

FILED ON DOCKET  
MAY 3 - 2007

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: ) CHAPTER 7  
)  
CHARLES RANDALL HAMBLLEN and ) CASE NO. 05-95215-JB  
JANET SMITH HAMBLLEN, ) CASE NO. 05-95216-JB  
BROOKSTONE FINE WOOD ) CASE NO. 05-95217-JB  
PRODUCTS, INC., CLOSET & )  
STORAGE SOLUTIONS, LLC, ) Jointly Administered Under  
) CASE NO. 05-95215-JB  
Debtors. )

**ORDER**

The Chapter 7 Trustee’s motion for authorization to serve as an independent fiduciary to administer and terminate an ERISA-covered benefit plan sponsored by Brookstone Wood Products, Inc., came before the Court on April 30, 2007 (Docket #341). Alex Teel was present representing the Trustee and the United States Trustee was represented by Guy Gebhardt. Counsel for the Trustee stated that he sought this authorization pursuant to 11 U.S.C. 704(a)(11) and he also sought authority to pay “related expenses” from plan assets. There are several problems with the Trustee’s motion and it cannot be granted.

The motion does not reference § 704(a)(11), but that section provides as follows:

The trustee shall - . . .

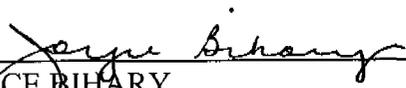
(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; . . .

The Trustee has not shown or alleged that any debtor served as the administrator of an employee benefit plan as defined in Section 3 of the Employee Retirement Income Security Act of 1974.

In fact, the motion identifies the plan administrator as R. Bruce Tanner & Associates. If R.

Bruce Tanner & Associates is the plan administrator, then § 704(a)(11) does not appear to be applicable. The motion seeks to pay “related expenses” from plan assets, but the Trustee has not served affected parties, such as the participants in the plan, nor has the Trustee indicated what the related expenses might be. Neither the motion nor the presentation explains exactly what the Trustee is proposing to do or what expenses might be incurred, and based on the record before the Court, the motion cannot be granted and is therefore denied.

IT IS SO ORDERED, this 2<sup>nd</sup> day of May, 2007.

  
\_\_\_\_\_  
JOYCE BIHARY  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF MAILING**

A copy of the foregoing Order mailed by United States Mail to the following:

Charles Randall Hamblen  
Janet Smith Hamblen  
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Alpharetta, GA 30004

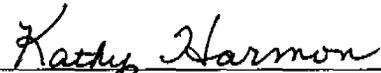
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\_\_\_\_\_  
Judicial Assistant to Judge Bihary

Date: May 2, 2007