

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re:

Case Number:

NORMAN MARK GROSLAND, a/k/a
NORMAN M. GROSLAND, d/b/a
GROSLAND TRUCKING,

WF11-82-00302

Debtor.

NORMAN M. GROSLAND, d/b/a
GROSLAND TRUCKING,

Plaintiff,

Adversary Number:

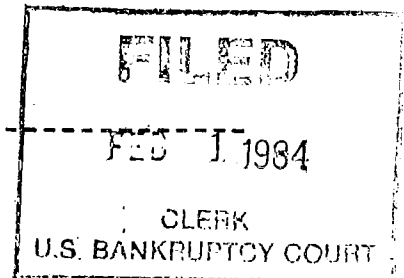
vs.

82-0192

GARDNER TRUCKING, INC.,

Defendant.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER DISMISSING COMPLAINT



The former debtor-in-possession, Norman Mark Grosland, by his attorney, Rhea A. Myers of Terwilliger, Wakeen, Piehler, Conway & Klingberg, S.C., having filed a Complaint against Gardner Trucking, Inc.; and the matter having come on for trial; and the plaintiff having appeared in person and by attorney; and the defendant appearing pro se by its president, Robert Gardner; and the Court having heard the evidence and considered all the

filings and proceedings herein, FINDS:

1. That the former debtor-in-possession, Norman Mark Grosland (Grosland), filed for relief under Chapter 11 of the Bankruptcy Code on March 2, 1982 (the case was later converted to Chapter 7).

2. That this adversary matter is in regard to a 1979 Strik semi-trailer owned by Grosland and valued at approximately \$8,000.

3. That, in September of 1981, third party Sparhawk Trucking (Sparhawk) was in possession of said trailer and used same to transport a load of soybean meal to the place of business of the defendant, Gardner Trucking, Inc. (Gardner).

4. That the trailer remained in Gardner's possession until December, 1981, or January, 1982, when Sparhawk--under authorization of Grosland--recovered it to haul an unidentified load.

5. That Sparhawk had a semi-tractor breakdown and called upon Gardner to complete the haul.

6. That Gardner completed the haul and returned the trailer to the Gardner place of business.

7. That, on or before February 15, 1982, Grosland demanded return of the trailer.

8. That Gardner refused to return the trailer until Grosland made payment on an unrelated debt.

9. That, as of on or about March 1, 1982, the trailer was parked at the Gardner place of business and was partially covered by drifting snow.

10. That the only driveway upon which the trailer could have been removed passed within four yards of the home of Gardner's president, Robert Gardner.

11. That, on or about March 11, 1982, upon learning of the Grosland bankruptcy proceedings, Gardner agreed to release the trailer.

12. That, later that same day, Gardner discovered that the trailer had been removed and informed Grosland.

13. That Grosland reported the theft of the trailer to local law enforcement authorities and an investigation was made. The trailer has never been located.

14. That it is the custom of the over-the-road trucking trade for the owner of a semi-trailer to arrange for the return of equipment.

15. That Grosland argues that Gardner's possession of the Grosland trailer constituted a bailment and that Gardner, as bailee,

is liable to Grosland for failing to return the trailer.

16. That a bailment results when a thing is (1) delivered (2) for a purpose (3) with an agreement to redeliver (or, in this situation, to permit recovery). See Moynihan Associates, Inc. v. Hanisch, 56 Wis.2d 185, 190-191, 201 NW2d 534 (1972).

17. That each transaction set out in Findings 3-6 represents actual delivery of the Grosland trailer, 8 Am.Jur.2d Bailments sec. 68 (1980) ("change of possession from one person to another"), for a purpose, with an agreement to "redeliver" to Grosland, e.g. id. at sec. 63 ("A contract of bailment may be implied from the circumstances of the transaction. . .").

18. That Grosland can look directly to Gardner as bailee. See The New Jersey Steam Nav. Co. v. The Merchants Bank, 47 U.S. 344, 381, 12 L.Ed. 465 (1848).

19. That Gardner's status as a bailee was not affected by any unrelated claim he may have had against Grosland. O'Brien v. Isaacs, 17 Wis.2d 261, 265-266, 116 NW2d 246 (1962).

20. That a bailee is held to a standard of ordinary care. Moore v. Relish, 53 Wis.2d 634, 639-640, 193 NW2d 691 (1971).

21. That storage on the Gardner property at a place where the trailer could only be removed by passing within four yards

of Robert Gardner's home was an exercise of ordinary care.

22. That loss by theft, free from the bailee's fault, will exonerate the bailee from liability, 8 Am.Jur.2d Bailments sec. 330 (1980), i.e. the bailor has the insurable interest.

CONCLUSION OF LAW

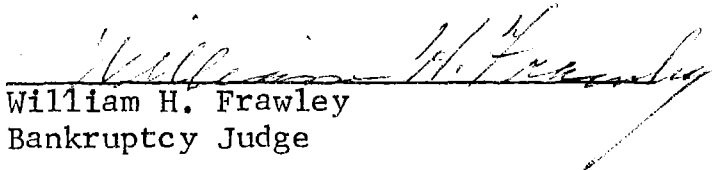
That Gardner was a bailee exercising ordinary care and the theft of the trailer exonerates it from liability.

ORDER

IT IS ORDERED THAT plaintiff's Complaint be, and the same hereby is, dismissed on its merits without costs.

Dated: February 1, 1984.

BY THE COURT:


William H. Frawley
Bankruptcy Judge