

In the United States Bankruptcy Court

for the Northern District of Iowa

RAY L. TWEED and BARBARA M. TWEED
Debtors.

Bankruptcy No. X87-01913M
Chapter 7

ORDER RE OBJECTION TO FINAL REPORT, MOTION TO DETERMINE SECURED STATUS

The matter before the court is an objection to the trustee's final report filed by State Savings Bank of Rake, Iowa (BANK). The parties agreed to treat the objection to final report as a motion to determine the secured status of Bank. The matter has been submitted to the court on stipulated facts. The parties have filed briefs.

The court now issues the following findings of fact and conclusions of law pursuant to Bankr. R. 7052 and issues the following order. This is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

FINDINGS OF FACT

The parties have stipulated to the following facts which this court now adopts as its findings:

1. That on the 25th day of October, 1988, State Savings Bank filed an Objection to Trustee's Final Report.
2. That hearing was scheduled for the 18th day of January, 1989 and at said hearing, it was determined that the issue raised by Creditor's Objection was a legal question requiring a legal analysis of the undisputed facts.
3. That a portion of the funds marked for distribution by the Trustee under his Final Report and in his Trust Account are from a check dated October 13, 1986 payable to Ray Tweed, Borg-Warner Leasing and State Savings Bank of Rake. That said check was signed by Brad Arnevik and in the amount of \$4,000.00 and identified as for "Grain Storage".
4. That the Trustee has taken the position that the above-described check and sum is exempt from Article 9, Secured Transactions in that it represents an interest in real estate.
5. That Creditor, State Savings Bank's position is that the above-described check and sum is a payment to the Debtor under a contract allowing the payor, Arnevik to store grain in Debtor's bin storage facilities; rent due Debtors, and as such, the proceeds of which are subject to their lien as evidenced by security and financing statements covering all contract rights of the Debtors.
6. Pursuant to the Trustee's request, Creditor, State Savings Bank endorsed the check and turned it over to the Trustee who deposited it in his Bankruptcy Trustee account. That said endorsement is not to be construed as a waiver of said Creditor's interest in said check and proceeds.

7. That attached to the Stipulation and marked as "Exhibits" as agreed are the following:
- Exhibit "A" - Check No. 3557, dated 10-13-86, in the sum of \$4,000.00, payable to Ray Tweed, Borg-Warner Leasing and State Savings Bank of Rake, identified as for "Grain Storage" with Brad Arnevik as payor.
 - Exhibit "B" - The legal description of the property upon which the grain storage facilities for which the payment represented by Exhibit "A" was made. At all times material to this issue said real estate and the grain storage facilities were the property of Debtors. The real estate described on Exhibit "B" is described in the mortgages of State Savings Bank attached as Exhibit "G" and the mortgage of Pioneer Federal Savings and Loan Association, n/k/a Metropolitan Federal Bank of Iowa attached as Exhibit "H".
 - Exhibit "C" - Statement of the amounts owed Creditor, State Savings Bank as of the date of filing, September 10, 1987.
 - Exhibit "D" - Copies of the promissory notes executed by the Debtors to State Savings Bank.
 - Exhibit "E" - Copy of title to 1976 Chevrolet with State Savings Bank's perfected interest.
 - Exhibit "F" - Copies of security agreement and financing statements.
 - Exhibit "G" - Copy of recorded Real Estate Mortgage by Debtors to State Savings Bank, which includes the property described in Exhibit "B" above. This mortgage was dated September 21, 1984 and was filed September 27, 1984.
 - Exhibit "H" - Copies of Promissory Note and recorded Real Estate Mortgage from Debtors to Pioneer Federal Savings and Loan Association, n/k/a Metropolitan Federal Bank of Iowa, which mortgage includes the property described in Exhibit "B" above. This mortgage was dated May 31, 1977 and was filed June 24, 1977. This mortgage is a first mortgage.

DISCUSSION

The trustee is holding \$4,000.00 which is property of the estate as a result of a payment by Brad Arnevik to Ray Tweed for "grain storage."

Trustee claims that the money is rent resulting from the debtors' lease to Arnevik of a grain storage facility which constituted real estate. Trustee contends, therefore, that the rental payment is not be covered under the Bank's personal property security interest. And, trustee argues, while the rents might be the subject of Bank's mortgage filed against the real property where the bin was located, Bank's security interest in the rents under the mortgage was not perfected under Iowa law and therefore the trustee has a prior perfected lien under 11 U.S.C. § 544(a).

Bank argues that the payment is the proceed of a contract right and that Bank is therefore perfected in the money as a result of its perfected U.C.C. security interest.

It appears undisputed that if the "grain storage" payment is a contract right, Bank is perfected and prior to the trustee. The trustee, therefore, seeks to convince the court that the payment is real estate rent and therefore excluded from coverage under the U.C.C. by Iowa Code § 554.9104(j). Likewise, Bank, in order to prevail, is trying to convince the court that the grain storage payment is a contract right.

The postures of the parties, therefore, seem to require the court to determine whether the grain storage payment is real estate rent or contract right.

The court does not have to decide this issue, and if it did, the stipulated facts would be insufficient to permit it to make such a determination.

The trustee premises a good part of his argument on the theory that even if Bank has a real estate mortgage on the subject bin, the mortgage is unperfected as to the trustee on rents.

This is not the law.

The trustee correctly cites the Iowa Supreme Court decision of Federal Land Bank of Omaha v. Lower, 421 N.W.2d 126 (Iowa 1988) for the proposition that a lien on rents granted in the conveyance clause of a real estate mortgage is effective between the parties to the mortgage from the date of the mortgage's execution.

The trustee, however, argues that perfection of such a security interest as to third parties can only take place when a foreclosure action is commenced and the appointment of a receiver is requested. (Trustee's brief, page 6.)

As to rents, however, such perfection takes place upon the recording of a mortgage which conveys rents as primary security. Federal Land Bank v. Terpstra (In re Porter), 90 B.R. 399, 404 (Bankr. N.D. Iowa 1988).

The real estate mortgage in the case at bar is a mortgage which conveys rents as primary security for the debt, and it was perfected upon filing with the Winnebago County Recorder on September 27, 1984.

The court must conclude, therefore, that whether the "grain storage" payment is a contract right or rent, the security interest of Bank is prior and superior to any interest of the trustee arising out of 11 U.S.C. § 544(a).

The trustee raises, in the closing portion of his brief, the additional question of whether the rental payment, if real estate rent, should go to Bank or to first mortgagee Pioneer Federal Savings & Loan Association n/k/a Metropolitan Federal Bank of Iowa. Apparently that creditor may claim a first lien as to rents from the subject property.

The priority between State Savings Bank and Pioneer Federal Savings & Loan Association, however, is not before this court and is more appropriately the subject of an adversary proceeding including both of the creditors or a state court proceeding, if the trustee abandoned the grain storage proceeds.

Either proceeding would be a more appropriate place to make a determination as to whether the grain storage payment was a contract right or real estate rent. Making such a determination now is unnecessary in that under either category, Bank's interest is superior to the interest of the trustee.

CONCLUSION OF LAW

State Savings Bank has a perfected security interest in the \$4,000.00 "grain storage" payment being held by the trustee which is prior and superior to any interest of the trustee under 11 U.S.C. § 544(a).

ORDER

IT IS THEREFORE ADJUDGED that the State Savings Bank has a perfected security interest in the \$4,000.00 grain storage check held by the trustee which is prior and superior to the interest of the trustee and that to the extent the trustee's final report ignores Bank's interest, the Bank's objection to the final report of the trustee is sustained. Trustee's final report shall be amended accordingly

SO ORDERED ON THIS 30th DAY OF MARCH, 1989.

William L. Edmonds
Bankruptcy Judge