

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

In Re:

DAVID L. HOERNKE and SANDRA K.
HOERNKE

Debtors

DAVID L. HOERNKE and SANDRA K.
HOERNKE

Plaintiffs

vs.

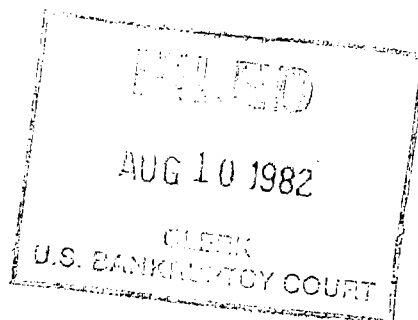
In Bankruptcy

No. WF7-81-01955

Adversary No. 82-0039

BETTY JANE SKAUG, LORRAINE MARIE
FREESE and CLIFFORD W. STEPHENS,
heirs of Elizabeth Neuman; STATE
OF WISCONSIN, DEPARTMENT OF
VETERAN AFFAIRS; DATA FLOW COR-
PORATION; G. THOMAS CARLSON, DDS
and STANLEY P. WILLIAMSON, DDS;
MERRILL ELECTRIC MOTORS, INC.,
d/b/a NIKOLAI ELECTRIC; PARK CITY
CREDIT UNION, a credit union
organized under the laws of Wis-
consin; CENTRAL BANK & TRUST, a
bank organized under the laws of
Wisconsin; JOHN LEHNHERR and
RANDY OPPMAN, trustees of the
Producers Accounts for Cloverdale
Cheese Factory and A. L. EBERLEIN,
U. S. Trustee in Bankruptcy

Defendants.



FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER

The plaintiffs in the above entitled action, who are also the debtors, commenced the adversary action herein claiming that certain items of personal property are not fixtures; and the defendants having answered said complaint, and the parties having stipulated to the facts, and having filed briefs herein, and the court having duly considered the facts, briefs of counsel and arguments previously made, and being fully advised in the premises, FINDS:

1. That the defendants, Betty Jane Skaug, Lorraine Marie Freese and Clifford W. Stephens, are heirs at law of one Elizabeth Neuman, deceased.

2. That on the 11th day of September, 1975, the said Elizabeth Neuman sold to the plaintiffs-debtors certain property known as the Neuman Cheese Factory consisting of real estate and personal property.

3. That the sale of the real estate was made by deed and the taking back of a second mortgage by the said seller, Elizabeth Neuman.

4. That the personal property is described as follows, to-wit:

- 3 Stainless steel agitators with paddles
- 3 Stainless steel vats
- 1 Stainless steel drop tank
- 1 Stainless steel whey holding tank
- 1 Stainless steel water tank
- 2 Curd cutting knives
- 1 De La Val Pasteurizer
- 1 Cream separator
- 3 Scales
- 2 Whey tanks located outside
- 1 Tester and accessories
- 1 Salt container
- 1 Boiler
- 1 Stainless steel cheese press
- 1 Tester and accessories
- 1 Stainless steel table with rollers
- 1 Used refrigerator

All pumps, curd knives, all store equipment including but not limited to a cooler and display counter but not including tables and corner shelves; all miscellaneous machinery and equipment not hereinabove enumerated used in the operation of the cheese factory; any warehouse rights buyer still has with seller to retain any cash refunds she has received to date;

which was sold by bill of sale and the executing of certain UCC financing agreements and notices.

5. That the said UCC agreements have expired and were not renewed, and are not subject to the lien of said agreements.

6. That in addition to the items of personal property above described, this action involves the following items, to-wit:

- Cyclothem boiler, serial no. 20564
- 2 HP boiler water feed pump
- 2 Murray steam heaters
- 300 Gallon dairy cool cream tank
and compressor
- Copland 2 HP compressor and Bohm condenser
- Brown, wood grain display cooler

7. That said defendants claim said property as fixtures to the real estate and included in their mortgage, and plaintiffs contend it is personal property belonging to the trustee of the estate with the right to remove the same subject to repairing any damage to defendants' buildings.

8. That as to the boiler, defendants claim it is a furnace under the mortgage given by the debtors to the said Elizabeth Neuman, and which is a printed word in said mortgage form, following her executing a bill of sale to the plaintiffs as personal property.

9. That at the time of the sale in 1975, the said Elizabeth Neuman treated the items of property as personal property and separated the same from the real estate when both items were sold to the debtors and plaintiffs herein.

10. That the defendants are trying to change the intent of their predecessor in title by claiming the items as attached fixtures to the real estate.

11. That the boiler is a high pressure steam piece of equipment not ordinarily used as a furnace and that the heating of the building was incidental to the operation of said boiler and equipment.

12. That it appears the controlling law in Wisconsin is well summarized in the case of Premonstratensian Fathers v. Badger Mutual Ins. Co. (1970) 46 Wis. 2d 362, 175 NW2 237, 239.

13. That the law of trade fixtures between lessor and lessee or landlord and tenant are not applicable in this case.

14. That as stated in the Fathers case, the matter of physical annexation of the articles to the freehold is relatively unimportant. That as to the question of "adaptation", it was well determined at the time of the sale on September 11, 1975.

15. That the remaining important item, "intent", as described in the opinion of the court commencing on page 371, is ruled not by what the defendants believe the intent to be or wanted it to be, but what the facts were as to the property they inherited and how it was determined at the time of the sale by the said Elizabeth Neuman to said plaintiffs.

16. That applying the doctrine of the Fathers case to the instant case, it is my opinion that all of the items described are personal property as evidenced by the bill of sale, itemized financing statements and agreements and the acts of the parties.

CONCLUSIONS OF LAW

That the court enter an order determining that the items of personal property being:

Cyclothum boiler, serial no. 20564
2 HP boiler water feed pump
2 Murray steam heaters
300 Gallon dairy cool cream tank
and compressor
Copland 2 HP compressor and Bohm condenser
Brown, wood grain display cooler

and the other items in the bill of sale are personal property and not fixtures attached to the real estate, and that the same may be removed by the trustee upon proper protection of said building.

O R D E R

NOW, THEREFORE, IT IS ORDERED:

That the items of personal property involved in this action, to-wit:

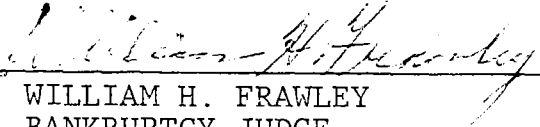
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2 HP boiler water feed pump
2 Murray steam heaters
300 Gallon dairy cool cream tank
and compressor
Copland 2 HP compressor and Bohm condenser
Brown, wood grain display cooler

be and the same are hereby determined to be personal property belonging to said trustee and not fixtures of the real estate

and that the trustee may remove the same upon proper protection of said building, and without costs to any of the parties.

Dated: August 10, 1982.

BY THE COURT:



WILLIAM H. FRAWLEY
BANKRUPTCY JUDGE