

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 7
BRIDGEPORT WHOLESALE CO.)
INC.,) No. BK 85-30301
)
Debtor.)

MEMORANDUM AND ORDER

This matter is before the Court on B&H Good, Inc.'s ("B&H") objection to payment of claims. The parties have stipulated to the following facts:

On April 24, 1985, an involuntary petition under Chapter 7 was filed against Bridgeport Wholesale Company, Inc. ("Bridgeport"). The case was subsequently converted to a Chapter 11 proceeding on September 26, 1985. Prior to the filing of the involuntary petition, B&H possessed a perfected security interest in all of the equipment of debtor. The debtor, without the knowledge or consent of B&H, conducted a sale of certain equipment and as a result of this sale, obtained proceeds in the amount of \$9,800.00. The debtor then deposited this sum into an account that was specifically established to receive the proceeds of the sale. No other deposits and no withdrawals were made from this account until February 1986. At that time, the debtor, while operating as a debtor-in-possession, withdrew the sum of \$10,198.05 (the account had grown through the accumulation of interest), and deposited that sum into its corporate checking account at the Wabash Valley Bank of Vincennes, Indiana. Before making the deposit to its account at the Wabash Valley Bank, the debtor had approximately \$268.90 in its

account.

The debtor, still operating as a debtor-in-possession, continued to make deposits to its account at the Wabash Valley Bank, and continued to write checks against the account. By March 10, 1986, the balance of debtor's account was \$82.33.

On May 20, 1986, an order was entered converting the instant case from Chapter 11 to Chapter 7, and Donald Hoagland was subsequently appointed Trustee of the Estate of Bridgeport. On approximately June 3, 1986, Mr. Hoagland withdrew the remaining funds on deposit in debtor's account at the Wabash Valley Bank, thereby obtaining the sum of \$23,000.00.

B&H contends that the debtor violated section 363 of the Bankruptcy Code by 1) co-mingling the cash collateral of B&H with other funds of the debtor, and 2) using the co-mingled funds without B&H's consent. B&H requests this Court to enter an order compensating it for the loss of its cash collateral. Specifically, B&H seeks the establishment of a priority administrative claim, under section 507(b) of the Bankruptcy Code, in the amount of \$10,198.05. Alternatively, B&H requests the Court to grant it a replacement lien in the funds now in possession of the Trustee to the extent of \$10,198.05. B&H contends that the Court may grant the requested relief pursuant to its equitable powers under 11 U.S.C. §105(a).

The Trustee, in response, argues that under Illinois law, the "lowest intermediate balance rule" applies in tracing the proceeds of secured property, and that B&H is accordingly entitled to \$82.33, the lowest intermediate balance in debtor's account. In Funk & Sons, Inc.

v. Sullivan Equipment, Inc., 431 N.E. 2d 370 (Ill. 1982), cited by the Trustee, the Illinois Supreme Court recognized the validity of the "lowest intermediate balance rule," and explained its application as follows:

The rule...provides a presumption that proceeds remain in the account as long as the account balance is equal to or greater than the amount of the proceeds deposited...Under the rule, however, if the balance of the account dips below the amount of deposited proceeds, [the secured party's] interest in the identifiable proceeds abates accordingly. This lower balance is not increased, if later, other funds of the debtor are deposited in the account...

The Court finds that the decision in Funk applies to the facts of this case, and that under the lowest intermediate balance rule, B&H is entitled to only \$82.33, the lowest intermediate balance in debtor's account.

The Trustee has requested that attorney's fees and costs for defending the instant objection be assessed against B&H. The Trustee contends that because B&H did not advance its claim until the hearing on the final report, it would be inequitable to the bankruptcy estate to assess it with the additional fees, which total \$1,220.00. The Court disagrees and therefore denies the Trustee's request.

Accordingly, B&H Good, Inc.'s objection to payment of claims is disallowed. B&H is granted a secured claim to the extent of \$82.33, and an unsecured claim to the extent of \$9,717.67. The Trustee's request for attorney's fees is denied.

/s/ Kenneth J. Meyers
U.S. Bankruptcy Judge

ENTERED: August 11, 1987