

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

MELVIN HUBKA,

DEBTOR

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CASE NO. BK85-2819

MEMORANDUM OPINION

A hearing on debtor's objection to the claim of the United States of America on behalf of the Commodity Credit Corporation and debtor's motion for contempt was held on January 13, 1987, in Lincoln, Nebraska. The debtor and debtor-in-possession, Melvin Hubka, appeared pro se. Douglas Semisch of the United States Attorney's Office appeared on behalf of the Commodity Credit Corporation.

Statement of Facts

The debtor filed his petition for relief under 11 U.S.C. Chapter 11 on December 3, 1985. The United States of America (the "CCC") has filed a claim in this case alleging a debt of \$62,895.82 plus a debt of \$154.82. The combined promissory note and security agreement were signed by Melvin Hubka, only on December 30, 1981, and the financing statement, signed by Melvin and Betty Hubka, was filed January 4, 1982. The financing statement indicates that the debtor's address is Odell, Nebraska, and the debtor alleges that said address is incorrect, thus rendering the financing statement invalid and the security interest unperfected. Further, the collateral is described on the financing statement only as "corn," which the debtor alleges is too vague and renders the financing statement invalid and the security interest unperfected. Finally, the evidence produced shows that the note and security agreement were not signed by the debtor's wife. The debtor alleges that his wife had an ownership interest in the collateral, and that, therefore, he was not legally entitled to pledge all of the collateral. Thus, if the security interest were perfected, it would apply to only his half of the collateral. However, other than the debtor's statement that his wife had a half interest in everything, he produced no further evidence of her ownership. Mrs. Hubka did not appear. The debtor has objected to the claims of the CCC based on the aforementioned allegations.

With regard to the motion for contempt, the debtor produced evidence that the Gage County ASCS Office sent to the debtor on July 19, 1986, a letter demanding payment of \$41.00 for a measuring service bill. This letter was sent after the filing of the debtor's petition and after the ASCS Office had been informed of the debtor's bankruptcy. Kevin Naber, Executive Director of the ASCS Office, testified that the letter was a form letter, signed by an employee, Bev Heacock, of the Compliance Department. Mr. Naber stated that he believed that the bill was inadvertently added to a bill for post-petition debt. He further stated that, once he was aware of the bill's being sent, he took steps to prevent any further collection attempts. The debtor asks the Court to find the Gage County ASCS Office in contempt and further claims damages of \$390.40, specified as follows: \$280.00 for the debtor's time spent on researching the matter (14 hours @ \$20.00 per hour) and \$110.40 in mileage to and from Lincoln to do research (480 miles @ 23¢ per mile).

Issues

1. Is the description "corn" on the financing statement sufficient to identify the collateral covered by the security agreement herein?
2. Does an error in the debtor's address invalidate the financing statement?
3. Did the debtor's wife have a half interest in the collateral, thus rendering an otherwise perfected security interest unperfected as to her half of the collateral?
4. Does the post-petition sending of a bill for \$41.00 in violation of 11 U.S.C. § 362 constitute contempt?

Decision

The description "corn" on the financing statement is sufficient to identify the collateral covered by the security agreement. Further, the error in the debtor's address is not so seriously misleading as to invalidate the financing statement. Therefore, the financing statement is valid and the CCC has a perfected security interest in the collateral. The CCC's security interest is valid as to all of the collateral, as there was insufficient evidence presented to substantiate Mr. Hubka's claim that his wife had a half interest in the collateral. The debtor's objection to the claim of the United States of America on behalf of the Commodity Credit Corporation should be and is overruled.

The sending of the demand for \$41.00 after the filing of the debtor's petition for relief does not rise to the level of contempt. The debtor's motion for contempt should be and is overruled.

Discussion

11 U.S.C. § 362(a)(6) and (7) provides as follows:

"(a) except as provided in sub-section (b) of this section, a petition filed under Section 301, 302, or 303 of this title, or an application filed under Section 5(a)(3) of the Securities Investors' Protection Act of 1970 (15 U.S.C. 78 EEE(a)(3)), operates as a stay, applicable to all entities, of-

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and . . ."

Nebraska U.C.C. § 9-110 (Reissue 1980) provides as follows:

"For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described."

Nebraska U.C.C. § 9-401(1)(a) (Reissue 1980) provides as follows:

"(1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the County Clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the County Clerk in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the Secretary of State."

Nebraska U.C.C. § 9-402 (Reissue 1980) states in pertinent part as follows:

"(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives the mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. . .

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."

Comment 2 to this section discusses the fact that this section has adopted a system of "notice filing," and further states, "The notice itself indicates merely that the secured party who has filed may have a security interest in collateral described. Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs." 1972 Comments to Section 9-402, Nebraska Revised Statutes (Reissue 1980).

In the instant case, the security agreement specified the quantity of corn being pledged as collateral and the seal numbers on the bins where it was stored. The financing statement, however, described the collateral as "corn." The Nebraska Supreme Court, in Mid-City Bank, Inc., vs. Omaha Butcher Supply, 222 Neb. 690, 385 N.W.2d 917 (Nebr. 1986), held that a description of collateral in a financing statement is sufficient if the financing statement sets out an address of the secured party from which information concerning the security interest may be obtained, gives the mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral, and reasonably defines the collateral. Id. at 922. This court finds that the word "corn" indicates the type of collateral and reasonably defines it, keeping in mind that the above-mentioned statutes do not require a specific description, only one that is sufficient to put a third party on notice. The description "corn" should put any third party on notice that at least some portion of the debtor's corn is subject to a security interest and that further inquiry is required.

A more difficult question arises with regard to the debtor's address. Nebraska U.C.C. § 9-402 requires, inter alia, the debtor's mailing address. The financing statement filed herein does list the debtor's address, although the said address is listed as Odell, Nebraska. The debtor testified that his mailing address is not Odell, but rather Diller, Nebraska, which is in Jefferson County. However, Mr. Hubka's residence and the collateral are in Gage County, as is Odell, and the financing

statement is filed there. Brief for the United States at 10. According to Section 9-402(8), a financing statement which substantially complies with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. The financing statement herein substantially complies with all of the other requirements of Section 9-402. It also complies with Section 9-401 in that it is filed in the county of the debtor's residence. A third party checking the Gage County records would find that a Melvin Hubka had given a security interest in corn to the CCC and with reasonable diligence, using other information on the financing statement, could ascertain whether the Melvin Hubka listed on the financing statement was the party for which it was searching. It should also be pointed out that, under Section 9-401(3), a financing statement remains effective even though the debtor's residence changes. It is obvious that one cannot reasonably rely only on the debtor's address. Therefore, this court believes that the financing statement is sufficient to put a third party on notice and that, therefore, the error in the debtor's address is not so seriously misleading as to invalidate the financing statement.

Finally, the debtor claims that his wife had a half interest in the collateral and that he thus was not legally entitled to pledge all of it, which in fact, is exactly what he did. His wife did not sign the note or the security agreement, only the financing statement. Mr. Hubka cites Matter of Hanson, 60 B.R. 359 (D. Neb. 1982), as support for his allegation. However, this Court believes that Hanson is distinguishable from the instant case. In Hanson, very specific evidence was presented as to the ownership of the property involved. In the instant case, Mr. Hubka merely testified that his wife owned half of all his property and presented evidence that she did not sign the note or the security agreement. He presented no other evidence. His wife did not appear because, according to Mr. Hubka's testimony, she could not miss work for two days. However, Mr. Hubka stated that Mrs. Hubka intended to appear at her husband's confirmation hearing on the day following the trial, even though she was not a debtor in the case. The debtor had the burden of proving that his wife had half ownership in the property, and the Court finds that he did not carry his burden. Therefore, the security interest is perfected as to all of the collateral.

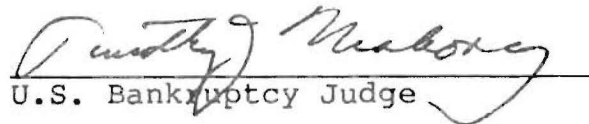
As to the issue of contempt in the post-petition filing, the Court believes that the action of the ASCS office does not rise to the level of contempt. There is no doubt that the ASCS office's sending of the bill for \$41.00 violated Section 362. However, the bill was for a negligible amount, and the ASCS official took actions to correct the situation as soon as officials there were aware of what had happened. This Court accepts Mr. Naber's explanation that the bill was sent inadvertently. It is unfortunate that Mr. Hubka expended so much time and money

researching this question, but his exertions and his expenditures do not justify a finding by this Court that the actions of the ASCS office rose to the level of contempt.

A separate Journal Entry shall be filed.

DATED: March 31, 1987.

BY THE COURT:


U.S. Bankruptcy Judge

Copies to:

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