

Reversed at 74 F.3d 854 (8th Cir. 1996).

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
RINE & RINE AUCTIONEERS, INC.,)	CASE NO. BK92-80770
)	A93-8098
DEBTOR(S))	
)	CH. 7
RICHARD MYERS, TRUSTEE,)	Filing No.
Plaintiff(s))	
vs.)	
)	
DOUGLAS COUNTY BANK AND)	
DAVID HUDDLE,)	
)	
Defendant(s))	

MEMORANDUM

Hearing was held on December 15, 1993, on the above adversary proceeding. Appearing on behalf of Richard Myers was Christopher D. Curzon of Schmid, Mooney & Frederick, P.C., Omaha, Nebraska. Appearing on behalf of David Huddle was Joseph Byam of Omaha, Nebraska. Appearing on behalf of Douglas County Bank was Steven C. Turner of Baird, Holm, McEachen, Pedersen, Omaha, Nebraska. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(F).

Rine & Rine Auctioneers, Inc., (debtor) was a corporation which was in the business of auctioneering its customers' personal property. Debtor entered into an oral agreement with David Huddle to sell the business personal property assets owned by Mr. Huddle. Debtor conducted an auction, received checks and cash for the property, deposited such payments into its business checking account and, within forty-five days after the sale, made payment to Mr. Huddle and to the Douglas County Bank which held a security interest in the property which was sold.

Within ninety days of the delivery of payment by the debtor to Mr. Huddle and the Bank, the debtor filed a Chapter 7 bankruptcy.

The trustee has filed this complaint pursuant to 11 U.S.C. § 547 alleging that the payment made by the debtor to Mr. Huddle and to the Bank was an avoidable preferential transfer.

The Bankruptcy Code at Section 547 permits a trustee to avoid a transfer of an interest of the debtor in property to or for the benefit of a creditor, on account of an antecedent debt, made while the debtor was insolvent, made within ninety days before the filing of the petition, that enables the creditor to receive more than would have been received in a Chapter 7 case had the transfer not been made. 11 U.S.C. § 547(b).

The trustee has the burden of proving each of the elements, including proving that the property transferred is property of the estate. Brown v. First Nat'l Bank, 748 F.2d 490, 491 (8th Cir. 1984). The bankruptcy court must look to state law to determine the property interest of the debtor. In re N.S. Garrott & Sons, 772 F.2d 462, 466 (8th Cir. 1985).

In Nebraska, the relationship between an auctioneer and the party who has employed the services of the auctioneer to sell personal property is that of principal and agent. Edwin Bender & Sons v. Ericson Livestock, 228 Neb. 157, 421 N.W.2d 766 (1988). Under the law of agency when an agent is entrusted with care of a principal's property, ownership remains in the principal. Edmondson v. Aladdin Synergetics, Inc., (In re Tinnell Traffic Services, Inc.), 43 B.R. 277, 279 (Bankr. M.D. Tenn. 1984). Additionally, when there exists a true agency relationship, a transfer by the agent of agency property to the principal is not a voidable preference. The reason is that the transfer is not property of the debtor but is property of the principal. Jensen-McLean Co., Inc. v. Crouthamel Potato Chip Co., Inc., (In re Crouthamel Potato Chip Co., Inc.), 6 B.R. 501 (Bankr. E.D. Pa. 1980).

In this case, the debtor entered into an oral contract with Mr. Huddle. The contract provided that Mr. Huddle would make his personal property available for sale and that the debtor would conduct an auction. Following the auction, the debtor would collect the proceeds of the sale and, after deducting sale expenses, including commission, would deliver the balance to the debtor or to the debtor's secured creditors.

The debtor did conduct the auction and collect the proceeds. The fact that the debtor deposited the proceeds into the debtor's own account does not change the ownership of the proceeds. The relationship of the parties was that of agent and principal. The agent, the debtor, held the property, the proceeds of the sale, for the principal, Mr. Huddle. Mr. Huddle did not at any time agree that the proceeds of the sale would become the property of the debtor.

Since the trustee is not able to prove that the property which was transferred by the debtor to Mr. Huddle was property of the debtor, no avoidable preference occurred.

Judgment shall be entered in favor of the defendants and against the plaintiff.

DATED: April 18, 1994.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

CC: Movant, Objector/Resistor (if any), Debtor(s) Atty. and all parties appearing at hearing
[] Chapter 13 Trustee [] Chapter 12 Trustee [] U.S.Trustee

Movant is responsible for giving notice of this journal entry to all other parties if required by rule or statute.

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DOUGLAS COUNTY BANK and)	
DAVID HUDDLE,)	
)	
Defendant)	

JUDGMENT

Judgment is entered in favor of the defendants and against the plaintiff on all issues. See memorandum this date.

DATED: April 18, 1994.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

CC: Movant, Debtor(s) Atty. and all parties appearing at hearing
[] Chapter 13 Trustee [] Chapter 12 Trustee [] U.S.Trustee

Movant is responsible for giving notice of this journal entry to any parties in interest not listed above.