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UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

CLEHN, U.S BANKRUPTCY COURT GASE NO

In re:

Case Number:

EF7-85-01397

LANNY L. PARKER LYNETTE PARKER, a/k/a Grain Storage Construction,

Debtors

ORDER

The court having this day entered its memorandum opinion, findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS HEREBY ORDERED that the debtors are to turn over to the Neillsville Bank the auction proceeds in sufficient amount as to fully satisfy the obligation owed to the Bank including accrued interest.

Dated: September 30, 1986.

BY THE COURT:

hanly William H. Frawley U.S. Bankruptcy Judge

cc: Attorney David P. Olson Attorney Alan D. Moeller

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Debtors.

MEMORANDUM OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The Neillsville Bank (Neillsville), by David P. Olson, has brought a motion requesting the distribution of proceeds. The debtors appear by Alan D. Moeller and object to the motion. A hearing was held in this matter on August 18, 1986. The parties have submitted the issues to the court for determination through briefs.

The debtors filed for relief under Chapter 7 of the Bankruptcy Code on July 17, 1985. The debtors claimed certain property as exempt in their bankruptcy schedules. Neillsville had a security interest in virtually all of the property of the debtors due to a promissory note and a general business security agreement dated July 24, 1984. There was an obligation of \$2,563.66 still owing on said promissory note on the date of filing the bankruptcy petition. The interest rate on this obligation is 15% per annum and accumulates at the rate of approximately \$.97 per diem. An auction was held in the latter part of 1985 at which the property that Neillsville claims a security interest in was sold. The proceeds from this auction amounted to \$7,500.00. These proceeds were placed in the trust account of the debtors' attorney and \$5,000.00 still remains in this account.

Neillsville argues that it has a security interest in the auction proceeds and that the proceeds, up to the amount of the obligation owed including accrued interest, should be distributed to Neillsville. The debtors argue that Neillsville did not object to the property they claimed as exempt and, therefore, the proceeds should be free and clear of liens. The debtors further argue that they could avoid Neillsville's lien under 11 U.S.C.\$ 522(f). The debtors, however, have not filed a motion to avoid the lien.

The general rule with respect to liens in bankruptcy is that "... bankruptcy extinguishes personal liability of the [debtors], but not a valid creditor's lien." <u>United States v. Marlow</u>, 48 B.R. 261, (D. Kan. 1984). The lien of Neillsville has not been avoided and is still valid. Neillsville is entitled to the proceeds of the auction up to the amount of the obligation owed including interest.

The debtors' attorney turned a portion of the proceeds, \$2,500.00, over to Community State Bank (Community), another creditor of the debtors. Community possesses a security interest in assets of the debtor to secure an obligation owed to it by the debtors. Subsequent to transferring the assets to Community, it

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was discovered that Community had allowed its financing statement to lapse prior to the bankruptcy petition. Thus, Community apparently now possesses only an unperfected security interest in the proceeds. The debtors argue that Community should be ordered to turn the \$2,500.00 over to Neillsville in partial satisfaction of the debt owed to Neillsville. The court disagrees. Neillsville is entitled to payment out of the proceeds held by the debtors' attorney.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

Dated: September 30, 1986.

BY THE COURT:

H. Frankey Frawley

U.S. Bankruptcy Judge