

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
 :
BUILDING MAINTENANCE SERVICE : Case No. 90-322-C H
OF IOWA, : Chapter 7
 :
Debtor. :

BUILDING MAINTENANCE SERVICE, :
INC., now known as CIC PLAN, :
INC., and DALE V. NELSON, :
 :
Plaintiffs, : Adv. No. 90-90071
vs. :
 :
FIRST INTERSTATE BANK OF :
DES MOINES, N.A., now known as :
BOATMEN'S NATIONAL BANK :
OF DES MOINES, :
 :
Defendant and :
Counterclaimant. :

ORDER--MOTIONS TO AMEND FINDINGS, CONCLUSIONS, AND JUDGMENT

This proceeding pends upon Plaintiffs, Building Maintenance Service, Inc., n/k/a CIC Plan, Inc., and Dale V. Nelson's (hereinafter "Nelson Group") Motion to Amend Findings, Make Additional Findings, and to Amend Judgment, and Defendant and Counterclaimant's, First Interstate Bank of Des Moines, N.A., n/k/a Boatmen's National Bank of Des Moines (hereinafter "Bank") Motion to Amend Findings and Conclusions, and Judgment, as Amended.

All parties have timely objected to the opposing motions.

The Court having reconsidered the evidence and arguments of counsel now enters its ruling and order.

PLAINTIFFS' MOTION TO AMEND FINDINGS, CONCLUSIONS, AND JUDGMENT

This motion essentially asks this Court to void the filed Findings, Conclusions, and Judgment and reverse itself by entering a \$2,500,000.00 judgment against Bank.

This Court has carefully reconsidered the evidence. The Court has found that the more credible witnesses and evidence support the findings and conclusions of the Court and the Court maintains this conclusion.

Accordingly, the Plaintiffs' Motion to Amend Findings, Conclusions, and Judgment must be denied.

CAPTION

The Bank prays that the caption should be amended to reflect the present names of the parties. Building Maintenance Service, Inc. is now known as CIC Planning and First Interstate Bank of Des Moines, N.A. is now known as Boatmen's National Bank of Des Moines.

Building Maintenance Service, Inc. has been known by other names on occasion but the true change of name is as reflected above.

Accordingly, said motion should be granted to the extent that the caption should be amended to show that Building Maintenance Service, Inc. is now known as CIC Plan, Inc. and First Interstate Bank of Des Moines, N.A. is now known as

Boatmen's National Bank of Des Moines. The balance of Bank's motion to change the caption should be denied.

ATTORNEYS' FEES AND COLLECTION EXPENSES

The Bank prays that the judgment be amended to award additional damages in the form of attorneys' fees and other collection expenses.

The Bank's promissory notes, guarantees, and security agreements provide for attorneys' fees and other collection expenses. These obligations were secured by the Bank's collateral, which collateral was converted by the Nelson Group.

The Subordination Agreement (Exh. 2) provides that upon Building Maintenance Service of Iowa, Inc.'s default, the Bank was to receive all monies and other assets that the Nelson Group received or were entitled to "up to the limit of \$350,000.00, together with accrued interest, attorneys' fees and related expenses, including expenses of collection."

Prior to June 2, 1993, the Bank had incurred attorneys' fees and other expenses in the amount of \$338,615.86. The Bank continues to incur attorneys' fees and collection expenses.

The attorneys' fees and other collection expenses incurred by the Bank to collect its claims including its claim against the Nelson Group for converting the collateral and enforce the subordination agreement, as well as those fees and

expenses incurred by the Bank for defending the Nelson Group's claims are part of the Bank's damage against the Nelson Group and the Bank is entitled to a judgment for these damages.

Accordingly, the findings and conclusions and judgment should be amended to provide for damages in the amount of \$338,615.86 for attorneys' fees and other collection expenses incurred by the Bank as of June 2, 1993, and post-judgment attorneys' fees and other collection expenses as may be incurred and determined by the Court upon further motion by the Bank and hearing upon notice and order.

EXEMPLARY DAMAGES

The Bank prays that the findings and conclusions be amended to include additional conduct on the part of the Nelson Group as the basis for the award of exemplary damages.

The findings and conclusions should be amended to include the following: The Nelson Group received and assumed at least \$240,000.00 of the Bank's accounts receivable. This was done even though the Nelson Group knew that it was not taking a security interest in these accounts receivable; even though the Nelson Group consented to the court order granting the Bank the right to collect the receivables; even though the bank had demanded the receivables without success; and, even though these accounts receivables were not acquired by the Bank from the Nelson Group but were generated by BMS-Iowa

after the sale from the Nelson Group and were not provided for in the forfeiture provision of the Agreement of Sale.

These receivables were kept by the Nelson Group and this conduct was directed specifically at the Bank.

IT IS ACCORDINGLY ORDERED that Plaintiffs' Motion to Amend Findings, Conclusions, and Judgment is overruled and denied.

FURTHER, Defendant's Motion to Amend Findings and Conclusions and Judgment is sustained.

FURTHER, the the Order of June 7, 1993, is amended to provide that the Bank is entitled to supplemental judgment against the Plaintiffs, joint and several, in the amount of \$338,615.86 for attorneys' fees and other collection expenses as of June 2, 1993.

FURTHER, the Clerk shall enter an amended and supplemental judgment for the Bank in the amount of \$338,615.86 for attorneys' fees and other collection expenses as of June 2, 1993.

FURTHER, this Court reserves jurisdiction for the purpose of determining attorneys' fees and the collection expenses incurred by the Bank after June 2, 1993.

Dated this day of 25th day of February, 1994.

Russell J. Hill
U.S. Bankruptcy Court