

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

IN RE:)
)
WEST ACCESS MARINA, INC.,) In Proceedings
) Under Chapter 11
Debtor(s),)
) No. BK 88-30672
WEST ACCESS MARINA, INC.,)
)
Plaintiff,)
V.) ADVERSARY NO.
) 89-0145
UNITED STATES OF AMERICA)
ARMY CORPS OF ENGINEERS,)
)
Defendant.)

MEMORANDUM AND ORDER

On July 2, 1989 West Access Marina, Inc. ("debtor") filed an adversary complaint against the United States of America, Department of the Army Corps of Engineers ("Corps") requesting that the Corps be ordered to turn over the sum of \$27,517.35. The complaint alleges that the Corps demanded \$35,919.04 in past due rent for the period of November 1982 through July 1988, that this amount was improperly calculated and that debtor actually owed only \$8,401.69 for the period in question. According to the complaint and exhibits attached thereto, debtor paid \$8,401.69 and upon further demand by the Corps, Harold Duffield, the president of West Access, paid the remaining \$27,517.35 "under protest." (Plaintiff's Group Exhibit 1). This amount was paid after debtor had filed its Chapter 11 bankruptcy petition. The remitter on the check sent by Mr. Duffield to the Corps stated, "Harold Duffield for West Access Marina, Inc." In the letter accompanying the check, Mr. Duffield stated that the funds "represent my own

personal funds which I am advancing for the benefit of West Access Marina, Inc. to pay a disputed claim so as to prevent threatened revocation of lease." (Plaintiff's Group Exhibit 1). Debtor now seeks the return of \$27,517.35.

In response to the complaint, the Corps filed a motion to dismiss, alleging that the funds in question are not property of the estate and that this Court therefore has no jurisdiction over the subject matter of the complaint. More specifically, the Corps contends that Mr. Duffield's letter and the check clearly indicate that the funds were taken from Mr. Duffield's personal funds--not from property of debtor--and that these funds are therefore not property of the estate. Debtor contends that the money was loaned by Harold Duffield to debtor--although debtor admits that no loan documents exist--and that the funds thus became an asset of debtor. Debtor further contends that in any event, it is irrelevant whether the funds were loaned or donated by Mr. Duffield "since in either case Debtor became owner of such funds prior to payment thereof to Defendant...." (Plaintiff's Response to Defendant's Motion to Dismiss, ¶10).

The Court initially notes that neither party has provided any authority supporting their respective positions, nor has the Court found any cases directly on point. Under section 541 of the Bankruptcy Code, however, property of the estate includes "[a]ny interest in property that the estate acquires after the commencement of the case." 11 U.S.C. §541(a)(7). The courts have consistently held that the scope of section 541(a) is broad and includes all kinds of property. See, e.g., In re Wegner Farms Co., 49 B.R. 440, 443 (Bankr. N.D. Iowa 1985);

Matter of Jones, 43 B.R. 1002, 1005 (Bankr. N.D. Ind. 1984). In the present case, although Mr. Duffield paid the disputed amount from his personal funds, the check clearly specifies that the funds were paid "for West Access."* Indeed, the Corps does not dispute that it applied the money to the obligation allegedly owed by debtor. Presumably, if the Court finds that debtor does not owe the amount at issue, debtor, and not Mr. Duffield, would be entitled to a return of those funds. Under these circumstances, the Court believes that debtor has an "interest" in the property within the meaning of section 541(a)(7), and that the Court accordingly has jurisdiction to hear and determine the underlying dispute set forth in debtor's complaint.**

Accordingly, defendant's motion to dismiss is DENIED.

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

ENTERED: November 16, 1989

*Whether Mr. Duffield donated or loaned the funds to debtor is irrelevant at this stage since the Court finds, in any event, that debtor acquired an "interest" in the property, and that the funds therefore constitute property of the estate.

**Should Mr. Duffield later attempt to claim an administrative expense for lending money to debtor, as the Corps suggests, the Court will determine his entitlement to such priority at that time.