

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
CALUMET DISTRIBUTION GROUP, INC., ) CASE NO. 04-60772 JPK  
 ) Chapter 11  
Debtor. )  
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CALUMET DISTRIBUTION GROUP, INC., )  
Plaintiff, )  
v. ) ADVERSARY NO. 05-6021  
GARY, EAST CHICAGO, HAMMOND )  
EMPOWERMENT ZONE, )  
Defendant. )

JUDGMENT

This adversary proceeding was commenced by a complaint filed on February 1, 2005 by Calumet Distribution Group, Inc., the debtor-in-possession in a Chapter 11 case pending before the Court as case number 04-60772. The defendant filed an answer on February 28, 2005. A preliminary pre-trial conference held on April 7, 2005 generated the Court's order entered on April 11, 2005, which scheduled a settlement conference for May 26, 2005 at 11:30 a.m. At this settlement conference, the plaintiff appeared by counsel Lawrence Kalina; the defendant appeared by counsel Deidre Monroe and by its Chief Executive Officer Venus Cobb. At the conference, the facts pertinent to the plaintiff's complaint were stipulated to by the parties.

The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b), 28 U.S.C. § 157, and N.D.Ind.L.R. 200.1(a) of the Rules of the United States District Court for the Northern District of Indiana. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(K).

As established by stipulation of the parties, the defendant Gary, East Chicago, Hammond Empowerment Zone ("Defendant") advanced funds to Calumet Distribution Group, Inc. ("Calumet") prior to its commencement of its Chapter 11 case. The Defendant was granted a security interest in the following property of Calumet:

All debtors (sic) assets now owned or hereafter acquired including,

but not limited to, all accounts receivables, office furnishings and equipment, inventory, automobiles, etc. and all proceeds thereof.

A financing statement was filed on April 3, 2003 in the Lake County, Indiana Recorder's Office with respect to the security interests granted by Calumet to the Defendant. No financing statement was ever filed in the Office of the Indiana Secretary of State.

I.C. 26-1-9.1-308(a) provides, in part pertinent to this matter, that "a security interest is perfected if it has attached and all of the applicable requirements for perfection in IC 26-1-9.1-310 through IC 26-1-9.1-316 have been satisfied". I.C. 26-1-9.1-310(a) provides that with the exception of certain forms of collateral not at issue in this case, "a financing statement must be filed to perfect all security interests and agricultural liens". I.C. 26-1-9.1-501(a)(2) requires that in order to be effective to perfect a security interest in the forms of collateral at issue in this case, a financing statement must be filed in "the office of the secretary of state".

11 U.S.C. § 544(a)(2) clothes Calumet with the hypothetical status of "a creditor that extends credit to the debtor at the time of commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists". As a result of this status, Calumet is a "lien creditor" as defined by I.C. 26-1-9.1-102(52)(A) ["a creditor that has acquired a lien on the property involved by attachment, levy or the like"] and (C) ["a trustee in bankruptcy from the date of the filing of the petition"]. I.C. 26-1-9.1-317(a) states in pertinent part the following:

26-1-9.1-317 Interests that take priority over or take free of unperfected security interest or agricultural lien

Sec. 317. (a) A security interest or agricultural lien is subordinate to the rights of:

- (1) a person entitled to priority under IC 26-1-9.1-322; and
- (2) except as provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:
  - (A) the security interest or agricultural lien is perfected; or
  - (B) one (1) of the conditions specified in IC 26-1-9.1-203(b)(3) is met;and a financing statement covering the collateral is filed.

The Defendant is not within the scope of an entity entitled to priority under I.C. 26-1-9.1-322 in relation to the status of Calumet. The Defendant also cannot satisfy one of the conditions specified in I.C. 26-1-9.1-203(b)(3), and thus, that provision is of no benefit to the Defendant. This leaves I.C. 26-1-9.1-317(a)(2) as operative, and the security interest of the Defendant is subordinate to Calumet due to the latter's status as a "lien creditor". Thus, pursuant to 11 U.S.C. § 544(a)(2), Calumet may avoid the unperfected security interest of the Defendant.

With respect to the forms of collateral in which the arrangement between Calumet and the Defendant provided the Defendant with a security interest, all except "automobiles" are subject to the perfection requirements set out above. The lien with respect to a motor vehicle subject to registration in the State of Indiana can only be perfected by the endorsement of the creditor's lien on the certificate of title and recording of that endorsed title with the Indiana Bureau of Motor Vehicles.

Based upon the foregoing, the Court finds that the security interests of the Defendant in property of Calumet are subject to avoidance pursuant to 11 U.S.C. § 544(a)(2), and that for the purposes of Calumet's Chapter 11 case, the Defendant has no lien in any property of the debtor's bankruptcy estate.

IT IS ORDERED, ADJUDGED AND DECREED that the security interests/lien of Gary, East Chicago, Hammond Empowerment Zone in property of the Chapter 11 bankruptcy estate of Calumet Distribution Group, Inc. [case number 04-60772] are avoided pursuant to 11 U.S.C. § 544(a)(2), and that thus, any indebtedness owed by Calumet to the Defendant is not entitled to the status of an allowed secured claim under 11 U.S.C. § 506(a).

Dated at Hammond, Indiana on June 2, 2005.



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J. Philip Klingeberger  
United States Bankruptcy Court

Distribution:  
Attorneys of Record