

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

AIDEX CORPORATION, )

DEBTOR )

CASE NO. BK79-0-111

MEMORANDUM OPINION

This is an action to determine the rights of the parties to funds which became the property of the debtor-in-possession at the expiration of an option to purchase. Aidex, the debtor, occupies land leased to it by the City of Glenwood, Iowa. The city issued bonds to improve the land and assigned its rights to Toy National Bank (Toy), the trustee for the bond holders. Aidex's lease payments were to be used to repay the bond holders. Commercial Loan Insurance Corporation (CLIC) claims subrogation rights pursuant to CLIC's contract with the City of Glenwood because CLIC has been obliged to make the lease payments due to Aidex's default. Columbia National Bank (Columbia) has a security interest in all of Aidex's personal property, including general intangibles and after-acquired property, as a result of an S.B.A. loan.

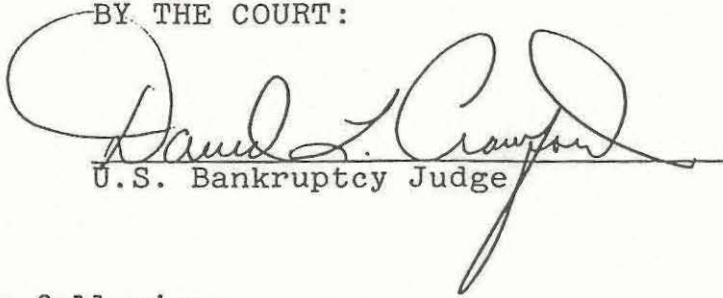
Aidex's Chapter XI proceeding was filed February 5, 1977. On February 15, 1980, Mobil Chemical Company and Aidex entered into an agreement whereby Mobil would have the option for a four-month period to purchase either the facility or all of the capital stock of Aidex. Mobil deposited \$35,000.00 which was either to be applied to the purchase price or retained by Aidex if the option period expired without a purchase. There was no purchase, and the option period has expired. Toy and CLIC both claim the funds pursuant to their interests in the real estate. Columbia claims the funds as a general intangible. Aidex and the creditors' committee have not made a specific claim to the funds but have filed applications, in which they were joined by Toy, seeking to use part of the funds to pay for insurance on the plant and equipment.

These funds are essentially new money generated by the debtor-in-possession. No property subject to a pre-petition security interest has been sold or otherwise diminished, and the funds accordingly are not proceeds of pre-petition collateral. In a nonbankruptcy setting, the funds would probably be subject to Columbia's security interest in general intangibles and after-acquired property. However, under the facts of this case, I am inclined to agree with the authorities who have held that security agreements do not attach to new funds generated by a debtor-in-possession pursuant to a contract entered into after the filing of the bankruptcy petition unless otherwise agreed by the parties and approved by the Court. In re Sequential Information Systems, 4 C.C.H. Sec. Trans. Guide (1969-73 Transfer Binder) para. 51,479 (S.D. N.Y. 1970) (Herzog, J.); De Gaynor Homes, Inc., 1 Bcy. Ct. Dec. 532 (W.D. Wis. 1975); see also 8 Collier on Bankruptcy, para. 6.30(4), n.30 at 923 (14th ed. 1978); 4 Collier on Bankruptcy, para. 552.02 at 552-4 (15th ed. 1979). Accordingly, I find that the Mobil funds should be retained by the debtor-in-possession

A separate order is entered in accordance with the foregoing.

DATED: December 2, 1980.

BY THE COURT:

  
U.S. Bankruptcy Judge

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