

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In Re :
: Chapter 11
DECORA INDUSTRIES, INC., : Bank. No. 00-4459 JJF
:
Debtors. :

Francis A. Monaco, Jr., Esquire of WALSH, MONZACK, and MONACO, P.A.,
Wilmington, Delaware.
Special Master.

Michael R. Nestor and Edmon L. Morton, Esquires of YOUNG CONAWAY
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DISTRICT OF DELAWARE, Wilmington, Delaware.
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MEMORANDUM OPINION

May 10, 2002
Wilmington, Delaware.

FARNAN, District Judge.

Pending before me, is the Amended Application For Appointment of Trustee. (D.I. 306). The Application was filed by Nathan Hevrony, a member of the Board of Directors of Debtors. Mr. Hevrony contends that appointment of a Trustee is necessary because of conflicts of interest, breach of fiduciary duty, misuse of estate property, gross incompetence, and mismanagement. In essence, the Application is an attack personally and professionally on Ronald Artzer, Debtors' current Chief Executive Officer, and the corporate officer selected by the Board to replace Mr. Hevrony as CEO. In support of the finding that the Application is an assault of Mr. Artzer personally, I refer to Mr. Hevrony's assertion "Artzer cannot be trusted to continue to manage the Companies." (D.I. 306 at 2). I permitted discovery by the interested parties and facilitated the conduct of discovery by the appointment of Francis A. Monaco, Jr. as Special Master.

The Application is opposed by the Debtors and all the interested parties that could suffer serious harm if the assertions of Mr. Hevrony were proven, including the Creditors Committee and lenders.

Authority for the appointment of a Trustee is found in Section 1104(a) of the United States Bankruptcy Code. Specifically, two circumstances may support the appointment of a Trustee: 1) cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor; or 2) if an appointment is in the

interest of creditors, equity security holders, and other interests of the estate. See 11 U.S.C. § 1104(a). In this matter, the "interests" constituencies vigorously oppose the appointment of a Trustee, so I will only consider whether cause exists.

On April 25, 2002, I held a hearing on the Application. I have also considered numerous papers and affidavits submitted by Mr. Hevrony, Debtors, and other interested parties. After considering all the evidence, I conclude that no cause exists for the appointment of a Trustee.

The Affidavit of Neil A. Steiner is a helpful summary of Mr. Hevrony's claims and evidence. Mr. Steiner is an attorney representing Mr. Hevrony, and he has set forth the factual background and evidence that allegedly support Mr. Hevrony's view. In his Affidavit, Mr. Steiner identifies events, such as the failure of Debtors' Pre-Negotiated Plan of Reorganization, the circumstances surrounding the decision to sell the Debtors' assets, Mr. Artzer's management and proposed employment with the intended purchaser, and finally business arrangements with the intended purchaser, Pliant. In my view, the evidence adduced by Mr. Hevrony does not support the allegations of misconduct attributed to Mr. Artzer.

Mr. Artzer assumed the day to day operations of a troubled business, and, it is clear that he has often revised plans and altered decisions concerning the Debtors' future. But, I am persuaded that his management has been in the interest of

continuing Debtors as a viable entity, so as to advantage constituencies that are typically disadvantaged in the context of a Chapter 11 proceeding. For example, I accept his explanation at the April 25 Hearing concerning the Pliant arrangement. He needed inventory and had no resources to produce it. So, not unexpectedly, he and his management team made a deal and found a way to produce the inventory. I find no illegality in the Pliant arrangement and, with an understanding of the position from which Mr. Artzer negotiated, I am not concerned with the terms agreed upon.

Also, I have examined the offer of employment Mr. Artzer has received from Pliant in regard to the pending sale of Debtors. Given Mr. Artzer's stewardship of these Debtors, it is not surprising that Pliant seeks to retain him with the compensation package discussed. In my view, a sale will occur only if a purchaser can anticipate some stability in the management of Debtors, and, therefore, I find no self-dealing or conflict of interest in the contemplated employment package offered by Pliant and accepted by Mr. Artzer.

In sum, Mr. Hevrony's allegations do not support cause for the appointment of a Trustee.

CONCLUSION

An Order denying the Application will be entered.

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O R D E R

At Wilmington, this 10th day of May 2002, for the reasons set forth in the Memorandum Opinion issued this date, IT IS HEREBY ORDERED THAT the Amended Application For Appointment of Trustee (D.I. 306) is DENIED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE