

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

IN RE:)
)
MEISSNER BROTHERS, INC.,)
)
Debtor(s).) In Proceedings
Under Chapter 11
No. BK 88-30333

O R D E R

This matter is before the Court on a Motion for Summary Judgment filed by the debtor-in-possession, Meissner Brothers, Inc. ("debtor"). Debtor asks for an order denying the State Bank of Breese ("Bank") relief from the automatic stay. Also before the Court is the Bank's motion to strike an affidavit filed by debtor in support of its motion for summary judgment. The issue to be decided is whether the Bank properly perfected its security interest in debtor's inventory.

Summary judgment is appropriate only where the record shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56. The party moving for summary judgment has the burden of establishing the lack of a genuine issue of material fact. Korf v. Ball State University, 726 F.2d 1222, 1226 (7th Cir. 1984). The Court must view the evidence, and the reasonable inferences to be drawn therefrom, in the light most favorable to the party opposing summary judgment. Id.

Debtor filed its petition under Chapter 11 of the Bankruptcy Code on April 25, 1988. On May 20, 1988 the Bank filed its Motion for Relief from Stay in which it alleged that it holds a valid perfected security interest in all of debtor's inventory.

Debtor's Motion for Summary Judgment, filed June 7, 1988, alleges

that the bank did not properly perfect its security interest in the inventory. Specifically, debtor claims that the Bank filed a UCC financing statement with the Illinois Secretary of State which listed the debtor as "Meissner Brothers" rather than "Meissner Brothers, Inc." A debtor requested search by the Illinois Secretary of State for finance statements filed under debtor's name, "Meissner Brothers, Inc.," failed to reveal the Bank's financing statement filed under the name "Meissner Brothers." As a result, debtor argues, the Bank's security interest is unperfected, which renders the Bank an unsecured creditor not entitled to relief from the stay.

In response, the Bank alleges that debtor's attorney made two financing statement search requests to the Illinois Secretary of State's Office. One search was for "Meissner Brothers, Inc.," and the other was for "Meissner Brothers." The "Meissner Brothers" search was the only one which found the financing statement. The Bank suggests that this was because the searches were requested simultaneously.

The Bank made its own financing statement search request, but this was through the Illinois Code Company, a commercial lien search service, rather than directly to the Illinois Secretary of State's Office. The Illinois Code Company search under "Meissner Brothers, Inc." found the Bank's financing statement. The Bank argues that its financing statement filed under "Meissner Brothers" is sufficiently similar to debtor's name of "Meissner Brothers, Inc." so that a reasonably prudent subsequent creditor would be likely to discover it, and that, as a result, its security interest was properly perfected.

"The purpose of the financing statement is to put third parties

on notice that a security interest may exist in certain property and that they should contact the parties to obtain details." In re Meyer-Midway, Inc., 65 B.R. 437, 442 (Bankr. N.D. Ill. 1986) quoting, In re Little Brick Shirthouse, Inc., 347 F.Supp. 827, 829 (N.D. Ill. 1972). The question of whether a financing statement contains sufficient information to cause a creditor's security interest in collateral to be perfected is determined by the facts in each case. In re Meyer-Midway, Inc., supra.

The question of whether the omission of "Inc." renders a financing statement ineffective has previously been addressed by this Court in In re Terry Pierson, Inc., 84 B.R. 533 (Bankr. S.D. Ill. 1988). In Pierson, the creditor bank had filed financing statements under the individual names of the corporate officers, Terry Pierson and Wayland Sims, rather than under the debtor's corporate name of Terry Pierson, Inc. A search by the Secretary of State's office for the bank's financing statement under the corporate name failed to discover it. An affidavit from an employee of the Secretary of State's office stated that UCC financing statements filed in the name of an individual would not be revealed in a UCC search of a corporation even if the only difference between the two is the addition of an "Inc." after the individual's name. Id. at 534. For these reasons, this Court held that the financing statement was ineffective to perfect the bank's interest in the debtor's equipment. Id. at 537.

Debtor cites Pierson in support of its claim that the Bank's security interest is unperfected. Debtor argues that since the search in debtor's name failed to turn up the Bank's financing statement, the

failure to include "Inc." after debtor's name renders the statement ineffective to perfect the Bank's security interest. In support of its arguments, debtor included a copy of the same affidavit from the Illinois Secretary of State's office cited by this Court in the Pierson case.

The Bank attempts to distinguish Pierson on two grounds. First, it notes that in Pierson the financing statement was filed under the name of an individual while in the present case the financing statement was in the name of "Meissner Brothers," which is a business entity. Secondly, the Bank argues that in Pierson a search under the debtor's name failed to reveal the financing statement in question while, in the present case, the search under "Meissner Brothers" was conducted at the same time as the search under "Meissner Brothers, Inc.," which may have adversely affected the result. The Bank also notes that the Illinois Code Company search under "Meissner Brothers, Inc." did reveal its financing statement.

The Court finds that debtor has not met its burden of establishing the lack of a genuine issue of material fact so as to warrant summary judgment. For example, there were conflicting allegations regarding the search for the Bank's financing statement. Additionally, the affidavit from the Illinois Secretary of State's office, which was cited in the Pierson case, is of questionable relevance in this case since Meissner Brothers is clearly a business entity and not an individual. Debtor has failed to establish that the Secretary of State files all financing statements which omit "Inc." separately from those which include it. Therefore, the issue of whether the Bank's security

interest was properly perfected remains an unresolved question of fact.

Accordingly, the Court will deny the motion for summary judgment. In light of this decision, the Court finds it unnecessary to grant the Bank's Motion to Strike Affidavit.

IT IS ORDERED that the Motion for Summary Judgment filed by debtor Meissner Brothers, Inc. is DENIED.

IT IS FURTHER ORDERED that the Motion to Strike the Affidavit of Harriet A. Bare filed by the State Bank of Breese is DENIED as moot.

/s/Kenneth J. Meyers
United States Bankruptcy Judge

ENTERED: August 3, 1988