

UNITED STATES BANKRUPTCY COURT FOR THE  
DISTRICT OF PUERTO RICO

In re: :  
: :  
THE ROBERT CYLINDER : Case No. 93-00782 (GAC)  
MANUFACTURING INC., : :  
: :  
Debtor : Chapter 7  
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: :  
ANTONIO FIOLE MATTA, Trustee, : :  
: :  
Plaintiff : :  
: :  
v. : Adv. No. 93-0077  
: :  
THE ROBERT CYLINDER : :  
MANUFACTURING INC., BORICUA : :  
WATER HEATERS, INC., ENRIQUE : :  
SANTIAGO RODRIGUEZ, BANCO : :  
SANTANDER DE PUERTO RICO, : :  
: :  
Defendants : :  
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**DECISION AND ORDER**

BACKGROUND

This adversary proceeding was filed by the trustee on July 21, 1993. The action was filed under 11 U.S.C. § 548(a) to avoid the transfer by defendants of certain industrial machinery. The trustee also sought turnover of the property to the estate pursuant to 11 U.S.C. § 542.

Prior to the filing of this bankruptcy petition, the debtor sold the industrial machinery to Boricua Water Heaters, Inc. ("Boricua") and the President of Boricua, Enrique Santiago Rodriguez ("Santiago"). Banco Santander de Puerto Rico

("Santander") thereafter obtained an order of attachment from the Superior Court of Carolina and took possession of the property. Santander, Boricua, and Santiago claim entitlement to the property.

Pursuant to an agreement reached between Santander and the trustee, the Court ordered Santander to deliver the property to the trustee. The trustee was directed to liquidate the property and place the proceeds in an interest bearing account until title to the funds was established. The trustee subsequently withdrew his cause of action against Santander.

On March 30, 1995, the trustee filed a notice in the legal case abandoning the industrial machinery (Dkt. #91). The trustee indicated that the property was burdensome to the estate, that it could not be adequately secured, that the outcome of the litigation over title was unforeseeable, that legal costs were increasing to the detriment of the estate, that vandalism and theft were occurring and he could not protect the property, that he had to deliver the real property where the industrial machinery was located to the landlord and that the cost of moving the machinery and storing it was too expensive. No objections were filed.

Santiago and Boricua subsequently filed an informative motion indicating that they had taken possession of the property (Dkt. #92). Santander then filed a motion in the adversary

requesting that Santiago and Boricua be ordered to deliver the property to Santander (Adv. Dkt. #39). Title to the property is still at issue.

The trustee informs the Court that although he abandoned possession of the property, he did not abandon the estate's interest in the recovery of the value (Adv. Dkt. #43).

#### DISCUSSION

The Bankruptcy Code provides that "the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). One bankruptcy commentator, in discussing the effect of abandonment, indicates that:

The trustee has the right to retain valuable assets and reject burdensome property, subject to the court's supervisory control, but cannot accept only the beneficial features and reject the burdens with respect to the same item of property. Abandonment, once accomplished, is irrevocable, regardless of any subsequent discovery that the property had greater value than previously believed.

5 Collier on Bankruptcy ¶ 554.02[2] (footnotes omitted).

In the present case, the trustee took possession of the industrial machinery that was the subject of this adversary proceeding. Thereafter, the trustee determined that the property was burdensome to the estate or of inconsequential value and benefit to the estate. The trustee abandoned the property and the abandonment is now irrevocable. Nonetheless, the trustee now claims that he is entitled to recover the value of the property.

The Court finds that when the trustee abandoned the property, the trustee abandoned the property for all purposes. The trustee may not maintain inconsistent positions with respect to the same property. The trustee may not maintain that the property is of inconsequential value to the estate, while maintaining that the property is of value and that he is entitled to recover the value for the benefit of the estate. Accordingly, the Court finds that the trustee may not maintain this lawsuit.

The dispute as to title to the property is between Santander and Boricua and Santiago. None of these parties are debtors in bankruptcy. There is nothing to prevent these parties from seeking to enforce their rights in state court. Thus, the Court will dismiss this adversary proceeding.

ORDER

Wherefore, IT IS ORDERED that this adversary proceeding shall be, and hereby is, DISMISSED. The Clerk shall enter judgment accordingly.

SO ORDERED.

San Juan, Puerto Rico this \_\_\_\_ day of January, 1996.

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Gerardo A. Carlo  
U.S. Bankruptcy Judge