

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
D CORPORATION,) CASE NO. BK81-262
)
DEBTOR)
)
NORTHWESTERN NATIONAL BANK,) A81-117
)
Plaintiff)
)
vs.)
)
JAMES J. STUMPF, Trustee in)
Bankruptcy for D Corporation, a)
Nebraska corporation; ASHLAND)
STATE BANK, a Nebraska corpora-)
tion; FISHER FIXTURE COMPANY,)
a Nebraska corporation; 132ND)
STREET LTD., a general partner-)
ship, AMERICAN EXPRESS COMPANY)
and FIRST NATIONAL BANK OF OMAHA,)
)
Defendants)

MEMORANDUM OPINION

In this adversary proceeding, Northwestern National Bank seeks a determination that its security interest on certain property previously owned by D Corporation and now claimed by the trustee in bankruptcy is prior to the interest of the trustee in bankruptcy and to the interests of the other defendants.

The evidence discloses that on November 9, 1977, Northwestern National Bank extended credit of \$5,000.00 to the debtor. On November 10, 1977, a Uniform Commercial Code financing statement was filed. A security agreement was also taken by the bank which secured the \$5,000.00 advance and future advances. The security agreement covered equipment of the debtor and other items. On four separate occasions thereafter, the last being August 3, 1979, the bank advanced further cash to D Corporation.

From September 28, 1979, through October 1, 1979, Fisher Fixture Company sold \$3,041.77 worth of equipment to D Corporation. The items were equipment used in a restaurant business. On November 2, 1979, a financing statement was filed on behalf of Fisher Fixture Company.

The essential issue is whether Northwestern National Bank is prior in right to the alleged security interest of Fisher Fixture Company. Fisher Fixture Company takes the position that under §9-108, there is no evidence from which this Court can conclude that the debtor acquired the rights in the collateral in the ordinary course of its business. However, the reason behind §9-108 is to avoid the argument by the trustee in bankruptcy that the acquisition by a debtor of property on which an after-acquired property clause in the security agreement would operate does not result in a transfer on an antecedent indebtedness in

a bankruptcy context. There being no claim by the trustee in bankruptcy here that the transfer was preferential, §9-108 does not apply to the facts of this situation and does not affect the outcome.

In essence, §9-204(3) provides that a security agreement such as the one held by Northwestern National Bank may provide the collateral acquired in the future may secure an obligation covered by a security agreement.

Section 9-312(4) provides that a purchase money security interest such as claimed by Fisher Fixture Company may have priority over a second security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter. Under the facts presented, Fisher Fixture Company did not perfect within ten days after the debtor received possession of the collateral and, accordingly, its purported security interest must fail to that of the Northwestern National Bank.

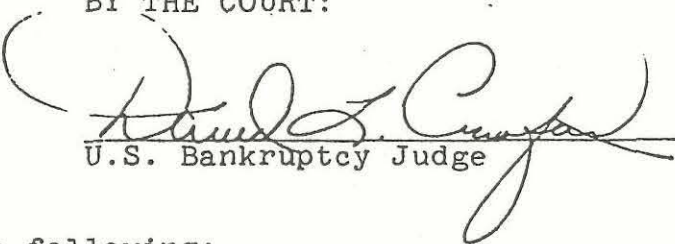
Ashland State Bank, a Nebraska corporation, takes the position that Northwestern National Bank should prevail over Fisher Fixture Company and, because of the foregoing, there contention is correct.

The other dispute between the parties involves the relative rights of the parties to the liquor license held by the debtor. Because of the statutes applicable to liquor licenses issued in Nebraska and by virtue of prior decisions of this Court, the trustee's rights to the liquor license are superior to the claims of the other parties.

A separate order is entered in accordance with the foregoing.

DATED: April 6, 1981.

BY THE COURT:


U.S. Bankruptcy Judge

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