

unperfected as against a trustee in bankruptcy in a Chapter 7 proceeding because of his hypothetical powers under §544(a).

Under 11 U.S.C. §103(a), Chapters 1, 3 and 5 of the Bankruptcy Code apply in a case under Chapter 7, 11 or 13. Thus, §502(d) applies in a Chapter 13 proceeding and provides as follows:

"Notwithstanding sub-sections (a) and (b) of this section, the Court shall disallow any claim of any entity from which property is recoverable under §542, 543, 550 or 553 of this title or that is a transferee of a transfer avoidable under §. . .544. . . of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under §. . .550. . . of this title."

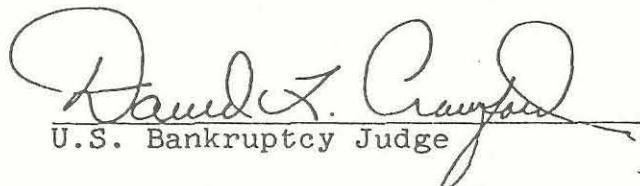
Under the foregoing statutory provision, made applicable in Chapter 13 by 11 U.S.C. §103(a), irrespective of whether a transfer is actually avoided by any appropriate entity in a debtor-relief proceeding, a creditor with a voidable transfer may not have its claim allowed in the debtor-relief proceeding until the transferee has paid the amount or turned over the property for which it is liable, given the voidable transfer.

In my view, the transfer here involved is a voidable transfer under 11 U.S.C. §544(a). Given that, Tripe Motor is not entitled to the allowance of any claim until such time as it has "turned over any such property". In this case, the property transferred was the security interest which was given to Tripe Motor by the debtor. Until Tripe Motor files an unsecured claim, thus waiving its claimed security interest and, in the language of the statute, turning over its security interest, it is not entitled to have any claim allowed in this debtor-relief proceeding.

The result of the foregoing is that Tripe Motor can have no secured claim in this proceeding and, at best, can have only an unsecured claim. Thus, Tripe Motor's objection to confirmation because the plan does not give it secured status is not sustainable and the plan should be confirmed. A separate order is entered in accordance with the foregoing.

DATED: August 23, 1982.

BY THE COURT:


U.S. Bankruptcy Judge

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