

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
MONARCH ASPHALT OILS, INC.,	)	CASE NO. BK81-1392
	)	
DEBTOR	)	A81-871
	)	
PACKERS NATIONAL BANK IN OMAHA,	)	
A National Banking Corporation,	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
MONARCH ASPHALT OILS, INC.,	)	
STRUCK AND IRWIN, INC., and	)	
UNIVERSAL SURETY COMPANY,	)	
A Nebraska Corporation,	)	
	)	
Defendants	)	

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Attorney for Struck and Irwin, Inc.

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Attorney for Creditors' Committee

MEMORANDUM

In this adversary proceeding, the parties litigate their relative rights to certain money, part of which is in the actual possession of this Court and part of which is in the constructive possession of this Court as a receivable of the debtor-defendant, Monarch Asphalt Oils, Inc.

Many of the facts are undisputed and are set forth as uncontroverted facts in the order on pretrial conference (Filing No. 12) which I incorporate herein by reference.

In summary, the money which the parties claim arises out of maintenance work on interstate highway I-29 which Monarch Asphalt Oils, Inc., contracted to perform for the Iowa Department of Transportation (IDOT). Forty thousand dollars of the money is held in a segregated account pursuant to a stipulation by Monarch, it having received money in partial payment of the contractual arrangement. The other money involved is money still in the possession of IDOT which it has retained pursuant to its statutory right to do so for the purpose of satisfying subcontractors of Monarch.

In summary, Packers National Bank in Omaha claims a security interest in each of the funds by virtue of a contractual security agreement with Monarch Asphalt Oils, Inc. Struck and Irwin, Inc., claims the money as a subcontractor of Monarch Asphalt Oils, Inc., in priority over the claims of any other party. Universal Surety Company claims a priority to the monies after Struck and Irwin, Inc., and in priority over Packers National Bank in Omaha and Monarch Asphalt Oils, Inc., by virtue of rights of subrogation, Universal Surety Company having furnished a contract of performance and payment bond on behalf of Monarch. Universal Surety Company intervened herein because it had paid some funds to certain contractors and claims possible liability for future claims on its payment bond.

Packers National Bank in Omaha claims a security interest in each of the funds by a security agreement which gives Packers a security interest in:

". . .all inventory and stock in trade of Monarch Asphalt Oils, Inc., consisting of all goods, merchandise and other personal property owned or hereinafter acquired for sale or other disposal by debtor, and all of the accounts receivable now existing or hereinafter arising from inventory sold or otherwise disposed of by Monarch Asphalt Oils, Inc., including all accounts, notes, drafts, acceptances and other forms or obligations and receivables."

My conclusion is that the security interest of Packers arises only in accounts receivable which arise "from inventory sold or otherwise disposed of by Monarch Asphalt Oils, Inc." In other words, I reject the suggestion by Packers that their security interest attaches to all accounts receivable of Monarch.

Having so concluded, I conclude that Packers has failed to meet its burden of persuasion with regard to identifying inventory used in this project which resulted in these monies becoming an account receivable and, as a result, Packers has failed to meet its burden of showing that it has a security interest in the money here in dispute.

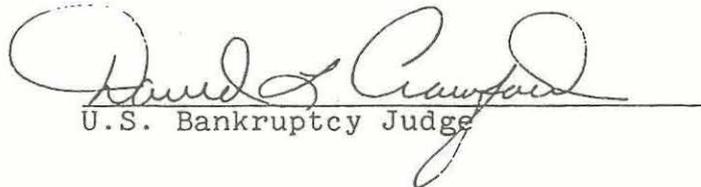
I reject the suggestion by Packers that the money in the segregated account has somehow lost its character as a receivable. In any event, I construe the statutory scheme for Iowa Public Contracts law to give Struck and Irwin, Inc., a superior interest to the money in the segregated account, over and above the claims of Packers. In addition, I conclude that Struck and Irwin, Inc., has superior claims to the balance of the monies retained by IDOT to the extent of the balance of its claim over the money held in the segregated account up to \$110,408 plus interest at the statutory rate from and after April 15, 1982.

Similarly, I conclude that Universal Surety Company has a superior claim after payment of Struck and Irwin, Inc.'s claim to the monies held by IDOT over the claims of Packers and of Monarch Asphalt Oils, Inc., to the extent that it is required to make payment on its payment and performance bond under general principles of subrogation.

A separate order is entered in accordance with the foregoing.

DATED: June 29, 1983.

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies to attorneys entering appearances.