

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

In re: :  
: :  
MICROBIOLOGICAL SCIENCES, INC. :  
d/b/a Lab-Ability, R.R. Baktron : C.A. No. 92-0255L  
and Cultiloop : C.A. No. 92-0654L  
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MEMORANDUM AND ORDER

RONALD R. LAGUEUX, Chief Judge.

This matter is now before the Court on consolidated appeals from two orders of the United States Bankruptcy Court for the District of Rhode Island. Appellant Shawmut Bank, N.A.

("Shawmut") first appeals the Bankruptcy Court's Order of April 10, 1992, requiring Shawmut to pay \$10,000 in attorneys' fees and expenses to appellee Kenneth A. McGaw, in his capacity as Trustee for Metallurgical Consultants Pension Plan and Lindell Motors, Inc. Profit Sharing Plan ("McGaw"), as a sanction for contempt. Second, Shawmut appeals the Bankruptcy Court's Decision and Order of October 28, 1992, which overruled Shawmut's objection to Claim No. 65 filed by McGaw. For the reasons given below, the Court affirms the Bankruptcy Court's sanctions Order of April 10, 1992, and reverses that Court's Decision and Order of October 28, 1992.

I. Background

The underlying facts in this case are undisputed. On or about May 17, 1988, Debtor Microbiological Sciences, Inc. ("Microbiological") executed a Note in the amount of \$250,000 payable to McGaw as Trustee. The Note was secured by a "Act of

Mortgage and Chattel Mortgage" in connection with property owned by Microbiological in Sulphur, Louisiana (the "Mortgage"). That Mortgage states in part:

This mortgage shall cover and include not only the real estate hereinabove described, with all the buildings and improvements thereon, but, also, any and all appliances, equipment, including but not limited to heating, cooling, regrigeration [sic], ventilating, air-conditioning, equipment or systems, storage units, supplies, furniture and fixtures and all other movable and personal property located in, on or attached to said real estate owned by the mortgagor, it being intended that the loan secured hereby shall be additionally secured to the fullest extent permitted by R.S. 9:9531<sup>1</sup> et seq.

The mortgage was recorded in Caleasieu Parish in Louisiana, the parish where the referenced real estate is located, on or about May 19, 1988.

From January 31, 1983, Shawmut disbursed funds under a Revolving Loan Agreement with Scott Prepared Culture Media Laboratories, Inc. ("Scott"), an affiliate of Microbiological. Microbiological guaranteed the obligations of Scott to Shawmut under the agreement, and Shawmut obtained a security interest in all of the assets of Scott, which it duly perfected.

Subsequently, in October 1989, Scott commenced a proceeding under Chapter 11 of the Bankruptcy Code. Shawmut agreed to furnish post-petition financing pursuant to a Stipulation, approved as an Order of the Bankruptcy Court, under which Shawmut was granted a security interest in various assets of Scott and Microbiological, including Microbiological's assets located in Sulphur, Louisiana.

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<sup>1</sup>It is unclear what statute this is intended to reference, as R.S. 9:9531 does not exist.

In connection with that security interest, Shawmut filed a Notice of Security Interest in the Chattel Mortgage Records of East Baton Rouge Parish, Louisiana.

Microbiological filed for Chapter 11 bankruptcy protection in early 1990. McGaw filed Claim No. 65 in that case in the amount of \$250,000, asserting that he was secured by Microbiological's real estate and personal property in Sulphur, Louisiana. On September 28, 1990, the Bankruptcy Court entered an order authorizing the sale of certain assets, providing that the first \$500,000 in sale proceeds would "be delivered to Shawmut subject to the claim of Kenneth McGaw . . . in such amount as he may establish as his claim secured by certain of the Louisiana assets." Shawmut objected to McGaw's claim as to the personal property located in Sulphur, Louisiana, at a stipulated value of \$34,300.

At a hearing on December 4, 1990, the Bankruptcy Court deferred ruling on the merits of this dispute pending the outcome of a related adversary proceeding in the Scott bankruptcy case. The Court also ordered Shawmut to place the \$34,300 in dispute in an interest bearing escrow account in the names of counsel to McGaw and counsel to Shawmut.

Despite repeated requests from counsel for McGaw, Shawmut failed to open the ordered escrow account. In March, 1991, McGaw moved for contempt. At the hearing on the motion on April 17, 1991, Judge Votolato found Shawmut in contempt, and ordered as the sanction that the dispute be resolved in favor of McGaw.

Shawmut appealed the Court's April 17, 1991 Order to this Court. On October 8, 1991, Judge Pettine affirmed the Bankruptcy Court's finding that Shawmut was in contempt. However, he found the sanction excessive in that it "was designed neither to induce Shawmut to comply with the December 4, 1990 Order, nor to compensate McGaw for any loss he may have suffered as a result of Shawmut's failure to so comply." Judge Pettine thus remanded the matter to the Bankruptcy Court for imposition of a more appropriate sanction.

On remand McGaw filed a Motion for Award of Attorneys' Fees and Expenses as Sanction, with a supporting affidavit establishing McGaw's expenses as \$92.63 for seeking to establish the escrow account; \$6,348.96 in fees and disbursements in connection with the Bankruptcy Court proceedings; and \$6,008.57 in fees and disbursements in connection with proceedings in the District Court, a total of \$12,450.16. On April 10, 1992, Judge Votolato issued an order awarding McGaw \$10,000 in sanctions. Shawmut appealed that order to this Court and McGaw moved to dismiss it as premature. This Court had a hearing on the motion to dismiss the appeal. At the hearing, as a result of the suggestion of the Court, the parties agreed that the appeal should be held in abeyance and later consolidated with any appeal from the Bankruptcy Court's decision on the merits.

The Bankruptcy Court held a hearing on the merits of the dispute on June 4, 1992. That Court issued its Decision and Order on October 28, 1992, holding that the McGaw Mortgage was a

valid "in globo" mortgage under Louisiana law, properly perfected by recording in Calcasieu Parish. The Court therefore overruled Shawmut's objection to McGaw's claim.

Shawmut appealed that Decision and Order, and the parties jointly filed a motion to consolidate the appeals, which was granted. Briefs were filed and the parties engaged in oral argument before this Court on May 6, 1993. Shawmut's two appeals were then taken under advisement. They are now in order for decision.

## II. The Sanctions Order

The district court reviews the bankruptcy court's determination of sanctions for contempt under an abuse of discretion standard. See Whittaker Corp. v. Execuair Corp., 953 F.2d 510, 515-16 (9th Cir. 1992) (Circuit court review of district court's sanctions determination uses abuse of discretion standard). In a civil contempt situation, a court may only impose sanctions intended to compensate the movant for actual harm suffered or coerce compliance with the court order, or both. Whittaker at 517; In re Kave, 760 F.2d 343, 351-52 (1st Cir. 1985).

In the instant case, Shawmut argues that Judge Votolato abused his discretion by including in the sanction awarded, legal fees and costs stemming solely from defense of Shawmut's appeal of the first sanction order. Shawmut argues that because that appeal resulted in the vacation of the Bankruptcy Court's

sanction, McGaw should not be allowed to recover his costs for defending that appeal.

It is clear that an award of attorneys' fees and costs are an appropriate compensatory sanction. Sizzler Family Steak Houses v. Western Sizzlin Steak House, Inc., 793 F.2d 1529, 1535 (11th Cir. 1986); In re Magwood, 785 F.2d 1077, 1082-83 (D.C. Cir. 1986); Northside Realty Assocs., Inc. v. United States, 605 F.2d 1348, 1356 n. 23 (5th Cir. 1979). Legal expenses incurred as a result of the contemnor's appeal of the contempt order are also appropriately included in a sanction. In re Crabtree, 60 B.R. 147, 150 (Bankr. E.D.Tenn. 1986).

Shawmut argues that McGaw's expenses incurred defending the first appeal should not be compensated because the appeal was successful. As McGaw notes, however, Shawmut's appeal was only partially successful. The District Court affirmed the Bankruptcy Court's finding of contempt and its finding that a sanction was appropriate, remanding only for determination of a lesser sanction. Shawmut cannot argue that its appeal challenged only the extent of the sanction imposed. Shawmut's own Statement of Issues on Appeal included four issues to be addressed by the District Court, only one of which concerned the level of sanction imposed.

Given that partial success, this Court finds that the Bankruptcy Court did not abuse its discretion in awarding McGaw \$10,000 in legal fees and costs. McGaw sought a total of \$12,450.16 in legal fees and costs, of which \$6,008.57 was

incurred in connection with the appeal before Judge Pettine. In making his award, Judge Votolato reduced that amount by \$2,405.16. Although he did not articulate the basis for that reduction, it is an ample allowance for that portion of the appeal on which McGaw was unsuccessful. The \$10,000 sanction is well within the range of the Bankruptcy Judge's discretion.

### III. Validity of Mortgage

Shawmut also challenges the Bankruptcy Court's determination on the merits that the McGaw Mortgage was a valid "in globo" mortgage under Louisiana law.

On appeal of a bankruptcy court's decision on the merits, a district court must accept the findings of fact made by the Bankruptcy Judge unless they are clearly erroneous. Fed. R. Bankr. P. 8013. Conclusions of law, however, are reviewed by the district court de novo.

The issue before this Court is whether the Bankruptcy Court erred in finding that the Mortgage was a valid "in globo" mortgage under Louisiana law. In order for McGaw to prevail over Shawmut, his security interest in the personal property must have been properly perfected. McGaw admits that his interest was not properly perfected as a "Chattel Mortgage" under Louisiana law, La. R.S. 9:5351 et seq., because it was not recorded in East Baton Rouge Parish as required by section 9:5353E(4). The Bankruptcy Court accepted McGaw's argument that the Mortgage was a valid "in globo" mortgage under R.S. 9:5367-5380. Those sections provide for the "Mortgage of Movables Used in Commercial

or Industrial Activity," otherwise known as an "in globo" mortgage. Under R.S. 9:5369, a mortgage that covers such movables and the immovable upon which they are located may be perfected by recording in the parish where the immovable is located - in this case, Calcasieu Parish.

The provisions of the Louisiana Civil Code governing "in globo" mortgages were enacted in 1980 as Part IV of Chapter 2 of Title XXII of Code Book III of Title 9 of the Louisiana Civil Code, codified at La. R.S. 9:5367-5380 ("Part IV"). Part IV defined a new class of mortgages under the Code:

**Mortgage of movables used in commercial or industrial activity**

A person who conducts or intends to conduct a trade, business, occupation or other commercial or industrial activity may impose a conventional mortgage upon all corporeal movables owned by him and placed upon an immovable for use in the conduct of such activity.

R.S. 9:5367. As explained in the "Exposé des motifs" (statement of purposes) of the Act, it was intended to address "a problem which has plagued the Louisiana commercial community for many years. There has never been a really effective means by which commercial establishments could use their machinery, furniture, fixtures, equipment and supplies as a basis for raising borrowed capital." R.S. Prec. 9:5367.

An earlier attempt to address the problem allowed businesses to declare movables to be components of an immovable. However, that solution created numerous other problems concerning the status of such movables for tax, inheritance and other purposes, and did not allow for mortgages of such movables on leased

premises. Experience had shown that the Chattel Mortgage Act was also unsuited for these purposes: "There are . . . practical impediments to utilizing a chattel mortgage in such cases. These arise from the necessity for accurately describing each item comprising the mass of movables that are to be financed and for periodically supplementing the mortgage as items wear out and are replaced." Id. The Act was intended to resolve those difficulties by providing that "corporeal movables placed upon premises and used in a commercial or industrial activity may be subjected to a mortgage as a general mortgage "in globo" and without particular description." Id.

Part IV sets forth three requirements for a valid "in globo" mortgage. R.S. 9:5368 provides:

A mortgage authorized by this Part shall describe the premises upon which the movables are located or to be located, identify the type of commercial or industrial activity being conducted or to be conducted on or by use of such premises and contain a declaration substantially to the effect that the mortgage affects all corporeal movables of the mortgagor that are located from time to time upon the premises for use in the conduct of the activity. No other description of the movables shall be required.

(emphasis added). The Comment to that Section states: "This Section makes it clear that the movables need only be generally described and sets forth the minimum limits necessary to identify them." R.S. 9:5368 Comment.

Under Part IV, the requirements for perfection and enforcement of such mortgages vary depending on whether they are included with a mortgage of an immovable. If included with the mortgage of an immovable, the "in globo" mortgage may be

perfected and enforced in the same manner as the mortgage of the immovable. If the "in globo" mortgage is not connected to the immovable, it must be perfected and enforced in accordance with the Chattel Mortgage Act. R.S. 9:5369.

Shawmut argues that the Bankruptcy Court erred in finding that the McGaw Mortgage was a valid "in globo" mortgage because it does not comply with two requirements of R.S. 9:5368. First, Shawmut notes that the mortgage does not "identify the type of commercial or industrial activity." McGaw admitted that the Mortgage does not contain a "formal description of the type of business conducted at the premises." However, the Bankruptcy Court accepted his argument that the name of the business, "Microbiological Sciences," and the name of its subsidiary "Scott Prepared Media Culture Laboratories" which appears on an attached document, were sufficiently descriptive of the type of business conducted to satisfy the statutory requirements.

Second, Shawmut argues that the Mortgage fails to contain the "declaration" specifically required by the Code, that it in fact contains no "declaration" at all. The Bankruptcy Court rejected that argument, stating that there was sufficient "declaratory language" in the absence of the "magic words 'I declare.'"

Shawmut's primary argument is that the Bankruptcy Court committed a legal error in failing to apply a rule of strict construction to the requirements for a valid "in globo" mortgage. The Bankruptcy Court rejected what it referred to as an "aging

line of cases" standing for the proposition that mortgage recording requirements are "stricti juris." The Court reasoned that the cases relied on by Shawmut dealt with identification of goods for chattel mortgages, not "in globo" mortgages and were inconsistent with the liberalizing intent associated with creation of the new security vehicle, and that those cases had been discredited by a recent Louisiana Court of Appeals case noting that the jurisprudential rule to be applied to interpretation of the chattel mortgage description provisions is "more liberal than a strict construction of the statute."

Domengeaux v. Daniels, 401 So.2d 655, 658 (La. Ct. App. 1981).

This Court agrees with Shawmut that Louisiana law requires strict compliance with the formal requirements of mortgage statutes, and must therefore reverse the Bankruptcy Court.

Shawmut cites a long line of cases for the proposition that construction of mortgages under Louisiana law is "stricti juris." It relies heavily on the often quoted language of Smith v. Bratsos, 12 So.2d 241 (La. Ct. App. 1942), rev'd 12 So.2d 245 (La. 1943):

To bring into existence the lien and privilege established by the statute, strict compliance with its requirements must be pursued. Such liens and privileges, it is uniformly held, are stricti juris. All prerequisites to their birth must be strictly observed. This principle is firmly imbedded in the jurisprudence of this state since the legalization of chattel mortgages.

12 So.2d at 243 (citations omitted). In that case, the Louisiana Second Circuit Court of Appeals held that where serial numbers were added to the description of property in a chattel mortgage

after it was executed before a notary, those serial numbers were not a valid part of the mortgage. The Appeals Court also held that without the serial numbers the description was insufficient to encumber the property under R.S. 9:5352, which requires "a full description of the property to be mortgaged shall be set forth so that it may be identified." That second determination was reversed by the Louisiana Supreme Court, which held that because there was only one refrigerator of the type described on the premises, the serial number was not necessary. 12 So.2d at 248.

The doctrine of "stricti juris" was most recently applied to a chattel mortgage in the case of Warren Refrigerator Co. v. Fosti Midstream Fueling and Service, Inc., 462 So.2d 1343 (La. Ct. App. 1985). The Court held that the mortgage in question failed to meet the requirements for a valid chattel mortgage because it failed to supply the time of payment of the obligation, as required by R.S. 9:5352. The Court stated:

It has long been established by our jurisprudence that chattel mortgages, being in derogation of common rights, are to be strictly construed and that the statutory provisions for the execution and recordation of such instruments are to be rigidly enforced. A clear and succinct statement of this principle is to be found in the opinion of the late Judge Taliaferro of this court in Smith v. Bratsos. (quoting language above).

462 So.2d at 1346 (quoting United Novelty Co. v. Salemi, 68 So.2d 808 (La. Ct. App. 1953)).

The Bankruptcy Court rejected this line of cases as "aging" and relied instead on the standard enunciated in Domengeaux, 401 So.2d at 658. In that case, the Court addressed the sufficiency

of a description in a chattel mortgage which did not contain serial numbers, stating:

Under the jurisprudential rule, which is more liberal than a strict construction of the statute, the description of property will be sufficient, if it enables third persons, aided by such reasonable inquiries which the instrument itself suggests, to identify the property. The determination of the sufficiency of description depends upon the peculiar circumstances surrounding each individual case.

Id. (citations omitted). The Court held that the descriptions without serial numbers were not sufficient, distinguishing Smith v. Bratsos because there were other similar pieces of equipment on the premises.

The cases cited by Shawmut can not fairly be described as "aging" given the continued adherence to the doctrine of strict construction in Warren Refrigerator in 1985. Furthermore, this Court does not perceive any conflict between the requirement of strict compliance with mortgage formalities and the more liberal rule applied to determining whether a given description is sufficient to encumber a particular piece of property. Where, as here, there has been no attempt to comply with the mortgage requirements, the doctrine of "stricti juris" dictates the invalidity of the mortgage.

Louisiana courts have uniformly held that strict compliance with statutory requirements is required for a valid chattel mortgage. What the Bankruptcy Court refers to as the "jurisprudential rule" is the standard applied to determining the sufficiency of a description of property under R.S. 9:5352, which

requires that "a full description of the property to be mortgaged shall be set forth so that it may be identified."

This jurisprudential rule does not conflict with a strict rule regarding compliance with all formalities of mortgage statutes. The lack of conflict is clear from the fact that both standards are cited in the same or related cases. In Smith v. Bratsos, the Louisiana Supreme Court did not disturb the Appeals Court's finding that the doctrine of "stricti juris" barred consideration of the serial numbers as part of the mortgage, although the Court found that the description was sufficient under a standard requiring "[a] description which will enable third persons, aided by inquiries which the instrument itself suggests, to identify the property." That is the same standard cited in Domengeaux as the more liberal "jurisprudential rule." 401 So.2d at 658.

Both standards were cited by the Louisiana Court of Appeals in Abbott v. Temple, 73 So.2d 647 (La. Ct. App. 1954). The Court stated, "It is generally recognized . . . [that] '[t]hird persons without actual knowledge can not be held to have constructive notice of the existence of the chattel mortgage unless the statutory requirements are strictly complied with.'" Id. at 649 (quoting Southern Enters., Inc. v. Foster, 13 So.2d 491, 494 (La. 1943)) (emphasis in original). Therefore, the Court stated, "[i]t is essential in order to impress third persons with the chattel mortgage privilege in this state the property shall be so described 'it may be identified' and its location stated." Id.

In determining whether the property was described sufficiently that it "may be identified," the Court used the standard adopted in Smith v. Bratsos. Under that standard, the chattel mortgage's reference to "all other miscellaneous tools, machinery and equipment" was insufficient. See also All State Credit Plan Houma, Inc. v. Fournier, 175 So.2d 707, 710-12 (La. Ct. App. 1965) (citing both standards in determining that listing of incomplete serial numbers rendered mortgages ineffective).

The cases McGaw cites using the liberal standard in determining whether property has been sufficiently described under R.S. 9:5352 are not controlling in this case. In those cases there was in fact compliance with the formalities of the chattel mortgage, and the only question was whether the given description was sufficient to identify the property. That is an entirely different situation from that in the instant case, where there has been no attempt to comply with the statutory formalities. The McGaw mortgage does not purport to identify the type of commercial activity being conducted on the premises and mortgage movables used in connection with it. Rather, the mortgage on its face attempts to mortgage all movables on the subject property. The inclusion of the name of the mortgagor on the mortgage, and the name of its affiliate on some other document, simply does not satisfy this requirement. The names do not identify the type of activity being conducted on the premises in any meaningful way. They cannot transform an invalid attempt to mortgage all personal property on a piece of real estate into

a valid "in globo" mortgage. Since there is no attempt to comply with the statutory formalities, the mortgage cannot be sustained under Part IV.

As another ground for failing to apply the "strict juris" standard, the Bankruptcy Court stated that the cases utilizing this rule should not be applied to "in globo" mortgages because they are specifically addressed to chattel mortgages, and are inconsistent with this new security device. This Court disagrees with that assessment. The Court recognizes that there are no published Louisiana cases construing Part IV mortgages. However, the doctrine of "stricti juris" has a long history in Louisiana law applied to statutory security devices other than chattel mortgages. In fact, the maxim originates in the rule of strict construction traditionally applied to mortgages of immovables. Durel v. Buchanan, 86 So. 189 (La. 1920) ("All mortgages are stricti juris.") (quoting former Art. 3283 concerning conventional mortgages: "Mortgage is Stricti Juris - The mortgage only takes place in such instances as are authorized by law."). The maxim is still applied to statutory liens securing the claims of contractors and materialmen. See, e.g., Gypsum Systems Interiors, Ltd. v. Republicbank Dallas N.A., 554 So.2d 282 (La. Ct. App. 1989), cert. den., 558 So.2d 587 (La. 1990).

Furthermore, the code provisions of Part IV themselves indicate that the statutory provisions governing chattel mortgages are relevant. R.S. 9:5369 provides that where the movables are mortgaged separately from an immovable, "the

substantive effects, rank, formal requisites, requirements of registry and reinscription, and procedures for enforcement of the mortgage shall be the same as those for a chattel mortgage and shall be governed by the laws regulating such chattel mortgages." La. R.S. 9:5369B (emphasis added). Where movables are mortgaged in connection with an immovable, "[t]he mortgage shall take its rank and effect with respect to third persons as a chattel mortgage when the mortgage of the immovable . . . is given such effect." La. R.S. 9:5369A(2) (emphasis added). The Comment to Section 5369 states: "This Section does not provide that movables mortgaged under Part IV become immovable if their mortgage is included in the same act as a mortgage of the immovable upon which they are located. They remain movables and the mortgage affecting them is in substantive effects a chattel mortgage." (emphasis added).

This Court also rejects the contention that the new security vehicle established in 1980 by Part IV reflects a new, more liberal approach to mortgage requirements. The Louisiana legislature clearly was responding to a particular financing problem by eliminating the need to particularly describe each movable being encumbered. However, it chose to do so not by liberalizing the code's approach to security devices in general (as was later done in enacting a version of the Uniform Commercial Code, Article 9, in 1989), but by creating a new, narrowly defined mortgage with particularized requirements. The enactment of Part IV does not indicate a liberalizing trend

authorizing this Court to disregard the well-established jurisprudence of Louisiana that mortgage formalities must be strictly complied with.

Finally, the Court rejects McGaw's argument that the only real purpose of the requirement that the activity be identified is to allow a determination from the face of the mortgage as to whether the movables are excluded from the scope of Part IV by R.S. 9:5372. Section 5372 excludes three types of movables from the coverage of Part IV:

(1) movables placed on lands by the owner of mineral rights that are susceptible of mortgage under the provisions of the Mineral Code,

(2) movables susceptible of mortgage under the provisions of the Vehicle Certificate of Title Law,

(3) movables placed on an immovable for use by persons engaged in the business or occupation of farming, ranching, growing crops, raising livestock, poultry or other living things, dairying or another agricultural pursuit.

With the possible exception of exclusion (3), the requirement of identifying the type of activity conducted entirely fails to indicate whether the movables fall within 9:5372. Particularly with regard to R.S. 9:5372(2), it is clear that almost any type of business could have vehicles on the property that would be excluded from an "in globo" mortgage. As the Comment to 5372(2) indicates:

The exclusion of vehicles subject to mortgage under the Vehicle Certificate of Title Law makes it clear that delivery trucks, salesmen's vehicles, and other vehicles are not included within the category of things subject to this mortgage, even though they are used in a business and garaged on the premises.

The type of activity requirement simply does not serve the purpose that McGaw has posited for it.

In enacting Part IV, the Louisiana legislature created a narrowly defined class of mortgage, established by identifying the business being conducted on the premises, and encumbering the immovables used in connection with that business. The requirement that the type of activity being conducted be identified allows other parties to determine which movables on the property are encumbered. There is no indication of an intent to abandon the long-standing Louisiana rule that new security devices, especially affecting chattel, can be established only through strict compliance with statutory requirements. There was no such compliance in this case. Naming the businesses involved gives no meaningful description of the activities being conducted on the premises. The McGaw mortgage purports to encumber all personal property on the real estate in question, but makes no mention of the type of business activity being conducted there or the use to which the movables were being put. This complete failure to comply with the formal requirements of mortgage formation bars enforcement of the McGaw mortgage.

#### IV. Conclusion

For the reasons given above, the Bankruptcy Court's Order of April 10, 1992, awarding sanctions in the amount of \$10,000 to appellee McGaw, is hereby affirmed. The Bankruptcy Court's Decision and Order of October 28, 1992 is hereby reversed, and

the matter remanded for proceedings not inconsistent with this decision.

It is so ordered.

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Ronald R. Lagueux  
Chief Judge  
August 13 , 1993