

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|------------------------------------|---|--------------------|
| IN THE MATTER OF |) | |
| |) | |
| CUSTOM, INC., |) | CASE NO. BK79-1536 |
| |) | |
| DEBTOR |) | A80-42 |
| |) | |
| CUSTOM, INC., |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| vs. |) | |
| |) | |
| METROPOLITAN UTILITIES DISTRICT, |) | |
| A Political Subdivision, of Omaha, |) | |
| Nebraska, |) | |
| |) | |
| Defendant |) | |

MEMORANDUM OPINION

Custom, Inc., brought this adversary proceeding against Metropolitan Utilities District alleging that Custom, Inc., was engaged in a Chapter 11 rehabilitation proceeding in this Court, that it was a customer of Metropolitan Utilities District, that Metropolitan Utilities District had made unreasonable demands on it for a deposit after the filing of the Chapter 11 petition, and prayed that the Court set a reasonable deposit pursuant to 11 U.S.C. §366. Trial has now been held.

Custom, Inc., has been a customer of Metropolitan Utilities District since 1975. During that period of time, Custom, Inc., has remained current in its payments to Metropolitan Utilities District. From 1975 to the date of the filing of the Chapter 11 proceeding, the only deposit which Metropolitan Utilities District had requested was a total of \$120.00. Since the beginning of their relationship, no additional request for a higher deposit had been made. Apparently, upon being notified of the Chapter 11 proceeding, Metropolitan Utilities District became concerned and made several different demands on Custom, Inc., for deposits. The first demand was for a deposit of \$785.00. A later demand was made in the amount of \$1,165.00. Neither demand was met by the plaintiff and, on February 14, 1980, representatives of Metropolitan Utilities District turned off the utility service to the debtor's two places of business. Negotiations followed and utility service was restored late on the same day. Utility service has continued to the date of trial and, by agreement, will continue until this Court rules.

Metropolitan Utilities District argues that personal guarantees of payment of utility bill by the president of the plaintiff is no longer effective since the Chapter 11 proceeding was filed. This Court need not resolve that issue at this time.

M.U.D. also argues that there is in excess of a two-month lag time from the time service is provided to the customer until it may be discovered that the customer is not paying his bills currently. With this in mind, it points to its normal policies regarding deposit. However, a debtor operating under Chapter 11 is not a normal situation and I have some confidence that with diligence, M.U.D. can protect its rights by monitoring closely the account with plaintiff.

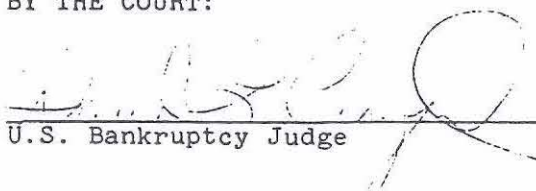
In view of the plaintiff's prior good record of payment to defendant, and in view of the fact that warmer weather conditions will prevail in coming months than in the recent past, and assuming that the defendant is willing to exercise diligence in monitoring the plaintiff's account, it is this Court's opinion that a reasonable deposit under the circumstances is \$400.00 and that that amount will provide adequate assurance of payment to the defendant.

Because the present \$120.00 deposit might be utilized as a setoff by the defendant against amounts owed it from the plaintiff, the \$120.00 amount should be left intact for such possible use. Accordingly, an additional \$400.00 will be required from the plaintiff for post-Chapter 11 petition protection.

A separate order is entered in accordance with the foregoing.

DATED: March 7, 1980.

BY THE COURT:



U.S. Bankruptcy Judge

Copies mailed to each of the following:

Richard Myers, Attorney, 300 Farm Credit Building, Omaha, Ne. 68102

Bruce H. Abrahamson, Attorney, 3932 North 90th Street, Omaha, Ne. 681

Randy Owens, Attorney, M.U.D. 1723 Harney Street, Omaha, Ne. 68102