

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE:

ESTATE OF WILLIAM H. DANYUS ) C.A. No. 3755-MG

MASTER'S FINAL REPORT

Date Submitted: September 4, 2008

Final Report: October 14, 2008

Deirdre A. O'Shea, Esquire, of Smith O'Donnell Feinberg & Berl, LLP, Georgetown,  
Delaware, Attorney for Petitioner.

Helga Vest, Pro Se, Creditor.

GLASSCOCK, Master

William Danyus died on January 1, 2004. This matter came before me on a petition for instructions and decree of distribution. This is my report after the hearing.

The proposed decree of distribution is unremarkable, and not objected to, except in one respect. A neighbor of Mr. Danyus, Helga I. Vest, was a creditor of Mr. Danyus. In security for her loan to Mr. Danyus, Ms. Vest took back a promissory note creating a security interest in a house trailer and boat belonging to Mr. Danyus. Based upon the information supplied by the Estate, I find that a security interest in both items attached and was enforceable before Mr. Danyus' death. Ms. Vest made a timely claim against the Estate. The house trailer<sup>1</sup> was sold by the administrator of the Estate on July 17, 2007. According to the attorney for the Estate, Ms. Vest "did not receive notice of the sale from the successor administrator prior to the sale." It is the administrator's position that, because the security interest was never perfected, the proceeds of the sale of the house trailer are the property of the Estate, and subject to the claims of creditors. According to the petition, Ms. Vest's claim is relegated to position "eleven" in the order of preference of claims against the Estate, "[c]ontracts under hand for the payment of money, or delivery of goods, wares or merchandise. . . ." 12 Del.C. § 2105 (11). The administrator now concedes that the debt arising under the promissory note should be considered a contract under seal, payable at position number ten of 12 Del.C. § 2105. Because the Estate has insufficient funds to pay claims against the Estate ranked higher than those in

---

<sup>1</sup> The record does not disclose what has become of the boat to which a security interest attached in favor of Ms. Vest.

category ten, Ms. Vest will not receive anything from the proceeds of the sale of the trailer, assuming the administrator is correct. Ms. Vest, on the other hand, asserts that her security interest in the trailer should be satisfied from the proceeds of its sale.

The Estate concedes that the security interest with respect to the trailer and the boat attached and was enforceable against Mr. Danyus during his lifetime. *See* 6 Del.C. § 9-203. The Estate maintains, and Ms. Vest has not argued otherwise, that the security interest was never perfected by filing or otherwise. *See* 6 Del.C. § 9-309, 310. Because the security interest attached but was not perfected, the security interest is inferior to the rights of lien creditors or third-party buyers for value without knowledge of the security interest. 6 Del.C. § 9-317. The security interest, however, is enforceable between the parties, and attaches to any identifiable proceeds of the collateral. 6 Del.C. § 9-315(a)(2).

I find, therefore, that the lien remained attached and enforceable against the Estate and its representative after the death of Mr. Danyus, that the sale of the house trailer without notice to Ms. Vest, presumably to a third-party purchaser for value, means that the third-party's rights are superior to that of Ms. Vest in the house trailer; and that the security interest attached to the proceeds of the sale of the trailer.

It follows, therefore, that Ms. Vest must be repaid, to the extent it is possible to do so, from the proceeds of the sale of the trailer before they become a part of the Estate available to creditors. To the extent the proceeds are sufficient to satisfy the debt owed Ms. Vest, any surplus becomes the property of the Estate, and subject to distribution. To

the extent that the proceeds of the sale of the trailer are insufficient to satisfy the debt owed Ms. Vest, the remainder of the obligation owed her becomes a debt of the Estate under seal, repayable at the tenth preference order under 12 Del.C. § 2501.

Conclusion

The proposed decree of distribution must be rejected.

*/s/ Sam Glasscock, III*  
Master in Chancery