

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

GEORGE P. CLEARMAN,

Case No. 82-1300-C

dba Petroleum Products, Inc.,

Chapter 7

Debtor.

ORDER ON OBJECTION TO TRUSTEE'S MOTION FOR AUTHORITY  
TO DISTRIBUTE PROCEEDS

On October 27, 1987 an objection to trustee's motion for authority to distribute proceeds under Bankruptcy Code section 725 filed on behalf of Brenton National Bank of Des Moines came on for hearing before this court in Des Moines, Iowa. David A. Erickson, the Chapter 7 trustee, appeared on his own behalf. Barry N. Minear appeared on behalf of Brenton National Bank. At the close of the hearing the court gave the parties until November 13, 1987 to submit briefs. The matter was considered fully submitted on that date.

In his motion for order under 11 U.S.C. section 725, the Chapter 7 trustee states that he is in possession of rents received from various properties of the debtor. The trustee seeks to turnover the sum of \$2,862.36 to the Bank of Millard pursuant to the Bank's assignment of rents. The trustee desires to retain the remaining amount of \$29,258.50 for the benefit of unsecured creditors.

The Brenton National Bank filed an objection to the trustee's motion and asserted a security interest in the sum of \$29,258.50. Brenton National Bank attached four promissory notes, two security agreements and three financing statements to its objection and asserts that these documents create a security interest in the rent proceeds collected by the trustee. The security agreements and financing statements describe the following interest:

First security interest, pursuant to the Uniform Commercial Code, on all accounts receivable and the contract rights and proceeds arising therefrom; inventory, furniture, fixtures, leasehold improvements, machinery and equipment now owned and hereafter acquired including that to be purchased with loan proceeds.

Brenton National Bank contends that the described "contract rights" include the rent collected by the trustee.

Resolution of this question is controlled by the Uniform Commercial Code and its interpretation by the Eighth Circuit Court of Appeals. The Uniform Commercial Code, as adopted in Iowa, excludes "the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder" from its coverage. Iowa Code § 554.9104(j)(1987)(emphasis added). Therefore, an Article 9 security interest in proceeds of a real estate lease or rents is expressly precluded. In re Standard Conveyor Co., 773 F. 2d 198, 204 (8th Cir. 1985). The characterization of rents as a "general intangible" or "contract right" does not

alter this conclusion. Id.; In re Patterson, 64 B.R. 189, 191 (Bankr. N.D. Ill. 1986).<sup>1</sup>

WHEREFORE, based on the foregoing analysis, the court hereby finds that Brenton National Bank does not have a security interest in rental proceeds in the possession of the Chapter 7 trustee.

THEREFORE, the objection to trustee's motion for authority to distribute proceeds filed on behalf of Brenton National Bank is overruled.

Signed and filed this 29th day of February, 1988.

LEE M. JACKWIG  
CHIEF U.S. BANKRUPTCY JUDGE

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<sup>1</sup> Brenton National Bank has not asserted rights to rent proceeds by reason of any non-Article 9 security interest or mortgage obligation. See, In re Standard Conveyor Co., 773 F.2d 198, 204 (9th Cir. 1985).