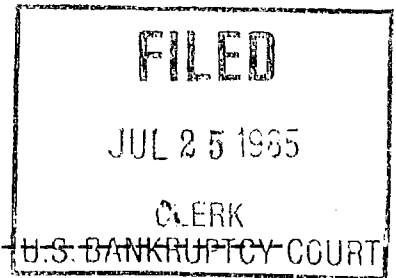


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

MICHAEL A. LUCHTERHAND
PEGGY E. LUCHTERHAND,

WF7-84-01330

Debtors.

OPINION AND ORDER DENYING RELIEF FROM STAY

Citizens National Bank and Trust of Marshfield, Wisconsin (Citizens Bank) has filed a motion seeking relief from the automatic stay imposed in this bankruptcy proceeding pursuant to 11 U.S.C. § 362. Citizens Bank has requested an order lifting the stay as to certain equipment, an account receivable from St. Joseph's Hospital of Marshfield and a "goodwill" payment arising from the sale of equipment and routes to Valley Sanitation of Marshfield, Inc. Citizens Bank contends that it possesses a security interest in the above-listed items.

The bank's motion has been objected to by the Trustee in this matter, Peter F. Herrell, and by creditor Marshfield Oil Company, Inc. A preliminary hearing was held on June 17, 1985. Debtors were represented by Attorney D. Michael Hoerl, the trustee appeared personally, Citizens Bank was represented by Attorney John H. Stauber and Marshfield Oil appeared by Attorney Ann Stevning-Roe. At this hearing Marshfield Oil withdrew its objection concerning the "goodwill" payment. Additionally, since

no objection had been lodged as to the lift request for the various pieces of equipment the court granted such request. The remaining matter of the St. Joseph's account receivable has been briefed by the trustee and Citizens Bank.

Prior to February, 1985, debtors had operated a garbage disposal business. As part of this business they had contracted with St. Joseph's Hospital to remove waste from the hospital. The account receivable that is sought by Citizens Bank is in the amount of \$4526 for February, 1985 waste removal services. Trustee's objection is in part based on the assertion that the bank has no security interest in this account since it is property acquired after the commencement of the bankruptcy case.

11 U.S.C. § 552(a) provides that liens created by pre-petition security agreements do not extend to property obtained by the estate after the filing of a bankruptcy petition. Sub-section 552(b) creates an exception to the general rule of sec. 552 by allowing security interests in proceeds of secured property acquired before the bankruptcy filing. Citizens Bank essentially argues that it falls within this exception. It maintains that the money received on the St. Joseph's account receivable is not after-acquired property, but simply a payment pursuant to a contract which had been in effect since before commencement of the bankruptcy proceeding.

A careful examination of sec. 552 and case law interpreting it leads to the conclusion that Citizens Bank's argument cannot be accepted. Under sec. 552(b) proceeds of collateral may be

held to be secured by a pre-petition security interest only if the collateral was acquired by the debtor prior to the commencement of the case. In re Gross-Feibel Co., Inc., 21 B.R. 648, at 649 (Bankr.S.D.Ohio 1982); 4 Collier on Bankruptcy, ¶ 552.02, at p. 552-5 (15th Ed. 1981). In Gross-Feibel the court pointed out that the first issue to be addressed was what "property" to be concerned with. In that case the trustee had received two refund checks. The court stated that the relevant property was the right to receive those checks. Id. For the bank claiming a security interest to succeed, the court concluded, it must appear that debtor had a right to the refunds prior to the filing of the petition. Id. at 650.

The present case is analogous to Gross-Feible, supra. The essential issue is when was the \$4526 account due. The court must conclude that St. Joseph's had an obligation to pay \$4526 only when the February, 1985 waste disposal services were rendered. Prior to the time this bankruptcy case was initiated there was a contract between debtors and St. Josephs. However, this contract entitled debtors to nothing until services were performed.

Since St. Joseph' Hospital had no obligation to pay \$4526 for February, 1985 waste disposal services until those services were performed, the \$4526 is after-acquired property within the meaning of 11 U.S.C. § 552. Therefore, Citizens Bank has no valid security interest in that money. The court also concludes that, contrary to the bank's assertion, the equities of this case

do not mandate that the bank be provided with a valid security interest in the \$4526.

CONCLUSION OF LAW

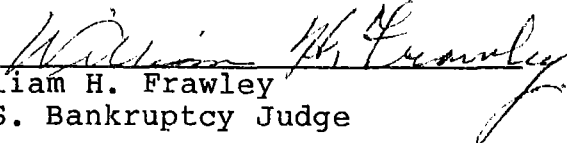
That an order be entered denying the motion.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT Citizens Bank's motion for relief from stay as to the \$4526 St. Joseph's account receivable is denied.

Dated: July 25, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Peter F. Herrell
Attorney D. Michael Hoerl
Attorney John H. Stauber
Attorney Ann Stevning-Roe *ca*