

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

IN RE:) In Proceedings
) Under Chapter 11
LABIB BARHOUMI HARDWOODS))
INC.,) No. BK 86-50527
Debtor.)

LABIB BARHOUMI HARDWOODS))
INC.,)
Plaintiff))

v.) ADVERSARY NO.
) 87-0124
LANHAM LUMBER & DRY)
KILN, INC.,)
Defendant))

O R D E R

This matter is before the Court on complaint for recovery of property filed by debtor Labib Barhoumi Hardwoods, Inc. ("plaintiff") against Lanham Lumber and Dry Kiln, Inc. ("defendant"). Also before the Court is defendant's counterclaim for setoff. At the hearing, the parties agreed that the matter could be submitted on the briefs.

Plaintiff operates a wholesale lumber business in Glen Carbon, Illinois. Defendant provides kiln drying services and storage services in Louisville, Kentucky. Prior to the filing of the bankruptcy petition, defendant received a quantity of plaintiff's hardwood lumber for the performance of kiln drying services and storage. Defendant is still in possession of the lumber, which is described as follows:

24,999 board feet of 6/4 Red Oak
7,788 board feet of 4/4/ Hard Maple
7,134 board feet of 5/4 Hard Maple

On June 19, 1987, plaintiff filed the present adversary complaint to recover the lumber. In its response, defendant asserted a warehouseman's lien on the lumber for kiln drying services, storage charges and interest allegedly owed by plaintiff. Defendant also filed a counterclaim to setoff what it alleges are the mutual debts owing between the parties.

The question for this Court to decide is whether defendant has a valid warehouseman's lien under Kentucky law. According to Kentucky Revised Statutes ("KRS") 355.7-209(1):

A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt ...in his possession for charges for storage or transportation, ...insurance, labor, or charges present or future in relation to the goods, and for the preservation of the goods or reasonably incurred in their sale pursuant to law.

There is no dispute that defendant qualifies as a warehouseman under KRS 355.7-102(h). What is in dispute is whether the documents submitted by defendant, taken together, constitute a valid warehouse receipt. The documents are "acknowledgements" issued by defendant after it received plaintiff's lumber.

KRS 355.1-201(45) defines "warehouse receipt" as "a receipt issued by a person engaged in the business of storing goods for hire." The term "warehouse receipt" is further defined in KRS 355.1-201(15) as a "document of title" which entitles the person who possesses it to hold and dispose of the warehouse receipt and the goods covered by it.

Although under KRS 355.7-202(1), a warehouse receipt need not be in any particular form, KRS 355.7-202(2) contains a list of elements

which a document must include to make it a valid warehouse receipt.

These essential elements are:

- (a) the location of the warehouse where the goods are stored;
- (b) the date of issue of the receipt;
- (c) the consecutive number of the receipt;
- (d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;
- (e) the rate of storage and handling charges;
- (f) a description of the goods or of the package containing them;
- (g) the signature of the warehouseman, which may be made by his authorized agent;
- (h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with other, the fact of such ownership; and
- (i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest.

Documents which do not include these elements cannot qualify as warehouse receipts. See In re Charter Co., 56 B.R. 91, 94 (Bankr. M.D. Fla. 1985).

In the present case, defendant claims that the "acknowledgements" it sent to plaintiff after it received plaintiff's lumber constituted a valid warehouse receipt. Plaintiff argues that the "acknowledgements" did not meet all the requirements of KRS 355.7-202(2) because, inter alia, they did not list the rate of storage and handling charges.

Upon reviewing the "acknowledgements," which were submitted as exhibits to defendant's answer and counterclaim, the Court finds that they do not constitute a valid warehouse receipt because they fail to list the rate of storage and handling charges as required by Kentucky law. KRS 355.7-202(2)(e). The only places where the storage rates are listed are on invoices issued by defendant in May and July of 1987, which was several months after plaintiff filed for bankruptcy and several more months after the lumber was originally delivered to defendant.

Since the documents issued by defendant did not constitute a valid warehouse receipt, defendant does not have a warehouseman's lien on plaintiff's lumber. KRS 355.7-209. See also, In re Charter Co., supra at 95; Richwagen v. Lilienthal, 386 So. 2d 247 (Fla. App. 1980). Therefore, defendant will be ordered to return plaintiff's lumber. However, since plaintiff failed to submit any evidence to support its allegation that it was damaged by defendant's actions, plaintiff's request for damages will be denied. Finally, in light of this Court's determination that defendant does not have a warehouseman's lien on plaintiff's lumber, defendant's counterclaim for setoff will also be denied.

IT IS ORDERED that plaintiff's complaint for recovery of property is GRANTED. Defendant shall immediately place plaintiff in possession of the hardwood lumber described herein.

IT IS FURTHER ORDERED that plaintiff's request for damages is DENIED.

IT IS FURTHER ORDERED that defendant's counterclaim for

setoff is DENIED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: November 12, 1987