

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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IN THE MATTER OF:)
)
VERLAN J. RUMBAUGH,)
)
Debtor.)
)
VERLAN J. RUMBAUGH,)
)
Plaintiff,)
)
vs.)
)
PATRICK J. MORROW, III, et)
al.,)
)
Defendants.)

BK78-0-1142

CV 82-0-21

FILED
DISTRICT OF NEBRASKA
JUL 13 1983
William L. Olson, Clerk
Deputy

MEMORANDUM OPINION
AND ORDER

This is an appeal from the United States Bankruptcy Court for the District of Nebraska. Appellant seeks review in this Court of Bankruptcy Judge David Crawford's order of December 22, 1981 (Bankruptcy filing 25).

On November 19, 1981, appellant Verlan Rumbaugh filed a motion with the Bankruptcy Court seeking an "order refusing to confirm the sale of R & S Hardware, Inc. to Patrick J. Morrow, III, Trustee, or in the alternative setting aside the sale, and further to order that the property was never possessed by or abandoned by the Trustee in bankruptcy prior to said sale, and permitting Verlan J. Rumbaugh to retain the stock certificates and minute book . . ." (Bankruptcy filing 22).

An evidentiary hearing was held upon that motion on December 18, 1981, before Judge Crawford. At the conclusion of the hearing, Judge Crawford denied the motion. On December 28, 1981, a timely Notice of Appeal was filed in this Court, alleging that the Bankruptcy Court order of December 18, 1981,

was clearly "erroneous, an abuse of discretion, contrary to the law and evidence, and without sufficient opportunity for hearing." (Bankruptcy filing 30).

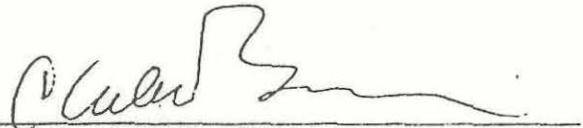
During the pendency of this appeal it has come to the Court's attention that the transcript of certain proceedings in the Bankruptcy Court, which were to be part of the record on appeal, could not be prepared due to a malfunction in the Bankruptcy Court's recording equipment.¹

Upon review of the limited record available, this Court finds that the absence of the transcript of hearing, especially in view of the fact that the findings of Judge Crawford are not available, will not allow a fair review on appeal. Therefore, the order of December 22, 1981, will be vacated and this cause remanded to the Bankruptcy Court for further development of a record with regard to the issues addressed on December 22, 1981.

IT IS SO ORDERED.

DATED this 13th day of July, 1983.

BY THE COURT:



C. ARLEN BEAM
UNITED STATES DISTRICT JUDGE

FOOTNOTE

¹ Although this state of affairs certainly is not the fault of appellant, the fact remains that the burden of presenting this Court with an adequate record falls on the appellant. See 13 Collier on Bankruptcy ¶ 806.04 (14th Ed. 1977 and 1982 Cum. Supp.). Appellant urges this Court to allow it to submit evidence on appeal in this case due to the non-existence of the tapes. In the opinion of this Court, the appellant has failed to take any other steps to bring that evidence before this tribunal e.g., statement of evidence similar to that provided in F. R. App. P. 10(c). See 13 Collier on Bankruptcy at ¶ 806.04. Appellant has completely failed to take such steps in the instant case. However, due to the fact that two different taped hearings are unavilabile, the Court finds that remanding this case for development of a record would be the prudent course here.

I certify this to be a true copy of
the original record in my custody.
WILLIAM L. OLSON, CLERK
By William L. Olson
Deputy Clerk