

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK01-43230
)	
RICK L. PATTERSON and)	
JENNIFER K. PATTERSON,)	
)	CH. 7
Debtor(s).)	
)	Filing No. 57, 60, 61

ORDER

Hearing was held in Lincoln, Nebraska, on March 22, 2006, regarding Filing No. 57, Motion to Compel Turnover of Assets, filed by Trustee Stacy C. Nossaman-Petitt; Filing No. 60, Resistance, filed by First National Bank; and Filing No. 61, Resistance, filed by Dennis R. Hicks/The Insurance Store. Stacy Nossaman-Petitt appeared as Chapter 7 Trustee, Tim Thompson appeared for First National Bank, and James Nisley appeared for Dennis Hicks & The Insurance Store.

The Chapter 7 trustee has filed a motion to compel turnover of assets, Filing No. 57. The motion is denied. The assets in question, money in a bank account at First National Bank - Scottsbluff, belongs to and should be turned over to Dennis Hicks/The Insurance Store.

The funds in question were originally insurance premium checks made payable to The Insurance Store. An employee of The Insurance Store converted the checks by endorsing them and depositing them in her own personal account at First National Bank. The Insurance Store was not a customer of First National Bank.

Mr. Hicks, the owner of The Insurance Store business sued First National Bank for its own conversion of the funds which belonged to The Insurance Store. He obtained a judgment for several hundred thousand dollars. However, that amount of money did not fully compensate The Insurance Store for its losses. First National Bank paid the judgment.

The employee of The Insurance Store who converted the money is one of the debtors, Jennifer K. Patterson. She was convicted of a crime and has been sentenced to prison.

The money in the account is all that remains of the money that she converted. Mr. Hicks/The Insurance Store has presented clear and convincing evidence that every dollar in the account came from checks payable to The Insurance Store during the last two months of the conversion activities of Ms. Patterson. In other words, all of the money in the account is traceable to the checks made payable to The Insurance Store which were property of The Insurance Store. In this circumstance, The Insurance Store has a right to a constructive trust on the misappropriated corporate funds. ProData Computer Servs., Inc. v. Ponec, 256 Neb. 228, 590 N.W.2d 176, 1782 (Neb. 1999).

The Trustee, on behalf of the bankruptcy estate of Mr. and Mrs. Patterson, has no right to the money, even though it sits in an account titled in the name of Ms. Patterson. In Balfany v.

Balfany, 239 Neb. 391, 476 N.W.2d, 681 (1991). The court, at 239 Neb. 394, stated:

A constructive trust is imposed when one has acquired legal title to property under such circumstances that he or she may not in good conscience retain the beneficial interest in the property. In such a situation, equity converts the legal title holder into a trustee holding the title for the benefit of those entitled to the ownership thereof.

First National Bank has no right to the funds on any theory of subrogation or set-off. Even though it has a deposit contract with Ms. Patterson which purports to give it a right of set-off concerning any debt owed by Ms. Patterson to the bank, there is no such debt in this case. Independently of the deposits in the account, Ms. Patterson does not owe the bank anything. She had no loan arrangement with the bank at the time of the conversion. The bank claims that it has some type of claim against her because it was forced to pay The Insurance Store as a result of her activities. The bank is incorrect. It was forced to pay The Insurance Store because of its own conversion and negligence.

Subrogation is not allowed where the debt paid is one for which the payor is primarily liable. Chadron Energy Corp. v. First Nat'l Bank of Omaha, 459 N.W.2d 718 (1990). According to the Nebraska Supreme Court in that case, subrogation is the right to be indemnified by the party on whose behalf a debt was paid. Because the bank in that case was liable for conversion, it was not entitled to be subrogated to anyone else's rights. That is exactly the situation we have here. The bank was found liable for conversion of property of The Insurance Store. It paid the judgment and claims it is subrogated to the right of The Insurance Store against Ms. Patterson. That is not Nebraska law.

If no appeal is timely taken, the bank is directed to turn over all of the funds in the account to The Insurance Store.

SO ORDERED.

DATED this 3rd day of April 2006.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Stacy Nossaman-Petitt
Tim Thompson
James Nisley
U.S. Trustee

Movant(*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.