

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

IN RE:) CHAPTER 11
) CASE NOS. 01-51665; 01-51666;
LJL TRUCK CENTER, INC.,) 01-51667; 01-51668-JDW
LESKOSKY LAND CO., L.L.C.,)
MACK SALES OF ATLANTA, INC., and)
TALLAHASSEE MACK SALES, INC.,)
)
DEBTORS.)
)
NAVISTAR FINANCIAL CORP.,) ADVERSARY PROCEEDING
) NO. 02-5123
PLAINTIFF,)
)
VS.)
)
TALLAHASSEE MACK SALES, INC.,)
INGRAM EQUIPMENT, CO., and LJL)
TRUCK SALES, INC.,)
)
DEFENDANTS.)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtor: Thomas M. Browder, III
Ward Stone, Jr.
577 Mulberry Street, Suite 800
Macon, Georgia 31201

For Ingram T. Baron Gibson
Equipment Co.: P.O. Box 1606

Macon, Georgia 31202-1606

MEMORANDUM OPINION

This matter comes before the Court on the cross-claim of Ingram Equipment Company for the recovery of property. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(O). After considering the pleadings, the evidence, and the applicable authorities, the Court rules in favor of Ingram Equipment and enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

On July 29, 2002, Navistar Financial Corporation filed a complaint for turnover against Tallahassee Mack Sales, Inc., LJJ Truck Center, Inc. (collectively, “Debtor”), Leskosky Land Company, L.L.C., and Ingram Equipment Company. Ingram asserted a cross-claim against Debtor to recover certain funds held in escrow by Debtor’s counsel. Both the original complaint and the cross-claim arose in connection with the prepetition sale of a truck to the city of Madison, Florida (the “City”). Debtor provided the truck chassis and Ingram provided certain equipment installed on the chassis. The City paid postpetition the full amount due for both the chassis and truck. Navistar had financed the chassis for Debtor and sought payment from the proceeds of the sale via its complaint for turnover. The parties settled Navistar’s claim. The only remaining issue in this adversary proceeding is the cross-claim by Ingram for the balance of the proceeds.

In 2000, the City solicited bids for a truck equipped with a dump body and a knuckle boom loader, which is a crane and grapple used for picking up large objects, such as tree limbs. The City required a single bid for the entire truck, including chassis and equipment. The parties used a bid process typically used by them and others in the business of selling public works trucks

to municipalities whereby one party—either the chassis dealer or the equipment dealer—submits a bid package on behalf of both parties. In this case, Debtor learned of the opportunity and contacted Ingram about submitting a bid. Debtor provided Ingram with specifications for the loader and dump body. Ingram in turn provided Debtor with a price for that equipment. Debtor then submitted a bid to the City for the complete unit, which was selected as the successful bid.

The chassis was delivered to a manufacturer in Waycross, Georgia from whom Ingram purchased such equipment. The loader and body were mounted on the chassis, and then the truck was delivered to Ingram's facility in Birmingham, Alabama, for a predelivery inspection of the equipment. The truck then went to Debtor for a predelivery inspection of the chassis. Finally, the truck was delivered to the City.

The parties have presented conflicting evidence as to the amount owed to Ingram for the equipment. An order acknowledgment from Ingram dated November 14, 2000, and signed by Debtor's employee, Todd O'Neal, shows the amount owed as \$32,090. Two invoices from Ingram, both dated March 6, 2001 and both describing the loader and dump body, show different amounts—one shows \$32,090 and the other shows \$28,390. A new truck sales analysis document completed by O'Neal and dated March 16, 2001, uses the \$28,390 figure to compute profit on the transaction. However, a pay proceeds letter dated March 30, 2001, and signed by Debtor's business manager, Tim McGinn, directs the City's financing agent to pay Ingram's financing agent \$32,090 for the equipment, and to pay the remainder due to Debtor's financing agent.

Furthermore, Debtor's president and CEO, Tim Leskosky testified that Debtor had no intention of making a profit from the knuckle boom loader and dump body. Because Debtor represented to

the City in the pay proceeds letter that Ingram was owed \$32,090 and Debtor's president stated that Debtor was not to make a profit on the equipment, the Court finds that amount owed to Ingram for equipment and installation is \$32,090. This is supported by Ingram's initial order acknowledgment and a subsequent invoice from Ingram to Debtor.

On April 18, 2001, Debtor filed for bankruptcy. At that time, the City had not yet paid any money due on the truck. The City paid in full postpetition, and the funds were placed in escrow pending a determination of how they should be distributed. Only the \$32,090 attributable to the dump body and the knuckle boom loader is at issue in this case.

Debtor argues that Ingram is merely an unsecured creditor and is not entitled to the money. Ingram argues that an implied trust was created and that Debtor has no beneficial interest in the money so that the money is not property of the estate. For the following reasons, the Court holds that the money is not property of the estate and must be paid to Ingram.

Conclusions of Law

Property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C.A. § 541(a)(1) (West 1993). While this is a broad definition, the section is not without limitations. For example, property that the debtor holds in trust for another is not property of the estate. 11 U.S.C. § 541(d)¹; Begier v. Internal Revenue Service,

¹ Section 541(d) provides in relevant part as follows:

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the

496 U.S. 53, 59, 110 S. Ct. 2258, 2263 (1990).

Ingram argues that Debtor holds the money at issue in an implied trust; thus, it is not property of the estate. However, this argument is not applicable under the present facts. At the commencement of the case, Debtor did not hold any of the money at issue. It was still in the hands of the City. Thus, at the commencement of the case, there was no res on which an implied trust could be imposed. See O.C.G.A. § 53-12-93 (1997); Begier, 496 U.S. at 62, 110 S. Ct. at 2265; Poss v. Morris (In re Morris), 260 F.3d 654, 666 (6th Cir. 2001) (Section 541(d) only excludes property impressed with a “constructive trust prior to its entry in bankruptcy.”).

The Court is left with the question of whether Debtor had any legal or equitable interest in the \$32,090 attributable to the sale of Ingram’s equipment. The case of Smith v. Friskney (In re Friskney), 282 B.R. 250 (Bankr. M.D. Fla. 2002), is helpful in this analysis. In Friskney, the debtor owned a small silk flower arranging business, known as JF. Her husband, Friskney, had provided a loan, equipment, and services to a third party, known as CDP. Friskney directed CDP to make payments to JF for the debt owed him. The debtor and Friskney divorced prior to full payment of the amount due to Friskney. The debtor filed a Chapter 7 petition, and the trustee sought turnover of the amount still owing from CDP as part of the bankruptcy estate. Id. at 251-52. The court found that the unpaid money was not part of the bankruptcy estate. Id. at 253.

The court made its decision based on the intent of the parties as evidenced by the following facts:

(1) certain agreements entered into by the parties specified that the money was being paid to

debtor does not hold.
11 U.S.C.A. § 541(d) (West 1993).

satisfy a debt owed to Friskney; (2) JF had never provided anything to CDP; (3) the payments were made to JF in care of Friskney; and (4) JF could produce no records showing the payments as an asset of the business. Id. From this evidence, the court concluded that “the receivable is Friskney’s asset and was directed to be paid to JF *for collection purposes only.*” Id. (emphasis added). As a result, it was not property of the debtor’s bankruptcy estate. Id.

Although the facts in this case are not identical to those in Friskney, they are similar and lead to the same conclusion. Tim Leskosky testified that Debtor would profit only from the sale of the chassis and not the sale of the knuckle boom loader and dump body. Each party did a separate predelivery inspection of the portion of the truck it was providing to the City. Debtor’s business manager wrote a letter to the City instructing it to pay \$32,090 directly to Ingram. There is no evidence that Debtor purchased the equipment from Ingram and resold it to Madison or that Debtor ever had any interest in the equipment. As in Friskney, these facts lead the Court to conclude that the parties intended Debtor to receive the money owed Ingram “for collection purposes only” as a convenience to all the parties to the transaction. Thus, the evidence shows Debtor had no legal or equitable interest in the funds attributable to the knuckle boom loader and the dump body such that they would be property of the estate; therefore, the Court will enter judgment for Ingram.

An Order in accordance with this Opinion will be entered on this date.

Dated this 29th day of April, 2003.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

Thomas M. Browder, III
Ward Stone, Jr.
577 Mulberry Street, Suite 800
Macon, Georgia 31201

T. Baron Gibson
P.O. Box 1606
Macon, Georgia 31202-1606

Mark Roadarmel
433 Cherry Street, Suite 510
Macon, Georgia 31201

This 29th day of April, 2003.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

IN RE:) CHAPTER 11
)
) CASE NOS. 01-51665; 01-51666;
LJL TRUCK CENTER, INC.,) 01-51667; 01-51668-JDW
LESKOSKY LAND CO., L.L.C.,)
MACK SALES OF ATLANTA, INC., and)
TALLAHASSEE MACK SALES, INC.,)
)
DEBTORS.)
)
NAVISTAR FINANCIAL CORP.,) ADVERSARY PROCEEDING
) NO. 02-5123
PLAINTIFF,)
)
VS.)
)
TALLAHASSEE MACK SALES, INC.,)
INGRAM EQUIPMENT, CO., and LJL)
TRUCK SALES, INC.,)
)
DEFENDANTS.)

ORDER

In accordance with the Memorandum Opinion entered on this date, the Court hereby finds that funds attributable to the sale of a knuckle boom loader and truck body to the city of Madison, Florida, are not property of the bankruptcy estate and, further

ORDERS Debtor to turn those funds over to Ingram Equipment Company instanter.

So ORDERED, this 29th day of April, 2003.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

Thomas M. Browder, III
Ward Stone, Jr.
577 Mulberry Street, Suite 800
Macon, Georgia 31201

T. Baron Gibson
P.O. Box 1606
Macon, Georgia 31202-1606

Mark Roadarmel
433 Cherry Street, Suite 510
Macon, Georgia 31201

This 29th day of April, 2003.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court