

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

**Rubino, Inc., David G. Stauffacher, and Exel Royal, L.L.C., Plaintiffs,
v. Royal Plastics, Inc., Defendant**

(In re Royal Plastics, Inc., Debtor)

Bankruptcy Case No. 94-20990-11, Adv. Case. No. A94-2114-11

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

November 30, 1994

John Widule, for the plaintiffs.
James McNeilly, for the trustee.

Thomas S. Utschig, United States Bankruptcy Judge.

**MEMORANDUM OPINION, FINDINGS OF FACT,
AND CONCLUSIONS OF LAW**

Two issues are presently before the Court in the above matters. In the adversary proceeding, the trustee for the debtor has moved to dismiss the complaint. The plaintiffs, Rubino, Inc., David Stauffacher, and Exel Royal, L.L.C., resist the dismissal of the proceeding. Additionally, in the main case, the trustee has sought to reject the executory contract which forms the basis of the plaintiffs' claims against the debtor in the adversary proceeding, and the plaintiffs have accordingly objected. The trustee is represented by James McNeilly, and the plaintiffs are represented by John Widule. Pursuant to the order of the Court and the agreement of the parties, briefs were submitted regarding the nature of the plaintiffs' claim against the debtor; the issue is now ripe for determination.

The adversary proceeding was initiated by the plaintiffs on June 23, 1994. The plaintiffs sought the turnover of certain tub molds which the debtor possessed, contending that they were the owners of the molds. The molds had apparently been in the possession of the debtor as a result of a prepetition agreement under which the debtor was to manufacture the tubs and pay the plaintiffs a royalty on each tub sold. The plaintiffs also sought the entry of a judgment against the debtor for revenues allegedly derived from the sale of the farm tubs. They want this claim paid in full before distribution to other creditors.

As indicated previously, the trustee has moved to reject this transaction as an executory contract. The plaintiffs have objected to the rejection, but admit that their objection is simply to preserve the status quo while they pursue their purported claims against the debtor in the adversary proceeding. Further, as is noted in the parties' joint pretrial statement, the trustee has surrendered the farm tubs to the

plaintiffs, and the parties entered into a settlement agreement in September which fully resolved plaintiffs' claims for postpetition revenues.

Thus, the sole remaining issue is the plaintiffs' claim for certain prepetition royalties on the sale of farm tubs by the debtor. The plaintiffs claim that they are entitled to be paid \$14,210.00 in prepetition royalties. They base their argument on the contention that the debtor did not "own" the farm tub molds and therefore did not "own" the royalties derived from the sale of tubs produced from the molds. The plaintiffs have produced a short document, purportedly executed by the debtor, which states that the royalties were "owned" by the plaintiffs and were to be segregated by the debtor from its funds.

The trustee contends that the plaintiffs have merely an unsecured claim against the debtor's bankruptcy estate, which should be paid like any other unsecured claim. According to the trustee, the plaintiffs are attempting to obtain preferential treatment of their claim, which is not entitled to priority status. Essentially, the trustee argues that the plaintiffs do not have any interest in the monies in question which would entitle their claim to such preferential treatment. In support of this contention, the debtor points out that all monies from the sale of farm tubs were delivered to the debtor, the debtor commingled all funds it received, and the debtor never created a separate account for the funds allegedly due the plaintiffs.

As the trustee points out, this dispute is controlled by application of 11 U.S.C. § 541, which defines the property that comprises the estate of a bankrupt debtor. Under § 541(a)(1), the debtor's estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." While the definition is extraordinarily broad, there are certain limitations, and § 541(d) excludes certain property in which the debtor has only "legal title," i.e., property which the debtor holds in trust for another. This section provides that

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

As is demonstrated in detail by the trustee, there is no trust relationship, either actual or constructive, between the plaintiffs and the debtor. The plaintiffs have produced no authority which would support an argument that the debtor possessed only legal title, and not full title, to the prepetition tub royalties in question. There is no statute which creates a trust relationship between the parties, and the written agreement does not possess any of the typical attributes of a trust. Thus, there is no actual trust relationship. See Matter of Lenk, 48 B.R. 867 (W.D. Wis. 1985). Further, there is no evidence that the debtor engaged in the type of conduct which would give rise to a constructive trust. Given these facts, it is clear that the royalties are property of the debtor and the plaintiffs possess merely an unsecured claim in the debtor's bankruptcy for breach of contract. They may file a proof of claim in connection with this debt, but they are not entitled to a judgment in this adversary proceeding which would prefer that claim above other general unsecured claims.

Accordingly, the trustee's motion to dismiss is granted, and this adversary proceeding is dismissed with prejudice. Further, the trustee's motion to reject executory contract is approved, and the plaintiffs' objections thereto are overruled.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.

