# In the United States Bankruptcy Court

## for the Northern District of Iowa

WENDELL W. COREY — Bankruptcy No. 87-00313M
*Debtor(s).*

## MEMORANDUM OF DECISION AND ORDER RE: MOTION FOR ABANDONMENT

The matter before the court is a motion by Norwest Bank Mason City, National Association (Norwest) seeking the abandonment by the trustee of a partnership interest which is property of the Wendell W. Corey bankruptcy estate. The trustee, Michael C. Dunbar, resisted the motion.

Hearing was held November 3, 1987, pursuant to Bankr. R. 6007(c).

The court, having considered the evidence and the arguments of counsel, now issues the following ruling which shall constitute Findings of Fact and Conclusions of Law pursuant to Bankr. R. 7052.

This is a core proceeding under 28 U.S.C. sections 157(b)(2)(A) and (0).

### FINDINGS OF FACT

Wendell W. Corey (Corey) filed his individual petition under Chapter 7 of the Bankruptcy Code on February 11, 1987.

Corey listed as an asset in his bankruptcy schedules a 15% interest in a partnership identified as "North Central Iowa Storage Co." He valued the interest at $125,000.00. Schedule B-2(u).

Corey identified Norwest as a creditor holding a security interest in the partnership interest. He showed the amount of Norwest's claim as in excess of one million dollars. Schedule A-2.

On October 9, 1987, Norwest filed its motion seeking the abandonment of the partnership interest. Norwest asserted its prepetition perfected security interest in Corey's interest in the partnership; alleged that the debt to Norwest exceeded the value of the partnership interest; and claimed that the collateral had no value or benefit to the bankruptcy estate. In short, therefore, it should be abandoned based on 11 **U.S.C.** section 554(b).

On October 22, 1982, Robert L. Gabeline, Corey and Midlands Development Co., a Nebraska partnership, formed a "general partnership under the laws of Nebraska for the purpose of constructing and operating a grain storage facility in Clear Lake, Iowa. . . ." "Partnership Agreement," P. 1.

The principal office of the partnership was in Douglas County, Nebraska.

It is somewhat unclear from paragraph 2 of the "Partnership Agreement" whether the partners intended "North Central Iowa Storage Co." to be the name of the partnership or whether they intended it to be a trade name.[(1)]

The evidence is insufficient to decide which was intended. A choice is not necessary, however, to reach a decision in this proceeding.

On December 30, 1983, Corey executed an "Assignment" which granted to Norwest a security interest in the following described property:

> [H]is property rights as a partner in a partnership consisting of himself, Robert L. Gabeline, Mount Union, Iowa, and Midlands Development Co., a Nebraska partnership composed of Harlan J. Noddle, Joseph Kirshenbaum, and Jay R. Lerner, under Partnership Agreement dated October 22, 1982, including his rights in specific partnership property and his interest in the partnership together with the proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements, and substitutes of, to, and for all of the foregoing. All such property in which a security interest is granted is herein called the "collateral".

The Assignment contained a choice of law provision:

> "This Assignment and our rights and duties hereunder, including but not limited to all matters of construction, validity, and performance, shall be governed by the law of Iowa."

The Assignment was for security purposes, and the partnership consented to it although the partnership made no independent assignment of any property rights nor did any other partners.

On June 12, 1984, Norwest filed a "UCC-1" financing statement with the Iowa Secretary of State which was identified by the Secretary as filing H 87333.

The financing statement, which was executed by Corey, contained the following information: The debtor was identified as

> "Wendell W. Corey
> Clear Lake, Iowa 50428."

The secured party was identified as:

> "Norwest Bank Mason City
> 5 North Federal
> Mason City, IA 50401."

Paragraph 4 described the collateral:

> All of my property rights in a partnership consisting of myself, Robert L. Gabeline, Mount Union, Iowa, Midlands Development Co., a Nebraska partnership composed of Harlan J. Noddle, Joseph Kirshenbaum, and Jay Lerner under Partnership Agreement dated October 22, 1982, including my rights in specific partnership property and my interest in the partnership together with the proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for all of the foregoing.

As of the date of bankruptcy, Corey owed Norwest $1,133,959.62. This sum included $815,389.14 in principal and $318,570.48 in interest. The debt was represented by eleven promissory notes, three of which were co-signed by Irene Corey. The three co-signed notes totaled $165,769.96. Even were Irene Corey to pay in full the three co-signed notes, the amount of debt would still exceed the value of the partnership interest. The bank believes that the Corey partnership interest has a value of between $250,000 and $300,000. There is no other collateral to liquidate. The trustee does not dispute the bank's valuation.[(2)] Nor does the trustee dispute that the bank gave value in consideration of Corey's transfer of the security interest. It is undisputed that there was a written security agreement signed by the debtor. There is no evidence that the partnership interest is beneficial to the estate even if it is encumbered by Norwest.

## DISCUSSION

Norwest seeks abandonment by the trustee of the estate's interest in the partnership (Corey's partnership interest).

The statutory basis for Norwest's motion is 11 U.S.C. section 554(b). This Code section permits a party in interest to seek a court order that the trustee abandon property of the estate "that is burdensome to the estate or that is of inconsequential value and benefit to the estate." The theory of Norwest's motion is that because the indebtedness secured by the bank's security interest in the partnership interest exceeds its value, it is of inconsequential value to the estate and should be abandoned.

Property may be of "inconsequential value" if encumbrances upon it exceed its present market value and the encumbrances are superior to the rights of the trustee. In re Brannan, 5 B.R. 505, 506 (D. VI, 1980); In re Pacific Sunwest Printing, 6 B.R. 408, 414 (Bankr. S.D. Cal.); see generally Central States Life Insurance Co. v. Koplar Co., 80 F.2d 754, 757-58 (8th Cir. 1936), cert. denied 298 U.S. 687 (1936)(abandonment decision under Bankruptcy Act of 1898).

The trustee disputes that the Norwest's security interest is superior to the status of the trustee. While nowhere specified, the court presumes the relevant status of the trustee is based on 11 U.S.C. section 544(a)(1).

In support of its resistance the trustee argues that the security interest is unperfected because of the following:

1. The financing statement is defective as it provides an incomplete mailing address for the debtor.

2. The financing statement is defective as it does not sufficiently describe the collateral because of the omission of the partnership name--North Central Iowa Storage Co.

3. The security agreement is defective in that it also fails to reasonably identify the partnership interest under the name of North Central Iowa Storage Co.

4. Norwest's security interest is unperfected because it did not "attach" within the meaning of the Uniform Commercial Code to the relevant assets prior to the trustee acquiring his status and rights under 11 U.S.C. section 544(a).

At this juncture, the court must note that on March 26, 1987, Norwest filed a Motion for Relief from the Automatic Stay under 11 U.S.C. sections 362(d)(1) and 362(d)(2). The contested matter proceeding was identified as number 70534.

In that proceeding, Norwest alleged its status as a perfected secured creditor in the Corey partnership interest by virtue of the same documents which are at issue in the present proceeding.

Further, in the stay litigation, Norwest alleged that the value of the collateral securing the indebtedness to Norwest was far less than the unpaid debt and that there was, therefore, no equity in the collateral. The bank requested relief from the stay on the ground that it lacked adequate protection of its security interest in the Corey partnership interest and also on the ground that there was no equity in the collateral.

On March 30, 1987, the clerk of court served notice upon the attorney for the debtors, the trustee, and the attorney for Norwest, that there would be a preliminary hearing on the Norwest motion on April 20, 1987.

The notice also indicated that the debtor and the trustee should file answers to the motion at least seven days prior to the preliminary hearing and that if no answers were filed and served upon the moving party, the preliminary hearing would not go forward and the stay would be lifted without further notice. On April 20, 1987, this court, the Hon. Michael J. Melloy presiding, granted the motion for relief because no resistances had been filed.

It is certainly arguable that the court's default order granting relief from the stay precludes the trustee from raising the attachment and perfection issues which he now asserts in resistance to the Motion for Abandonment. See Kapp v. Naturelle, Inc., 611 F.2d 703, 708 (8th Cir. 1979).

However, whether the elements of issue preclusion (or collateral estoppel) are present in this case has not been raised by Norwest and therefore this court considers that issue preclusion has been waived as a method of proof. There is authority that the court may raise the issue of collateral estoppel on its own motion,[(3)] but the court will not now do so. This brings us to the merits.

I.

There is no dispute between the parties that with regard to the attachment, enforceability, perfection and priority of Norwest's security interest, Iowa law is applicable.

Under Iowa Code section 554.9301, an unperfected security interest is subordinate to the rights of a person who becomes a lien creditor before the security interest is perfected. Iowa Code section 554.9301(l)(b).

For the purposes of Iowa Code section 554.9301(l)(b), "[a] 'lien creditor' means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for the benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition. . . ." Iowa Code section 554.9301(3).

The strong arm clause of the Bankruptcy Code, 11 U.S.C. section 544(a) provides the trustee in bankruptcy with the rights and powers of a judicial lien creditor at the commencement of the case.

To have already been perfected on the day of the bankruptcy filing, Norwest's security interest must have attached and the applicable steps required for perfection must have been taken. Iowa Code section 554.9303(l).

Iowa Code section 554.9203 governs attachment and enforceability and states as follows in pertinent part:

1. [Al security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless
    a. . . . the debtor has signed a security agreement which contains a description of the collateral
    b. value has been given; and
    c. the debtor has rights in the collateral.
2. A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in sub-section 1 have taken place unless explicit agreement postpones the time of attaching.
3. Unless otherwise agreed, a security agreement gives the secured party the rights to proceeds provided by section 554.9306, . . ."

A partnership interest is treated as a general intangible. Madison National Bank v. Newrath, 275 A.2d 495, 501 (Md. App. 1971). See also In re Sunberg, 35 B.R. 777, 782 (Bankr. S.D. Iowa 1983)(dictum, citing Waldrep v. Jochum, 337 So.2d 334 (Ala.App. 1976)).

As to a general intangible, the applicable step required for perfection is the filing of a financing statement, Iowa Code section 554.9302(l)(exceptions not applicable), with the Iowa Secretary of State. Iowa Code section 554.9401(l)(c).

The financing statement required by 554.9302(l) must meet the applicable requirements of 554.9402.

II.

The trustee argues that the financing statement in this case was defective because it failed to state the mailing address of the debtor, Wendell W. Corey. The financing statement showed the address of the debtor as "Clear Lake, IA 50428".

Under Iowa Code section 554.9402(l), a financing statement is sufficient

> "if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items of collateral. . . ."

A financing statement which substantially complies with these requirements is effective although it contains "minor errors which are not seriously misleading." Iowa Code section 554.9402(8).

The sufficiency of the address of the debtor in a financing statement is a question of fact. Cf. Mid-America Dairy, Inc. v. Newmann Grove C. C. Co., Inc., 191 Neb. 74, 214 N.W.2d 18, 26 (1974).

"[Tlhe validity of a financing statement depends primarily on its ability to give notice of the secured interest to other creditors." Griswold State Bank v. Rieber (In re Rieber), 740 F.2d 10, 12 (8th Cir. 1984). While in this case the address was incomplete, it was not absent. The omission of a house number and street name from the Clear Lake "address" in this court's view is a minor error and is not seriously misleading. Iowa Code section 554.9402(8), Hilburn v. Southern Trailer Distributors, Inc. (In re Smith), 508 P.2d 1323, 1325 (5th Cir. 1975). That is not to say that the omission of a house number and street name is always harmless. The debtor's residence in a larger city, for example, might have affected the court's decision.

The court, therefore, finds that as to the mailing address requirement, the financing statement was not defective.

III.

The trustee also argues that the financing statement was defective because it failed to describe the partnership interest by the partnership name, North Central Iowa Storage Co., in violation of 554.9402(l) which requires the financing statement to indicate the type, or describe the items of collateral.

The financing statement sufficiently described the collateral by item.

The financing statement described the collateral as all of the debtor's property rights in a partnership and it described the partnership by listing all of the partners. The financing statement also gave the date of the partnership agreement. The partnership agreement was filed with the Cerro Gordo County Recorder on December 30, 1982.

As has been said, the purpose of the financing statement is to put creditors on notice of a security interest.

The description of collateral in a financing statement is sufficient if the description makes it possible for third parties to identify the property described. Central Iowa Production Credit Association v. DeSchamp (In re DeSchamp), 44 B.R. 517, 520 (Bankr. N.D. Iowa 1984); In re Sunberg, 35 B.R. 777, 782 (Bankr. S.D. Iowa 1983); aff'd., 729 F.2d 561 (8th Cir. 1984); First State Bank of Nora Springs v. Waychus, 183 N.W.2d 728, 730 (Iowa 1971).

The financing statement was sufficient to put creditors on notice of Norwest's claim to a security interest in Corey's partnership interest. Any third party interested in taking a security interest in Corey's general intangibles, contract rights, or specifically in Corey's partnership rights in this partnership or in any other partnership would have been put on notice by this financing statement of a potentially prior and conflicting interest.

The omission of the partnership firm name or trade name was a minor omission and not seriously misleading.

Therefore the court finds that the omission of the partnership's firm name from the financing statement was not a defect which rendered the security interest unperfected.

IV.

It is asserted that the security agreement was defective because it failed to describe the partnership interest by the partnership name.

Security agreements serve a somewhat different function than financing statements. Financing statements are intended to put third parties on notice of a claimed interest, whereas a description of collateral in a security agreement serves to minimize disputes over what collateral is covered. In re Niles, 72 B.R. 86 (Bankr. N.D. Ill., E.D. 1987).[(4)]

The trustee argues that the security agreement, to be enforceable pursuant to Iowa Code section 554.203(l)(a), should have described the partnership by firm name.

This is an objection to the security agreement's lack of specificity as distinguished from an objection based on

overbreadth. In re Niles, 72 B.R. 84, 86 (Bankr. N.D. Ill. E.D. 1987).

A non-specific description in a security agreement may make it difficult for a secured creditor to distinguish his collateral from someone else's.

Indeed, the trustee argues in this case that the failure to describe by partnership name makes the bank's collateral indistinguishable from Corey's interest in "all other partnership agreements between the same parties bearing the same date." (trustee's brief, pages 13-14.)

The description of the partnership interest as stated in the Assignment is not so under focused, however, as to render the security agreement unenforceable, especially in light of Iowa Code section 554.9110 which provides that a description of personal property "is sufficient whether or not it is specific if it reasonably identifies what is described."

From the official comment to that Code section, it is believed that the drafters intended to do away with the "serial number" test which found security agreement descriptions insufficient "unless they are of the most exact and detailed nature. Uniform Commercial Code comment to section 9-110.

It is the purpose of a collateral description in a security agreement to provide evidence of the agreement of the parties in order to make possible the identification of the collateral.

United States v. First National Bank of Ogallala, Nebraska, 470 F.2d 944, 947 (8th Cir. 1973). The Assignment accomplished that purpose.

The court finds that the Assignment's description of the collateral was sufficient to satisfy the requirements of Iowa Code section 554.9203(l)(a) in that it makes possible the identification of the collateral.

V.

Trustee maintains that the collateral which Corey pledged to Norwest was the profits and surplus from the partnership but only those which he actually received. Stated another way, Norwest didn't obtain a security interest in a general intangible or the proceeds thereof, but rather in tangible profits and surplus when received by Corey, so that until he received them, he had no rights in them within the meaning of Iowa Code section 554.203(l)(c). Therefore, the trustee says, Norwest's security interest never attached to profits and surplus which will be distributed only because of the post-bankruptcy dissolution of the partnership.

The court does not agree. When Corey executed the Assignment on December 30, 1983, he granted Norwest a security interest "in his partnership rights as a partner. . . including . . . his interest in the partnership." This interest was personalty, and by definition, he had rights in it. Iowa Code sections 544.24(2) and 544.26.[(5)]

That Corey might not receive profits or surplus until the future is immaterial to the attachment issue. The receipt of future profits or surplus would flow from his present interest as a partner by virtue of not only the partnership agreement but also state law. Paragraphs 5, 6, 7 and 14 of the partnership agreement and Iowa Code section 544.40. The dissolution distribution schemes are essentially the same. The profits and surplus would be proceeds of the disposition of the partnership interest through dissolution, within the meaning of Iowa Code sections 554.9203(3) and 554.9306. To the extent the proceeds may be post-petition after acquired property, Norwest's interest is preserved by 11 U.S.C. section 552(b).

Iowa Code section 544.27 permits a conveyance by the partner of his interest in the partnership and in the event of a dissolution, the assignee is entitled to receive the assignor's interest. Iowa Code section 544.27(2).

If the trustee's argument were correct, a security agreement covering a "partner's interest in the partnership" would be ineffective to provide the secured creditor with an interest in future profits and surplus to fall due to the partner.

A judgment creditor of a partner, however, could obtain a charging order which would entitle the judgment creditor to any money due "or to fall due" to the partner in respect of the partnership. Iowa Code section 544.28.

This court does not believe it was the intent of Uniform Partnership Act as adopted in Iowa and Nebraska to define partnership rights in such a way that a partner's interest in the partnership did not include "rights to profits and surplus but only to profits and surplus themselves." (See trustee's brief, page 5, last paragraph.)

Corey had a present right in the collateral which was his partnership interest. It was alienable and could be used as collateral.

There is no basis for reaching a different conclusion because the secured party described a specific partnership interest on the security agreement and financing statement as opposed to identifying the collateral as a "general intangible." See State Bank of Manchester v. Heims (In re Heims), 65 B.R. 112, 116 (Bankr. N.D. Iowa 1986).

This court finds that at the time Corey granted security interest to Norwest, he had rights in the collateral, and therefore, the bank's security interest attached on December 30, 1983.

**CONCLUSIONS OF LAW**

Norwest Bank Mason City, N.A. has a valid, perfected and enforceable security interest in the North Central Iowa Storage Co. partnership interest of the estate and the interest of Norwest is prior and superior to the interest of the trustee. The partnership interest is of inconsequential value and of no benefit to the estate and should be abandoned pursuant to 11 U.S.C. section 554.

IT IS, THEREFORE, ORDERED that the Trustee Michael C. Dunbar shall abandon pursuant to 11 U.S.C. section 554(b) the debtor's interest in the North Central Iowa Storage Co. partnership. Judgment shall enter accordingly.

SO ORDERED ON THIS 4th DAY OF FEBRUARY, 1988.

William L. Edmonds
Chief Bankruptcy Judge

Filed Stamped Feb. 4, 1988

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1. Iowa law does not permit a partnership to conduct business under a trade name or assumed name unless the partnership satisfies the requirements of Iowa code section 547.1. Otherwise, it must conduct its business under the surnames of the partners. There was no evidence of a verified statement being filed in Cerro Gordo County, Iowa, although a copy of the "Partnership Agreement" was shown to have been filed there.

2. The trustee, however, believes the bank's evidence showed a value of $175,000 to $250,000.

3. Boone v. Kurtz, 617 F.2d 435, 436 (5th Cir. 1980).

4. See J. White & R. Summers, Handbook of the Law Under the Uniform Commercial Code, section 23-3 at 910 (2d ed. 1980) which states:

> One should first compare the objective written description required in 9-203 to the analogous requirement (for financing statements) in 9-402. The two requirements are intended to perform different functions and they pose different interpretive questions. The primary function of 9-203 is that of a statute of fraud; it is designed mainly to minimize disputes over whether there was an agreement and over what collateral it could have covered. The primary function of the description in 9-402 is to put third parties on notice.

5. The trustee and Norwest each cite and rely on the Iowa Uniform Partnership Law (Iowa Code Chapter 544) with regard to partnership law relevant to this matter. While the law applicable to Norwest's security interest is appropriately Iowa's, Corey's rights in the partnership would be governed by Nebraska law. See Partnership Agreement, paragraph 19, requiring construction of the Partnership Agreement in accordance with the laws of the State of Nebraska. The Court

has compared the relevant sections of the Iowa and Nebraska versions of the Uniform Partnership Act. There are no variations due to non-uniform amendments in the applicable sections. Further, there are no cases which would indicate that the Uniform Act is construed differently in the two jurisdictions. Therefore, citations in this Memorandum will be to the Iowa statute.