

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

KENNETH D. GOOCH,
dba K. G. Antiques,

Case No. 86-2615-C

Debtor.

ORDER ON MOTION TO RECONSIDER, AMEND FINDINGS,
AND ALTER ORDER, OR TO REOPEN HEARING

On June 30, 1987 this court rendered an order denying the debtors' motion to avoid a lien on a Hylander trailer. The court grounded this decision on the debtor's failure to carry its burden under 11 U.S.C. section 522(f). More specifically, the court found that the debtor failed to show that the interest of the Hartford-Carlisle Savings Bank (Bank) in the trailer was a nonpossessory, nonpurchase money security interest. In their motion to reconsider filed on July 10, 1987, the debtor implicitly argues that he should be given the opportunity to present evidence showing that the Bank lost its purchase money status in the trailer. The Bank resisted on July 15, 1987 contending the debtor had ample time to adduce documentary evidence to support his claim.

A hearing on the motion to avoid liens was held telephonically on April 14, 1987. A review of the tape of the telephonic hearing in this matter reveals that debtor's counsel did not request an opportunity to submit any kind of evidence when questioned whether he had documents supporting

his position. The only evidence before the court consisted of the records submitted by the Bank on April 28, 1987.

Telephonic hearings were instituted in this district both as a method of dealing with this court's large docket and as a means of saving time and cost for litigants and their attorneys in contested matters which can be resolved without testimony. The phone hearings give the parties an opportunity to identify issues, advance arguments and resolve some or all factual disputes in order that the court may dispose of issues of law in an efficient manner. In the usual case, stipulated facts and letter briefs are submitted if the court is otherwise unable to dispose of the matter after listening to the oral arguments. If facts are in dispute, the parties may submit documentary evidence, including affidavits, or may request that a hearing be scheduled for testimony. Obviously, to allow a party to wait until an unfavorable ruling has been entered before requesting a courtroom hearing will defeat the court's efforts and policies regarding docket control. Such requests will not be granted in the typical case.

The present case is atypical. Although the debtor's counsel did not avail himself of the opportunity to request time to submit documentary evidence or a hearing to present testimony, his failure to do so may be due in part to the fact that the Bank's documents had not been attached to the resistance (as was otherwise indicated in the body of the resistance filed February 4, 1987) at the time the phone hearing was conducted. Additionally, the court notes that the

April 15, 1987 "minutes", which indicated that the parties would be providing documentation regarding the purchase money and novation issues, were utilized as an internal administrative notice for the clerk's benefit rather than as an order to the parties. The minute sheet format has been revised in the interim to include both instructions to the clerk's office and an order to the parties.

CONCLUSION AND ORDER

WHEREFORE, based upon the foregoing considerations and the specific facts in this case, the debtor's motion to reconsider is granted.

THEREFORE, the clerk shall set an evidentiary hearing on the debtor's motion to avoid the lien on the Hylander trailer.

Dated and signed this 28th day of July, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE