



Opinion 554

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Opinion Title: 09/30/2011 UNPUBLISHED In re Rushton v. Bank of Utah, 10-2712, Judge Mosier.

Body: Pre-petition, Bank of Utah entered into a letter of credit transaction with the Debtor wherein the Bank issued a letter of credit in the amount of \$362,000 secured by funds in the amount of \$362,000 deposited with the Bank by the Debtor. In addition to being secured by the funds on deposit, the letter of credit was cross collateralized to other assets of the Debtor. Post-petition, and knowing that the Debtor was in bankruptcy, the Bank declined to renew the letter of credit and applied the proceeds from the certificate of deposit to payoff the indebtedness. The Trustee commenced an adversary proceeding to recover the entire \$362,000 plus interest free and clear of any encumbrance in favor of Bank arguing that by avoiding the transfer under § 549, the Trustee could recover the transfer free and clear of the Bank's security interest and that the transfer was void as a violation of the automatic stay and that the Trustee was entitled to turnover of the \$362,000 plus interest under § 542. In doing so, the Trustee did not allege that the post-petition actions of the Bank caused any damage to the Debtor. The Court held that a transfer to a fully secured creditor may not be avoided under § 549 without reviving the secured creditor's lien, that the remedies available to a non-individual debtor are subject to the limitations of the Court's § 105 powers, that § 362(a) does not permit the Court to strip a bank's lien, and that although an act committed in violation of the automatic stay is "void," some acts cannot be undone. The law does not recognize a void act, and that judicial machinery is not available for use to one that acted in violation of the automatic stay.

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Judge: [Chief Judge R. Kimball Mosier](#) [2]

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