

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
RICCI LEE ROSS and)	CASE NO. BK81-1216
CHERLYN ANN ROSS,)	
)	
DEBTORS)	A82-142
)	
RICCI LEE ROSS and)	
CHERLYN ANN ROSS,)	
)	
Plaintiffs)	
)	
vs.)	
)	
FIRST NATIONAL BANK OF OMAHA,)	
)	
Defendant)	

Appearances: Larry Spain
500 South 18th Street
Omaha, Nebraska 68102
Attorney for plaintiff

Richard D. Myers
1800 First Nat'l. Center
Omaha, Ne. 68102
Attorney for defendant

MEMORANDUM

In this adversary proceeding, plaintiffs seek recovery from defendant of certain insurance proceeds. The facts are not in dispute and are set forth as uncontroverted facts in the order on pretrial conference (Filing No. 6).

In summary, the plaintiffs filed a Chapter 13 proceeding with this Court, scheduling First National Bank of Omaha as a secured creditor with a lien on the plaintiffs' 1979 automobile. The bank objected to confirmation and, thereafter, the parties agreed upon a value to be attributed to the automobile and the plaintiffs agreed to pay such value with interest by amending their plan to provide for payments of \$180 per month for a period of 36 months in full satisfaction of the defendant's claim. Debtors also agreed to obtain insurance coverage to protect First National Bank of Omaha's interest in the collateral. The amended plan was confirmed.

After confirmation, the automobile was destroyed and a claim made with the insurer. From the insurance proceeds received, First National Bank withheld \$5,531.59 representing the net payoff amount on the original note, \$398.75 for attorney's fees and remitted the balance of \$417.66 to the debtors.

Plaintiffs have filed this adversary proceeding to obtain turnover of the insurance proceeds which they believe are improperly held by the defendant.

The first issue raised by the plaintiffs is that this constituted a post-petition transfer, avoidable under 11 U.S. Code §549. However, it seems to me that the insurance contract was procured post-petition and, therefore, since the insurance contract did not exist at the petition date, the proceeds therefrom cannot be deemed to be a post-petition transfer of a pre-petition asset.

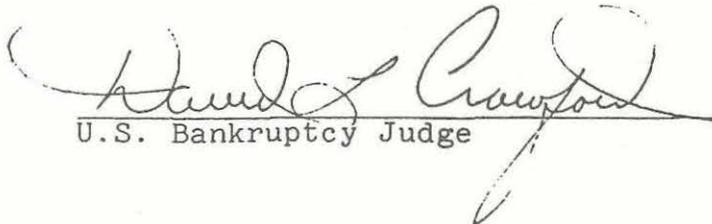
Alternatively, plaintiffs assert that the application of the insurance proceeds to the bank's claim was contrary to the provisions binding the bank upon confirmation of the plan. However, I am unpersuaded that the plaintiffs' position that the insurance proceeds were a mere substitute for the automobile is well founded. In my view, the insurance proceeds were in existence to provide adequate protection to the bank and did so by naming the bank as a named insured. In my view, the bank had every right to look to the insurance for the payment of its entire obligation upon destruction of the automobile.

Similarly, I conclude that the bank did not violate §362 which imposes an automatic stay since the bank did not receive any money from the debtors or take any action towards property of the debtors.

My conclusion is in favor of the defendant and against the plaintiffs. A separate judgment is entered in accordance with the foregoing.

DATED: June 29, 1983.

BY THE COURT:


U.S. Bankruptcy Judge

Copies to attorneys entering appearances.