

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

STEVENS STEEL STRUCTURES, INC.,

DEBTOR

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CASE NO. BK81-1858

MEMORANDUM

In this bankruptcy proceeding, the trustee has proposed the sale of certain assets free and clear of any lien claimed by DeLay First National Bank & Trust Co. The bank has filed an objection to the proposed sale free and clear of their lien, the objection being the matter now before me.

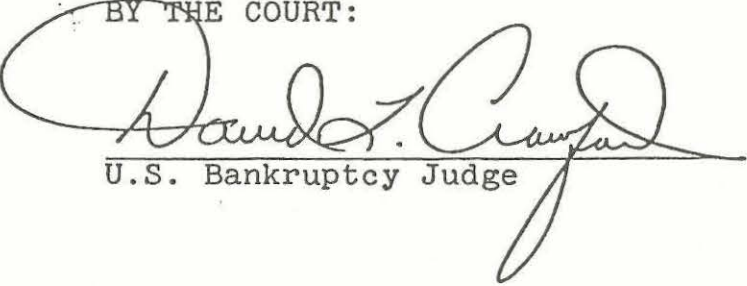
The trustee's position is that the DeLay First National Bank has no valid lien on the assets as against a trustee in bankruptcy. In this regard, the trustee points to the evidence before me which discloses that the registered agent of this corporate debtor at all times relevant was in Saunders County, Nebraska. Prior to September 1, 1981, the Nebraska Uniform Commercial Code, §9-401(c), provided that a resident corporation's residence for the purpose of perfection of security interests was the county where the office of its last-appointed registered agent was located. The evidence before me discloses that all filings were made in the County Clerk of Madison County, Nebraska, and that no filings were filed with the office of the County Clerk for Saunders County, Nebraska. The result of the foregoing is that, under §544(a), the trustee as a hypothetical lien creditor would have rights superior to the rights of an improperly perfected security interest. As such, the provisions of the Uniform Commercial Code subordinate the bank's security interest to the interest of the trustee in this bankruptcy proceeding. Accordingly, the trustee's proposed sale free and clear of any lien claimed by the First National Bank is proper in view of the conclusion that the bank's lien is subordinate to the rights of the trustee.

To the extent that the bank may premise any rights on an amendment to the Uniform Commercial Code effective September 1, 1981, the evidence further discloses that no perfection was ever made with the Secretary of State's office and, accordingly, no proper perfection was made under the amendment. The result of this observation is the same as with regard to the previous findings and conclusion.

A separate order is entered in accordance with the foregoing.

DATED: August 23, 1982.

BY THE COURT:


U.S. Bankruptcy Judge

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