

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

DAVID WILLIAM FINNEY, JR.,
DEBTOR

CASE NO. BK79-1324

MEMORANDUM AND ORDER

David William Finney, Jr., the debtor, has brought this proceeding for a determination that Busy Bee Van and Storage Company has violated the automatic stay provisions of 11 U.S.C. §362 of the New Bankruptcy Code and, therefore, is in contempt of this Court.

Mr. Finney filed his Chapter 13 petition with this Court on November 7, 1979. Prior to that date, Mr. Finney had stored household goods and furnishings and other personal items at Busy Bee under a contract which called for a monthly storage fee. At the date of the filing of this Chapter 13 petition, Mr. Finney owed Busy Bee for prepetition storage. He admits to receiving letters and statements from Busy Bee saying he owed prepetition charges.

After the filing of the Chapter 13 petition and while the Chapter 13 proceeding was pending, Busy Bee sold the stored items to satisfy its unpaid storage charges. It is this conduct which Mr. Finney alleges was in violation of the automatic stay provisions and is contemptuous.

The petition filed by Mr. Finney and the accompanying schedules list the address of Busy Bee as 2111 Nicholas Street, Omaha, Ne. In fact, Busy Bee had moved from that address some years before the trial.

The only evidence before me which suggests that Busy Bee had actual knowledge of this Chapter 13 proceeding is evidence by Mr. Finney that he telephoned the office of Busy Bee in March or April of 1980 and talked to a woman whom he alleges he advised of the Chapter 13 filing. In essence, Busy Bee denies knowledge of the Chapter 13 proceeding.

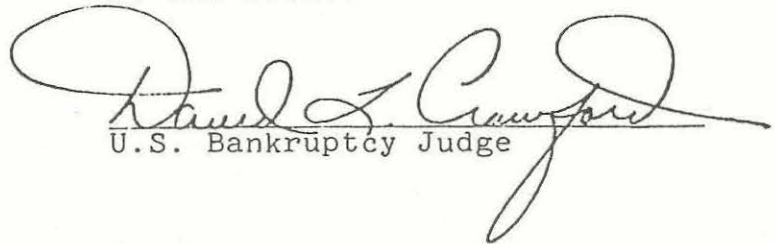
Having heard the evidence, this Court is unable to conclude that Busy Bee had actual knowledge of the Chapter 13 proceeding. I am unwilling to premise a finding of contempt on the alleged mention of the Chapter 13 proceeding in a telephone conversation with an unnamed person at Busy Bee. Similarly, I cannot assume that the postal service forwarded the notice of the Chapter 13 proceeding from the 2111 Nicholas Street address to the hands of Busy Bee. My finding is in favor of Busy Bee and against Mr. Finney. Accordingly, it is

ORDERED that the order to show cause (Filing No. 14) previously entered herein be, and the same hereby is, vacated and set aside; and it is further

ORDERED that Busy Bee Van & Storage Company be, and it hereby is, held not to be in contempt of this Court based on the facts alleged in Filing No. 13.

DATED: May 12, 1981.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

Norman Denenberg, Attorney, 3814 Dodge Street, Omaha, Nebraska

Richard D. Myers, Attorney, 1800 First Nat'l. Center, Omaha, Ne.