

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN RE: )  
)  
WINNEBAGO LIFESTYLE CO., )  
INC., )  
)  
Debtor, )  
)  
WINNEBAGO TRIBE OF NEBRASKA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
MERLE NICOLA, Trustee, )  
)  
Defendant. )

BK 80-1580

CV 83-0-329

FILED  
DISTRICT OF NEBRASKA  
AUG 8 1984  
ORDER  
William L. Olson, Clerk  
By \_\_\_\_\_ Deputy

This matter is before the Court on appeal from a decision of the Bankruptcy Court for the District of Nebraska in favor of appellee, the trustee for the bankruptcy estate of the Winnebago Lifestyle Company, Inc., the debtor in this Chapter 7 proceeding. The trustee liquidated certain woodworking equipment on behalf of the debtor, realizing approximately \$3,500.00 which has been placed in escrow. Plaintiff, the Winnebago Tribe of Nebraska, brought a reclamation action to recover from the trustee the proceeds of the woodworking equipment. At the close of plaintiff's case, the Bankruptcy Court dismissed the complaint, finding that plaintiff had failed to identify and establish its interest in the woodworking equipment sold by the trustee.

Whether the clearly erroneous standard of Bankruptcy Rule 8013 is applied or the record is reviewed de novo, the Court finds that the decision of the Bankruptcy Court must be reversed. The testimony of Rueben A. Snake, Jr. and Arthur

Thomas May, witnesses for plaintiff, establishes that the Winnebago Tribe bought the woodworking equipment described in Exhibit 1A from the Nebraska Indian Inter-Tribal Development Corporation ("Inter-Tribal") in 1977. The equipment was placed in a building owned by Inter-Tribal on the Winnebago reservation and then was subsequently removed by the Tribe during the course of this litigation to a storage area on the reservation.

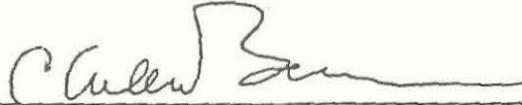
Meanwhile, a company which ultimately became incorporated under the name of Winnebago Lifestyle Company, Inc., the debtor herein, used the equipment. The testimony of Merle Nicola, trustee for the debtor's estate, establishes that the woodworking equipment turned over to and sold by him was removed from the storage area in which the tribe had placed its own woodworking equipment previously acquired from Inter-Tribal. The trustee conceded that he recognized at least some of the equipment he sold as that itemized in Exhibit 1A, the Tribe's purchase list.

Furthermore, the record contains no hint or suggestion that the debtor ever used or acquired woodworking equipment other than that owned by the Tribe or that the Tribe ever owned any such equipment other than that used by the debtor. The Court finds that even without the benefit of 25 U.S.C. § 194,<sup>1</sup> plaintiff established a prima facie case in this reclamation action and identified the property it sought to reclaim and its interest in that property sufficiently to withstand a motion to dismiss.

IT IS THEREFORE ORDERED that the judgment of the Bankruptcy Court is reversed, and this action is remanded or referred for further proceedings as appropriate in light of this Order.

DATED this 8<sup>th</sup> day of August, 1984.

BY THE COURT:



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C. ARLEN BEAM  
UNITED STATES DISTRICT JUDGE

<sup>1</sup>25 U.S.C. § 194 states:

In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership. See also Wilson v. Omaha Indian Tribe, 442 U.S. 653 (1979).