

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

DEC 20 1984

U.S. BANKRUPTCY COURT

In re:

Case Number:

JAMES E. LASZEWSKI
JANITH G. LASZEWSKI

WF11-81-01502

Debtor.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER FOR TURNOVER OF FUNDS TO FIRST FINANCIAL

First American National Bank of Wausau (American), by Attorney Konrad T. Tuchscherer, having filed a Motion for Turnover of Funds; and First Financial Savings and Loan Association (Financial), by Attorney David G. Shafton, having filed a Motion for Turnover of Funds; and Glinski, Haferman, Ilten, Mills and Dreier, S.C. (Glinski), by Attorney Gary L. Dreier, having filed a Motion for Determination of Monies and Responsibility of Law Firm; and a hearing having been held; and American, Financial and Glinski appearing by counsel; and Debtors James E. and Janith G. Laszewski appearing by Attorney Thomas J. Molinaro; and briefs having been filed; the Court, being fully advised in the premises, FINDS THAT:

1. For the purpose of this Decision the Court will assume that, in January of 1984, the First American National Bank of Wausau (American), as vendor, entered into a contract with Debtors-in-Possession Janith G. and James E. Laszewski and

another, as vendees, for the sale--in lieu of replevin--of its interest in certain personal property in exchange for \$6,500.

2. Pursuant to said agreement the Debtors placed \$3,250 into the Glinski, Haferman, Ilten, Mills and Dreier, S.C. (Glinski), trust account; and American forwarded a bill of sale and certain certificates of title to Glinski.

3. On January 30, 1984, American instructed Glinski to return the bill of sale and documents of title if the Debtors had not provided the \$6,500 by February 1, 1984. The balance of the \$6,500 was never paid into the Glinski trust account.

4. On May 8, 1984, Glinski returned the \$3,250 to the Debtors in the form of a check drawn on its trust account.

5. On May 11, 1984, the Debtors endorsed the check and cashed it at First Financial Savings and Loan Association.

6. Debtor James E. Laszewski testified that he has spent the proceeds of said check.

7. At some time before the check was presented to Glinski's bank, Glinski issued a stop payment order "at the suggestion of" American's attorney. October 4, 1984, Affidavit of Gary L. Dreier.

8. Glinski now holds the \$3,250 in its trust account. (On September 27, 1984, Glinski obtained an Order of this Court permitting it to pay the \$3,250 into the Bankruptcy Clerk's Office. On October 17, 1984, this Court granted Glinski's motion to withdraw as the Debtors' attorney. No deposit has been made

with the Bankruptcy Clerk's Office.) It appears that Glinski also retains the American bill of sale and certificates of title.

9. The monies in the Glinski trust account are property of the above captioned bankruptcy estate, 11 U.S.C. sec. 541(a), and subject to this Court's jurisdiction under 28 U.S.C. secs. 1334 & 157, cf. In re Goetz, WF7-84-00826, ___ B.R. ___ (Bankr.W.D.Wis. 1984) (bankruptcy court's inherent power to regulate its bar).

10. Even assuming that the facts set forth above would entitle American to damages or specific performance, they do not establish that American has an interest in the funds held by Glinski.

11. Glinski's stop payment was wrongful as to the Debtors, see 7 Am.Jur.2d Attorneys at Law sec. 212 (1980).

12. Financial succeeds to the rights of the Debtors as a matter of equity. Cf. Wis. Stats. secs. 403.507 & 404.407; Roland v. Republic Nat'l Bank, 463 S.W.2d 747, 8 U.C.C. Rep. Serv. 1076 (Tex.Civ.App. 1971).

CONCLUSION OF LAW

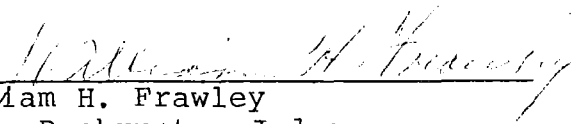
Glinski should turn over the funds held in its trust account to Financial. 11 U.S.C. sec. 542.

ORDER

IT IS ORDERED THAT Glinski, Haferman, Ilten, Mills & Dreier, S.C., forthwith turn over \$3,250 held in trust for Debtors-in-Possession Janith G. and James E. Laszewski to First Financial Savings and Loan Association.

Dated: December 20, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Konrad T. Tuchscherer
Attorney David G. Shafton
Attorney Gary L. Dreier
Attorney Thomas J. Molinaro