UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	BKY 4-89-3142
SALISBURY FLOWER MARKETS, INC. Debtor.	MEMORANDUM ORDER DENYING MOTION TO VACATE SALE AND FURTHER DENYING MOTION FOR SANCTIONS

At Minneapolis, Minnesota, February 22, 1991.

The above-entitled matter came on for hearing before the undersigned on the 23rd day of January, 1991 on a motion by Everflora Chicago, Inc. ("Everflora") to vacate a sale of certain assets of the bankruptcy estate to Diversified Flowers ("Diversified"). The appearances were as follows: David Marshall for Everflora; Frank Farrell for Diversified; and James Ramette, in propria persona.

FACTS

On January 20th, 1986, Salisbury granted Doris J. Ekrem ("Ekrem") a blanket security interest in Salisbury's then-owned and after-acquired accounts, inventory, machinery and equipment, general intangibles, and all products and proceeds of any and all of the foregoing. The agreement specifically included Salisbury's corporate name and good will.

On July 5, 1989, Salisbury filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

On September 27, 1990, Ekrem requested relief from the stay to foreclose on her security interest. I granted her motion on October 19, 1990. Thereafter, on October 31, 1990, Diversified purchased the assets listed above from Ekrem. This transaction was

conditioned on Diversified entering into agreements to occupy retail space once occupied by Salisbury on Grand Avenue in St. Paul and at Calhoun Square in Minneapolis.

Salisbury's bankruptcy case was voluntarily converted to Chapter 7 on November 5, 1990.

On November 21, 1990, Ramette, as Chapter 7 trustee, noticed a sale as follows:

> Three telephone numbers . . . the corporate name of the debtor (to the extent not already covered/conveyed by the security agreement) and the rights to use the rejected lease space at Calhoun Square will be sold to Diversified Floral, Inc. (who has a secured interest in all other assets previously owned by the debtor) for $1400.00 cash.

In accordance with Local Rule 115(b), the notice indicated that the sale was to take place on November 29, 1990, and that objections, if any, were to be filed one day in advance of that date. The notice was served on the United States Trustee, Salisbury's attorney, Diversified's attorney and the attorney for Salisbury's landlord, the latter having requested notice under Bankruptcy Rule 2002(i).

Everflora, a creditor in this case, became aware of the proposed sale on or about November 27, 1990. The following day, Everflora's attorney attempted unsuccessfully to communicate with Ramette to indicate that it was willing to pay $2,500 for the assets. Everflora did not file an objection to the sale with the court or serve an objection upon Ramette or the United States Trustee prior to November 29.

Thus, on November 29, 1990, the sale went forward. Subsequently, Everflora notified Ramette in writing that it wanted to purchase the assets and Ramette responded that they were already sold in accordance with our Local Rules, and he would not reverse his position.

DISCUSSION

Everflora moves to vacate the sale of the debtor's telephone numbers and corporate name[1] on two grounds. First, it asserts that Local Rule 115(b) did not apply to the sale in question because the value of the assets exceeded $1,500. Therefore, the sale should have been noticed to all creditors pursuant to Bankruptcy Rule 2002(a)(2). Second, it asserts that, even if Local Rule 115(b) applies, the rule directly conflicts with Bankruptcy Rule 2002(a)(2). Because of this conflict, and because Local Rules are subordinate to the Bankruptcy Rules, Everflora urges Local Rule 115(b) is invalid.

I. Applicability of Local Rule 115(b)

Local Rule 115(b) provides that a sale of property of the estate may be consummated on four days notice and without general notice, "if the value to the estate of the property to be sold is less than $1,500.00." Under this local rule, notice of sale of assets of value less than $1,500 may be sent only to the United States Trustee and those who request notice pursuant to Bankruptcy Rule 2002(i).

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[1] Everflora did not request the court to vacate the purported sale of the rejected lease right.

Everflora asserts that the best evidence of property's value is what a buyer will pay to acquire it. According to this theory, because Everflora was willing to pay $2,500 for the assets, that was their worth and the trustee was not entitled to use the more limited notice rule. I disagree and find, instead, that the Trustee justifiably believed that the property in question was worth less than $1,500, that in fact the value of the assets was less than $1,500, and that Local Rule 115(b) did apply.

As Ramette argued at the hearing, the assets he sold to Diversified are probably worth substantially less than $1,500 because they were subject to Ekrem's security interest which had been foreclosed upon by Diversified or because they had a value which diminished substantially upon conversion of the case. There certainly was a serious question whether the corporate name was already owned by Diversified. The telephone numbers had questionable, if any, value. As noted above, Ekrem's security interest included all general intangibles, and the debtor's good will and name were explicitly covered by the security interest. Under the circumstances, it is surprising that Diversified offered to pay anything for the assets. As Ramette described it, he simply did a good job of squeezing the last nickel out of Diversified by offering to sell it assets it probably already owned in order to pin down the last detail of foreclosure of the security interest and purchase of the assets. Moreover, there is evidence on the record that Everflora has ulterior motives in offering $2,500. An

uncontested affidavit indicates that Everflora has threatened to do whatever is necessary to competitively disable Diversified.

Thus, I conclude that Local Rule 115(b) does apply to this sale and the trustee acted appropriately in utilizing the limited notice procedures contained in Local Rule 115(b).

II. Validity of Local Rule 115(b)

This leaves me to decide whether Local Rule 115(b) conflicts with the Bankruptcy Code and other Bankruptcy Rules and is, therefore, unenforceable. I conclude that it does not.

Bankruptcy Rule 9029 authorizes the district courts to adopt local rules governing procedure within their bankruptcy jurisdiction, provided that such rules are not inconsistent with the Bankruptcy Rules. Local Rules which conflict with the Bankruptcy Rules or the Bankruptcy Code are of no effect. In re Falk, 96 B.R. 901 (Bktcy. D. Minn. 1989). A local rule will be upheld, however, if (a) it does not "abridge, enlarge, or modify any substantive right" as required by 28 U.S.C. § 2075 and (b) it is "a matter of procedure not inconsistent with" the Bankruptcy Rules as required by Bankruptcy Rule 9029. In re Falk, 96 B.R. 904.

Local Rule 115(b) does not conflict with Section 363 of Title 11 because it does not affect in any way whether a Trustee can sell property of the estate. Thus, Local Rule 115(b) does not "abridge, enlarge, or modify any substantive right" granted in the Code itself and, therefore, it meets the first part of the test for validity.

Nor does the provision in Local Rule 115(b) allowing sales to proceed on notice only to creditors who request notice conflict with any Bankruptcy Rule. Bankruptcy Rule 6004(a) provides, with limited exception, that the notice of a proposed sale of property of the estate be given pursuant to Bankruptcy Rule 2002(a)(2), (c)(1) and (i).[2] Bankruptcy Rule 2002(a)(2) requires 20 days notice[3] to all creditors of a proposed sale of property of the estate "unless the court for cause shown shortens the time or directs another method of giving notice." The content of such a notice is fixed by Bankruptcy Rule 2002(c)(1). Bankruptcy Rule 2002(i) permits the court to order that notices required by 2002(a)(2) be mailed only to appointed committees and to creditors and equity security holders who serve on the trustee and file with the clerk a request for notice. Bankruptcy Rule 2002(i) does not require a motion by any party, a hearing, or a showing of cause. Cf. Bankruptcy Rule 4007(c), considered in In re Falk, 96 B.R. 901, 904-906.

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[2] An exception, not applicable here, provides for less detail in the form of the notice in the case of a sale of all of the property of the estate for less than $2500. Bankruptcy Rule 6004(d).

[3] Everflora has not argued that Local Rule 115(b) improperly shortens the time for such notice. Since it is not entitled to notice at all, it has no standing to challenge the timeliness of notice given to parties entitled to such notice. Furthermore, Rule 2002(a)(2) allows the time of notice to be shortened "for cause". Rule 9006(c)(1) further allows for reduction of time limitations in the Rules "for cause shown . . . with or without notice . . .". The 20-day notice requirement of 2002(a)(2) is not one which cannot be reduced. Bankruptcy Rule 9006(c)(2).

Thus, Bankruptcy Rules allow the court, on its own initiative, to order that certain notices be served on the specified entities and only on those creditors who request notice. By adopting Local Rule 115(b), this court has, for eminently sensible reasons having to do with the economics of administration of assets of minimal value, decided to take this initiative if the value of the property to be sold is less than $1,500. To the extent Local Rule 115(b) provides for service of a notice of sale of property only on creditors who have requested notice, it does not conflict with any Bankruptcy Rule governing the sale of property of the estate.

III. Request for Sanctions

Based on the record, I further conclude that Diversified's request for Rule 9011 sanctions against Everflora and its counsel should be denied.

Based on the foregoing,

IT IS HEREBY ORDERED that:

1. Everflora's motion to vacate the sale is denied.

2. Diversified's motion for sanctions is denied.

Nancy C. Dreher
United States Bankruptcy Judge