inc.*, 804 F.2d 289 (4th Cir. 1986) ruling that section 362(h), when read in conjunction with the rest of section 362, applies to corporate debtors as well. Compare *United States v. Kras (In re Kras)*, 409 U.S. 434 (1973).

One Commerce Square, #1700
Memphis, TN 38103

Ellen B. Vergos, Esquire
United States Trustee
200 Jefferson #400
Memphis, TN 38103

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