

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:

KMART CORPORATION,

Reorganized Debtor.

Case No. 02 B 02474

Hon. Susan Pierson Sonderby

Hearing Date: March 3, 2010

Hearing Time: 11:00 a.m. (CST)

**KMART'S REPLY TO BEULAH JOHNSON'S RESPONSE TO KMART'S MOTION TO  
ALLOW IN PART AND DISALLOW IN PART CLAIM OF BEULAH JOHNSON**

Kmart Corporation filed a Motion to Allow in Part and Disallow in Part Claim of Beulah Johnson. Ms. Johnson filed a timely response to the Motion. Ms. Johnson's response does not provide any credible responses to the points made in Kmart's motion, and the relief sought by Kmart should accordingly be granted.

1. Ms. Johnson's first contention is that Kmart's objection to her claim had to specifically object to the fact that Ms. Johnson checked the "unsecured priority box" for her admittedly non-priority claim. Kmart objected (in its 10<sup>th</sup> Omnibus Objection to Claims) to the entire claim as being without merit. The argument that it had to separately object to the claimed priority of the claim is without logic and authority. In the *Transouth Truck Equipment* case cited by Johnson, the court considered *in dicta* the consequences of a trustee failing to make any objection to a claim; the case did not remotely hold that an objection to a claim *in toto* must also specify an objection to wrongfully asserted priority.

2. Johnson does not respond to the main thrust of Kmart's argument regarding the North Carolina District Court's order that Kmart provide Johnson with certain training. Kmart never received notice of the order and therefore cannot be sanctioned for not having complied

with the order. Johnson does not say that she sent notice to Kmart. And she certainly cannot say they she filed a certificate of service that would have described the sending of the notice, or that she took any action to enforce the order, because the docket for the North Carolina case shows no such pleadings. The citation to *Gouveia v. Tazbir*, 37 F.3d 295 (7<sup>th</sup> Cir. 1994), is not helpful because in that case the debtor had actively participated in the pre-bankruptcy injunction proceedings, whereas in this case not only did Kmart not participate in the proceeding, it never received notice of its outcome.

3. Johnson appears to fall back on the argument that Kmart must specify its objection to the specific dollar amount that Johnson is seeking, and not Johnson's basis for such a claim. It is pointless, however, to argue over, or have a trial on, a claim where the claim lacks legal substance. That is the purpose of Rules 7012 and 7056 of Bankruptcy Procedure – to ferret out claims that lack legal merit so the Court does not have to spend its limited time trying legal insufficient claims.

4. Johnson ends with a plea for a trial on whether Kmart received notice of the North Carolina judgment. There is, however, no issue of material fact: there is no certificate of service showing that Kmart received notice; there were no subsequent filings made to enforce the judgment; and the person at Kmart responsible for monitoring litigation against the company at that time, and who still holds that position, has stated in an affidavit that the records of the company do not show that notice of the judgment was ever received. For her part, Johnson has offered nothing to show that the judgment was served on Kmart.

5. Johnson does not attempt to explain how a default judgment for less than \$30,000 becomes a claim for \$15,000,000. What Johnson should have done, as suggested by Kmart in its

Motion, is calculate how much more she would have earned had she received the training she sought. Assuming that Johnson would have completed the training and would have remained in any resulting higher pay grade position, Kmart believes that the amount at issue would be in the range of \$10,000 to \$15,000. Kmart would likely allow such an amount if reasonably calculated, and would make a Class 6 distribution on the amount.<sup>1</sup>

Dated: February 22, 2010

KMART CORPORATION

/s/ William J. Barrett  
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<sup>1</sup> In her Response, Johnson says that she has claimed \$68,386 in lost wages “due to the failure to provide her with the training pursuant to the Judgment ...” However, in her Statement of Claim, the \$68,386 appears as the original judgment amount plus interest and attorneys fees, it does not relate to any prospective damages for not receiving training.

**CERTIFICATE OF SERVICE**

I, William J. Barrett, an attorney, hereby certify that a true and correct copy of **KMART'S REPLY TO BEULAH JOHNSON'S RESPONSE TO KMART'S MOTION TO ALLOW IN PART AND DISALLOW IN PART CLAIM OF BEULAH JOHNSON**, was served via overnight courier delivery, to the party listed below, and by ECF notification to all registered filers listed below, on the 22<sup>nd</sup> day of February, 2010.

Beulah Johnson  
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/s/ William J. Barrett  
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## Mailing Information for Case 02-02474

### Electronic Mail Notice List

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