

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

ROY'S SERVICE INC.

Bankruptcy No. 97-02403S

Debtor(s).

Chapter 7

WIL L. FORKER Trustee

Adversary No. 98-9170S

Plaintiff(s)

vs.

KINGSLEY STATE BANK

Defendant(s)

MEMORANDUM DECISION

In this proceeding, the trustee attempts to avoid, as a preference, a pre-petition transfer from debtor to Kingsley State Bank. This is a core proceeding under 28 U.S.C. § 157(b)(2)(F). Both parties have moved for summary judgment. Hearing on the motions was held on December 16, 1998 in Sioux City. Wil L. Forker, the trustee, acted as his own attorney. Glenn A. Metcalf appeared as attorney for Kingsley State Bank.

Trustee and Bank agree that there is no genuine issue as to any material fact. Each contends that it is entitled to judgment as a matter of law.

The undisputed facts are these. Debtor is Roy's Service, Inc., a corporation. It filed its chapter 7 petition on August 7, 1997. Wil L Forker was appointed trustee of the estate. On July 31, 1997, debtor paid Bank \$4,488.48 on account of an antecedent debt. Debtor was insolvent at the time. The money came from the sale of corporate assets.

Bank claimed an interest in debtor's property as security for the debt. Bank obtained a security agreement in June 1995. Roy's Service, Inc. was shown as the debtor. The agreement was signed on behalf of the debtor by Roy E. and Denise E. Auen and by Charles L. and Linda M. Barnes. The Auens and the Barneses were at all times material hereto the sole officers, directors, and shareholders of the debtor corporation. The Auens and Barneses also signed a financing statement for Bank. Listed as debtors were the individuals "d/b/a" Roy's Service, Inc. Each person signed above his or her typed name, but no name was shown as being signed in any corporate capacity. Nonetheless, it was the expressed purpose of the signers to authenticate the financing statement for the corporation (Bank affidavit, docket no. 12).

The property described in the agreement and financing statement was corporate assets. The financing statement was filed with the Iowa Secretary of State on June 22, 1995. It was identified by the

Secretary's office as filing number K659606. A diligent search of the records of the Secretary of State revealed the financing statement under the name "Roy's Service, Inc."

A trustee may avoid as a preference a transfer to a creditor of debtor's interest in property made for or on account of an antecedent debt, made while the debtor was insolvent, and within 90 days before the filing of the petition. 11 U.S.C. § 547(b)(1)-(4).

The parties do not dispute that these elements of a preference have been established. But there is an additional element that is in dispute. To be preferential, the transfer must be one that enables such creditor to receive more than such creditor would receive if--

(A) the case were a case under chapter 7 of this title [Title 11];

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title. 11 U.S.C. § 547(b)(5).

The trustee argues that the Bank's financing statement is defective and thus at filing would be inferior to the trustee's avoidance powers. If this were so, and had the transfer to Bank not been made, then in a chapter 7 case, the trustee would administer the asset--the proceeds that were paid to Bank pre-petition. Trustee must prove also that the distribution to Bank, as an unsecured creditor in the chapter 7, would be less than the payment which Bank received by virtue of the preference. The trustee has offered no proof on this point. Accordingly, even if trustee had otherwise proved the elements of a preference, it would be necessary to deny his motion for summary judgment. But I do not reach this issue because I find and conclude that the Bank's financing statement is not defective; because it is not, the payment to Bank from proceeds of its collateral did not enable it to receive more than it would have received in a chapter 7 case if the transfer had not been made.

The trustee has the rights of a hypothetical lien creditor. 11 U.S.C. § 544(a)(1). Using such rights, he would be able to avoid an unperfected lien. Iowa Code § 554.9301(1)(b) and (3). There is no dispute that Bank was required to file a financing statement in order to perfect its lien. Iowa Code § 554.9302(1). For a financing statement to be sufficient, it must be signed by the debtor. Iowa Code § 554.9402(1). The alleged defect in the financing statement is that it was not signed by the debtor.

In this case, the Auens and the Barnses signed the financing statement, but there was nothing on the statement to show that it was signed by them in any corporate capacities. This court has dealt with this same issue in the context of a partnership. In that context, the court decided that a financing statement showing a partnership as debtor was effective when signed by the three partners, even though the partners did not expressly sign in their capacities as partners. In re Waters, 90 B.R. 946, 961-62 (Bankr. N.D. Iowa 1988). I do not consider it significant that the Waters decision involved a partnership debtor rather than a corporate debtor. Indeed, the court in its Waters decision favorably cited two signing cases involving corporations. Id.

Other cases also support this result. Sherman v. Upton, Inc., 90 S.D. 467, 475, 242 N.W.2d 666, 670 (1976); Plemens v. Didde-Glaser, Inc., 244 Md. 556, 565, 224 A.2d 464, 649, citing In re Turcotte, 3 UCC Rep. Serv. 774 (Bankr. D. Me. 1966); Sweney v. Cardinal Doors, Inc. (Matter of Door Supply Center, Inc.), 3 B.R. 103, 106 (Bankr. Id. 1980).

In support of his position, trustee cites Crews v. First Union National Bank of Florida (In re Michelle's Hallmark Cards & Gifts, Inc.), 219 B.R. 316 (Bankr. M.D. Fla. 1998). In that case, the court found a creditor's security interest unperfected in that the financing statement failed to show the name of the corporate debtor and the financing statement was signed by borrowers in their individual capacities. Id. at 321-22. I think authority in Iowa supports a more liberal view. See Murray v. Conrad, 346 N.W.2d 814, 819-20 (Iowa 1984).

There is no dispute that the Auens and the Barneses were officers and directors of the debtor. Trustee also concedes that if the matter were tried, he could not contradict evidence that the signors of the financing statement signed it on behalf of the corporation. I conclude that the financing statement is not defective because the signors failed to sign in their corporate capacities. The financing statement was sufficient to perfect the Bank's lien in corporate property under Iowa's version of Article 9 of the Uniform Commercial Code (Iowa Code, Chapter 554).

As Bank had a perfected security interest in the assets used to pay it, it did not receive more by virtue of the transfer than it would have received in and under chapter 7, had the transfer not been made. Bank is entitled to judgment as a matter of law; the trustee is not.

IT IS ORDERED that Bank's motion for summary judgment is granted and trustee's motion for summary judgment is denied.

IT IS FURTHER ORDERED that the trustee's complaint against Kingsley State Bank be dismissed. Judgment shall enter accordingly.

SO ORDERED THIS 12th DAY OF DECEMBER 1998.

William L. Edmonds

Chief Bankruptcy Judge

I certify that on I mailed by U.S. mail or provided a copy of this order and a judgment to Wil Forker, Glenn Metcalf, and the U.S. trustee.