

10/30/80

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE  
WESTERN DISTRICT OF WISCONSIN

In the Matter of

IN BANKRUPTCY

WENSTRO, INC.  
d/b/a Avenue South Food Center  
d/b/a Avenue North Food Center

No. 79-01161 Invol.  
Chapter XI

Debtor.

**FILED**  
OCT 30 1980  
CLERK  
U.S. BANKRUPTCY COURT

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The Trustee, Arthur L. Eberlein, having duly filed an application with the Court for a determination as to the last date the debtor is obligated on supplier accounts, and the petitioning creditors by their attorney, Roy T. Traynor, having joined in the proceedings claiming Hub City Foods liable for all accounts after May 21, 1979; and the matter having been duly noticed for hearing before the Court; and Hub City Foods by its attorney, Jeffery J. Drach, having contended that they are not liable therefor because of the agreement dated April 16, 1979, between the debtor and Hub City Foods; and evidence having been duly taken, and briefs having been filed by the respective attorneys, and oral arguments having been made to the Court; and the Court having considered the entire record, the number of exhibits, the contract of April 16, 1979, and the related matters relative to said application, and being fully advised in the premises, FINDS:

1. That the applicant is the duly qualified and acting Trustee herein.
2. That on September 20, 1979, a petition for involuntary bankruptcy was filed and the first meeting of creditors was held on November 15, 1979.
3. That the bankruptcy schedules and the record herein show that the debtor and Hub City Foods entered into a written sales agreement on April 16, 1979.

4. That pursuant to said agreement, on May 21, 1979, Hub City Foods took control of all of the assets of the debtor.

5. That Hub City Foods operated and managed the business.

6. That Hub City Foods took complete custody and control of the premises.

7. That Hub City Foods then relieved the management of Wenstro of all operating control and the employment of personnel.

8. That certain charges were made from other suppliers beginning on May 21, 1979, which remain unpaid and which Hub City Foods contends they are not liable for by virtue of their take-over of said business.

9. That the contract dated April 16, 1979, hereinabove referred to, is fourteen pages long and specifically describes the two stores of the debtor and provides for an option by Hub City Foods to purchase said stores in paragraph three of the contract.

10. That paragraph one provides that a note in the amount of \$58,000.00 with interest at the rate of twelve percent per annum and providing for weekly payments shall be forthwith executed and secured by a UCC security interest, and which obviously the contract endeavors to secure for a pre-existing debt.

11. That paragraph six provides for the operation of the grocery stores pending closing and tries to make it that Hub City Foods is merely an agent for Wenstro.

12. That on May 21, 1979, Hub City Foods informed all of the employees that it was taking over for Wenstro, Inc.

13. That on May 21, 1979, on the date of the transfer, Hub City Foods advised the management of its take-over and arranged for a change of locks and absolute control thereof.

14. That on June 6, 1979, a written notice was given of the take-over of the business in compliance with the Bulk Sales Law.

15. That the letter of May 21, 1979, to the management and addressed to the attention of William F. Wenzel, president of Wenstro, Inc., was signed by Maurice D. Ash, assistant secretary-treasurer, and stated that Hub City Foods would manage the stores until the time of closing and completion of the sale.

16. That the evidence shows that Hub City Foods took over under said contract and operated said stores, and by its acts and conduct to the public and in its manner of operation held itself out to be operating at the times involved herein.

17. That a careful review of all of the evidence, the contract, the letter, the Bulk Sales and the examination relative to the antecedent debt, the sales agreement and the UCC agreement as well as the operation of the stores and the exclusion of the management of Wenstro, Inc., all indicate a complete take-over by Hub City Foods as of May 21, 1979, with the ensuing completion of the sales documents and papers being merely routine accomplishments of their take-over.

18. That in all equity, from a careful examination of all of said conduct, the facts and operation, and in spite of the attempted wording of the contract as to agency, Hub City Foods became liable for the supplier accounts starting on May 21, 1979, and thereafter. And as

CONCLUSIONS OF LAW

That an order be entered directing that the supplier account charges from May 21, 1979, and thereafter, are properly the obligation of Hub City Foods, Inc. and not a charge against this bankruptcy estate, and that the accounts incurred prior to May 21, 1979, and being on the itemized list of creditors, are accounts of said bankruptcy estate.

O R D E R

NOW, THEREFORE, IT IS ORDERED:

1. That the supplier account charges commencing on May 21, 1979, and thereafter, relative to the stores involved herein, are the obligation of Hub City Foods, Inc., and not a charge against this bankruptcy estate.

2. That the obligation of the bankruptcy estate only includes those charges on accounts by suppliers to May 21, 1979, being through May 20, 1979.

Dated: October 30, 1980.

BY THE COURT:

  
Bankruptcy Judge