

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
AMERICAN BEEF PACKERS, INC.,) CASE NO. BK75-0-17
)
BANKRUPT)
)
AMERICAN BEEF PACKERS, INC.,)
)
Plaintiff)
)
vs.)
)
MICHIGAN NATIONAL BANK,)
)
Defendant)

MEMORANDUM OPINION

This matter arises pursuant to American Beef Packers', Inc., (ABP), application to vacate its order of dismissal and reopen proceedings due to an alleged failure of the Michigan National Bank (Bank) to comply with the terms of a settlement agreement. The application was granted, and the matter progressed to trial on the merits. Although the factual background of this proceeding is complex, after sifting through the allegations of the parties, I have concluded that the issue is actually quite simple.

Prior to ABP's bankruptcy, the Bank was the designated recipient for certain accounts of ABP in the Bank's area. After ABP filed bankruptcy, a creditor sent \$37,080.89 to the Bank instead of to the Omaha debtor-in-possession account. The Bank deposited this money in an account held by a secured creditor of ABP. ABP filed suit to collect the money, and the Bank eventually turned over \$18,555.58 which it agreed was not in dispute. The reason for the dispute as to the remaining funds is not pertinent to this controversy.

The present controversy between the parties concerns the fact that when the Bank turned over the money from the secured creditor's account, it debited the account by the amount turned over. The secured creditor then added the amount debited to the debt owed it by ABP. There is no evidence as to whether the secured creditor had previously credited ABP with the amount deposited, but that matter is not before me.

ABP alleges that the Bank should not have debited the secured creditor's account when it withdrew money improperly deposited to that account and turned it over to ABP. ABP contends that, by so doing, the Bank enriched itself by the amount debited.

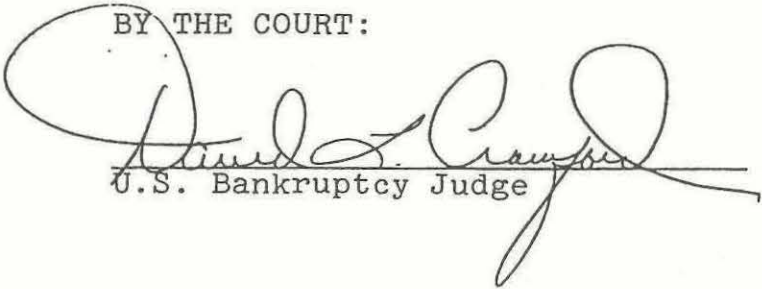
However, it seems to me that if ABP were to prevail in this matter, ABP rather than the Bank would receive a windfall. ABP would have its debt to the secured creditor reduced by the amount in the account at the Bank and have an additional \$18,555.58 at the Bank's expense.

If the secured creditor did not credit ABP with the initial deposit by the Bank, it acted improperly when it added the amount debited to ABP's debt. In that case, ABP's remedy lies against the secured creditor and not the Bank. If the secured creditor did initially credit the deposit, then ABP is attempting to double its recovery. In either case, ABP's position is untenable and its application must be denied.

A separate order is entered in accordance with the foregoing.

DATED: September 10, 1980.

BY THE COURT:


U.S. Bankruptcy Judge

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