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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

COUNTER COPY - DO NOT REMOVE -

In re	)	
	)	
UNITED ROBERTS CORPORATION,	)	Bankruptcy Case No. 82C-02454
a Utah corporation,	)	
	)	
Debtor.	)	
	)	
PANELERA CORPORATION,	)	Bankruptcy Case No. 82C-02458
a Delaware corporation,	)	
	)	
Debtor.	)	
	)	
PANELERA UTAH, INC.,	)	Bankruptcy Case No. 82C-02457
a Utah corporation,	)	
	)	
Debtor.	)	
	)	
PANELERA MANUFACTURING	)	Bankruptcy Case No. 82C-02456
CORPORATION, a Texas	)	
corporation,	)	
	)	
Debtor.	)	MEMORANDUM OPINION REGARDING
	)	POST-PETITION ACCOUNTS
	)	RECEIVABLE

As a result of the trustee's notice of intent to disburse funds collected from the debtors' accounts receivable, the court must determine the extent of Walter E. Heller Western Inc.'s (Heller) security interest in the debtors' post-petition accounts receivable.

Heller asserts a security interest in the debtors' post-petition accounts receivable based upon a court order dated March 14, 1983, and also based upon Heller's pre-petition security interest in debtors' inventory.

The March 14 order resulted from debtors' motion for use of cash collateral. At the hearing on debtors' motion, all parties in interest had an opportunity to be heard, to present evidence, and to examine and cross-examine witnesses. All counsel present at the hearing approved the form of the order presented to the court. The order reads as follows:

NOW THEREFORE, IT IS ORDERED that Panelera Corporation is authorized to use the sum of \$120,000.00 of cash collateral in its possession; and it is further

ORDERED, that Panelera Corporation shall forthwith remit the sum of \$10,000.00 to Walter E. Heller Western Incorporated; and it is further

ORDERED, that Panelera Corporation shall remit to Walter E. Heller Western Incorporated, upon collection, all sums representing pre-petition accounts receivable collateral until its debt is repaid; and it is further

ORDERED, that in pursuance of this order Panelera Corporation shall cooperate fully with Walter E. Heller Western Incorporated.

The language of the order does not grant Heller a security interest in post-petition accounts receivable. However, Heller relies upon the findings of fact and conclusions of law which were the basis of the court's order. Specifically, Heller cites Finding No. 9 which states, "The debtor has pledged \$100,000 in receivables to Walter E. Heller Western Incorporated since the filing of its Chapter 11 petition." Heller also cites Conclusion

No. 5: "Walter E. Heller Western Incorporated is adequately protected within the meaning of 11 U.S.C. § 363(e)."

The court's conclusion that Heller was adequately protected in no way grants a security interest in post-petition accounts receivable, nor does it imply such an interest. The purpose of the hearing was to determine use of cash collateral. The property proposed to be used by the debtor was the \$120,000.00 already in the possession of the debtors; proceeds from pre-petition inventory and accounts receivable. The court concluded that Heller was adequately protected as to that property, not that it was granted additional security in order to have adequate protection.

The fact that the debtor pledged \$100,000.00 in receivables to Heller after the filing of the petition does not, in and of itself, create a post-petition security interest. The debtor may grant a post-petition lien only with court authorization and only after notice and a hearing. 11 U.S.C. § 364(c) and (d). There was no notice and hearing concerning the debtors' intent to pledge post-petition accounts receivable, nor a court order authorizing such a lien.

Heller's argument that "the clear context and thrust of the evidence adduced at the November 8, 1982 hearing, together with the court's bench ruling" establish the granting to Heller of a security interest in debtors' post-petition accounts receivable is unpersuasive. Heller has not cited to the court any portion

of the transcript which would justify an amendment of the order previously entered.

Heller's second ground for asserting a security interest in the debtors' post-petition accounts receivable is based upon its original pre-petition security interest in the debtors' inventory. Generally, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case. 11 U.S.C. § 552(a). Therefore, even though Heller had a valid security interest in the debtors' accounts receivable before the filing of the petition, that security interest does not extend to accounts receivable acquired by the debtor post-petition.

However, where a security agreement entered into prior to the commencement of the case creates a security interest in property acquired pre-petition and to proceeds of that property, the security interest extends to proceeds, including those acquired post-petition. 11 U.S.C. § 552(b).

Heller has a perfected security interest in the debtors' pre-petition inventory to all proceeds thereof. U.C.A. § 70A-9-306(1) defines proceeds as follows:

"Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of.

Where the debtors' sale of pre-petition inventory generates an

account receivable, that account is proceeds of the inventory and therefore subject to Heller's security interest.

To the extent that post-petition accounts receivable are proceeds from the sale of pre-petition inventory, Heller continues to have a perfected security interest and is entitled to such funds collected by the trustee. As to the accounts that were generated from the sale of inventory acquired post-petition, Heller's security interest does not apply.

DATED this 23 day of January, 1984.

BY THE COURT:

  
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GLEN E. CLARK  
UNITED STATES BANKRUPTCY JUDGE