

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

MIDWESTERN PETROLEUM SERVICE, INC., )

BANKRUPT )

PACKERS NATIONAL BANK IN OMAHA, )  
a National Banking Corporation, )

Plaintiff )

vs. )

MERLE A. NICOLA, As Trustee )  
for Midwestern Petroleum )  
Service, Inc., )

Defendant )

CASE NO. BK79-0-369

MEMORANDUM OPINION

I have before me a motion to intervene in the above-captioned proceedings filed by Stanford Lipsey and Jeanne Lipsey. Petitioners allege that they are the owners of a warehouse located at 8036 "H" Street and that Midwestern Petroleum Services, Inc., had possession of these premises pursuant to a three-year lease entered into on January 1, 1978, with petitioners' predecessor in interest. The agreed rent was \$300.00 per month.

On April 2, 1979, Midwestern was adjudicated a bankrupt. At that time, certain items of inventory and equipment were stored in the warehouse. The plaintiff in these proceedings claimed a security interest in all of the stored property and subsequently filed an adversary complaint seeking to foreclose its security interest. Later, pursuant to stipulation of the parties and an order of this Court, the property was sold free and clear of all encumbrances and plaintiff's interest, if any, was transferred to the proceeds of the sale. Petitioners allege that the proceeds constitute the sole asset of the estate.

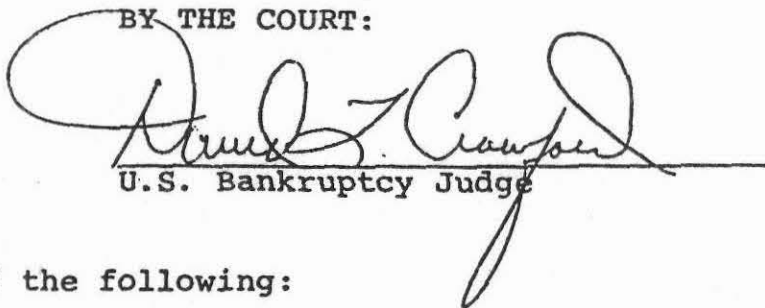
Petitioners are seeking to recover \$2,873.02, which they state represents the fair rental value of the warehouse from April 2, 1979, the date of the adjudication, to December 3, 1979, the date the property was removed from the warehouse. Petitioners, by their first cause of action, seek to recover this sum from the secured party in repayment for preservation of the assets. In their second cause of action, petitioners seek to recover this sum from the trustee and allege an agreement of the trustee to pay petitioners the rent set forth in the lease

It is the opinion of this Court that the petitioners' motion should be granted. Fed. R. Civ. P. 24, as adopted by Bankruptcy Rule 724. While petitioners could conceivably await the outcome of the present action and then file an action against the prevailing party, such a duplication of proceedings seems undesirable where the rights of the parties can be settled in a single action without undue prejudice or delay to any party.

A separate order is entered in accordance with the foregoing.

DATED: December 20, 1979.

BY THE COURT:



Handwritten signature of Harold S. Crayton, U.S. Bankruptcy Judge.

U.S. Bankruptcy Judge

Copies mailed to each of the following:

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