

**United States Bankruptcy Court  
District of New Mexico**

**Document Verification**

**Case Title:** Sherry A. Knight and Arthur A. Knight  
**Case Number:** 00-11022  
**Chapter :** 7  
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**First Meeting Location:** Roswell  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

In re:  
SHERRY KNIGHT,  
Debtor.

No. 13-00-11022 SR

**MEMORANDUM OPINION IN SUPPORT OF  
ORDER APPROVING SALE OF EQUIPMENT  
FREE AND CLEAR OF LIENS AND INTERESTS  
AND DENYING DEBTORS' OBJECTION THERETO**

This matter is before the Court pursuant to the Order Resulting from Preliminary Hearing entered on August 14, 2000 (Doc. 64), which preliminary hearing was conducted in connection with the Trustee's Motion to Sell Equipment Free and clear of Liens (Doc. 52) and the objection thereto filed by the Debtors (Doc. 58). Part of the Order Resulting from Preliminary Hearing required Debtors to file a brief if they contested the Trustee's authority under 11 U.S.C. § 363 to sell the equipment. Debtors timely filed their brief. (Doc. 66.) Having reviewed the brief, the cases cited therein and other legal authority, and the relevant court files, the Court has determined that the objection is not well taken and should be denied.

The Trustee moved to sell the equipment at issue pursuant to 11 U.S.C. § 363(f)(4), which permits the Trustee to sell property "free and clear of any interest in such property of an entity other than the estate, only if. . .such interest is in bona fide dispute; . . ." Almost a month and half before filing the sale motion, the Trustee had initiated an adversary proceeding, Linda

S. Bloom v. Sherry A. Knight, et al., Adv. Pro. No. 00-1107, naming the several parties in interest (in addition to the debtors) who might claim a lien on or an interest in the equipment, to resolve the lien and ownership rights in the equipment.<sup>1</sup>

The Debtors argue vigorously that the equipment at issue belongs to a limited liability company ("LLC") which they own and are the members of, and that therefore the Trustee may not sell the equipment. All of the cases cited by Debtors are ones in which various courts have ruled, correctly, that a trustee may not sell property that does not belong to the estate. E.g., Connolly v. Nuthatch Hill Associates (In re Manning), 831 F.2d 205 (10<sup>th</sup> cir. 1987). But none of the cases cited by Debtors address the specific issue of the sale of property subject to a bona fide dispute as to ownership, and so the cases cited by Debtors are large inapposite.

The language of 11 U.S.C. § 363(f)(4) is clear that a trustee may sell property that is claimed by another party if that ownership interest is subject to a bona fide dispute. However, the trustee has the burden of establishing that there is an objective basis for a legal or factual dispute about the

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<sup>1</sup> That adversary proceeding is currently set for the final pretrial conference on September 27, 2000. Presumably the trial date will be set at that time.

ownership. 3 Collier on Bankruptcy, ¶ 363.06[5] at pages 363 -- 47-48 (15<sup>th</sup> Ed. Rev. 2000), citing, e.g., In re Octagon Roofing, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991). The court is not required to resolve the underlying dispute, which would in this case require entry of a judgment in the adversary proceeding, but merely to determine whether a bona fide dispute exists. Id.

For the methodology to determine the bona fides of the dispute, the Octagon Roofing court looked to its circuit law on bona fide disputes in involuntary petitions, 11 U.S.C. § 303(h)(1).<sup>2</sup> This Court has addressed that issue in its decision in In re Daniel Krupiak, No. 7-99-10304 (Doc. 139), entered October 14, 1999 (United States Bankruptcy Court, District of New Mexico), at pages 20 - 22.<sup>3</sup> The Tenth Circuit case that addresses the issue most directly is Bartmann v. Maverick Tube Corporation, 853 F.2d 1540, 1543 (10<sup>th</sup> Cir. 1988).

Following the dictates of Bartmann, the Court has reviewed the pleadings and related materials in the adversary proceeding. While the Debtors did not list the equipment on their schedules and indeed have submitted a copy of an IRS schedule purporting to show the transfer of the equipment to the LLC, there is no

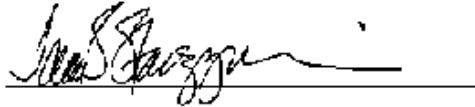
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<sup>2</sup> The Octagon court cited In re Busick, 831 F.2d 745 (7<sup>th</sup> Cir. 1987).

<sup>3</sup> The text of the memorandum opinion is available on this Court's chambers web site.

additional documentation, including no public documentation, of the transfer and continuing ownership of the equipment by the LLC. Further, the former owners of the equipment have made a claim to it. At this stage, it does not appear that the issue of ownership can be determined easily or by summary judgment. The Court therefore concludes that "there is an objective basis for either a factual or a legal dispute" concerning the claim of ownership. Id., citing In re Busick, 831 F.2d 745, 750 (7<sup>th</sup> Cir. 1987).

The Court will therefore enter an order denying the objection and granting the Trustee permission to sell the equipment.



Honorable James S. Starzynski  
United States Bankruptcy Judge

I hereby certify that, on the date stamped above, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered or mailed to the listed counsel and parties.

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entered on the Court's official docket.