

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

AARON FERER & SONS CO.,

DEBTOR

AARON FERER & SONS CO., as  
Debtor-In-Possession and the  
OFFICIAL CREDITORS COMMITTEE,

Plaintiffs

vs.

WILLIAMS & GLYN'S BANK  
LIMITED and DONALD ALFRED  
JAMES DRAPER, Liquidator,  
for Aaron Ferer & Sons Co.  
Ltd., In Liquidation,

Defendants

CASE NO. BK74-0-482

ASARCO

MEMORANDUM OPINION

All parties have moved for summary judgment in this proceeding. After examination of the exhibits and briefs offered by the parties, I have concluded that there are genuine issues of material fact and that both motions must be denied.

Defendants' motion relies primarily on the principle of res judicata. It has been determined that defendants were entitled to certain overpayments made under the copper contracts which have given rise to this and other litigation. However, the status of title to the copper itself has never been judicially determined and is the central issue in this proceeding. Defendants also rely on a stipulation among the parties for their claim that there is no genuine controversy as to title to the copper. I have already heard arguments as to the meaning and effect of the stipulation and I find that its impact on this proceeding is in itself a controverted issue of material fact.

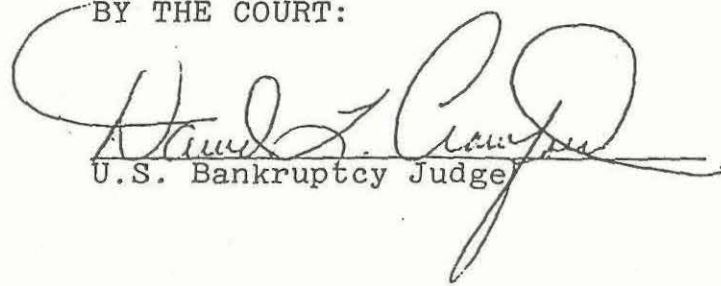
Plaintiffs claim that they are entitled to summary judgment because defendants waived their security interest as a matter of law by voting their claims as unsecured. However, defendants are claiming ownership rather than a security interest in the copper. If defendants' theory is correct, defendants may have an unsecured claim for conversion against the debtor-in-possession and, additionally, the right to pursue their property wherever it may be. This is a controverted issue material to this proceeding.

It is not practicable in this proceeding for this Court to determine which facts are material and are not controverted. The parties are urged to do that when they prepare their pretrial order. The parties are also encouraged to consider stipulating to the admission of testimony and exhibits from prior proceedings wherever possible. A cooperative attitude among the parties could accomplish the results sought by these motions in a more appropriate manner.

A separate order is entered in accordance with the foregoing.

DATED: October 9, 1980.

BY THE COURT:



U.S. Bankruptcy Judge

Copies mailed to each of the following:

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