

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

CASE NO. 02-20110

SHEPARD NILES, INC.,

Debtor.

DECISION & ORDER

BACKGROUND

On January 11, 2002, Shepard Niles, Inc. (the "Debtor") filed a petition initiating a liquidating Chapter 11 case.

On April 23, 2002, Benton Foundry, Inc. ("Benton Foundry") filed a secured proof of claim (the "Benton Foundry Claim"), which asserted that: (1) the basis of its Claim was for goods sold; (2) the debt was incurred between October 16, 2001 and January 4, 2002; (3) the amount of the Claim was \$27,126.68, which did not include interest or any additional charges; and (4) the Claim was secured by patterns and core boxes having a value of \$125,300.00, as the result of a grant of a security interest for all unpaid obligations in all: (a) castings supplied by Benton Foundry to the Debtor; and (b) patterns, tooling and other property owned by the Debtor in the possession of Benton Foundry, which grant was allegedly contained in the general conditions to the quotations submitted by Benton Foundry to the Debtor in connection with the Debtor's initial orders for various castings (a "Benton Quotation").

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On March 8, 2002, the Court approved the sale of substantially all of the Debtor's assets, including patterns and core boxes in the possession of Benton Foundry, and, thereafter, approved the Debtor's liquidating plan which specifically provided that Benton Foundry would be paid in full to the extent of the value of any perfected and unavoidable lien it had on the patterns and core boxes.

On August 27, 2002, the Debtor filed an Objection to the Benton Foundry Claim (the "Objection"), which asserted that Benton Foundry did not have a perfected security interest under the Uniform Commercial Code (the "UCC") in either the patterns or core boxes because the Debtor never executed a written security agreement that granted Benton Foundry a security interest in such property, or otherwise authenticated or ratified such a security agreement or interest. Specifically, the Objection alleged that: (1) Benton Foundry had not produced any signed Benton Quotation that included the general conditions referred to in the Benton Foundry Claim; (2) the Debtor had not signed or authenticated any other combination of documents that could be found by the Court to be the security agreement required by the UCC; and (3) there was insufficient evidence, written or otherwise, that the specific sales transactions

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covered by the Benton Foundry Claim were subject to the general conditions referred to in the Benton Foundry Claim. The Objection further asserted that Benton Foundry did not have an artisan's lien on the patterns or core boxes because: (1) there was no specific agreement between Benton Foundry and the Debtor that any repairs, modifications or enhancements made by Benton Foundry to any patterns or core boxes would be separately compensated for; and (2) under Pennsylvania law, any artisan's lien which Benton Foundry might have on the patterns and core boxes would be only for the value of any enhancements to the patterns and core boxes that resulted from any repairs or modifications, not for the unpaid amounts due for castings produced with the patterns and core boxes, as claimed in the Benton Foundry Claim.

DISCUSSION

I. Evidentiary Hearing

At the November 6, 2002 hearing on the Objection, the attorneys for both parties indicated that they did not wish an evidentiary hearing to further develop any evidence, and that the parties would rely on the pleadings, the oral argument at the hearing and any post-hearing submissions.

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**II. Perfected Unavoidable Security Interest
Under the New York Uniform Commercial Code**

In *In re Lanzatella*, 254 B.R. 84 (Bankr. W.D.N.Y. 2000) ("*Lanzatella*") and *Colonial Transport Products Co., Inc., vs. Ro-An Industries Corporation*, Chapter 11 Case No. 899-90170-478, AP No. 800-8112-478 (E.D.N.Y. February 12, 2001) ("*Colonial Transport*"), this Court addressed the need for a creditor to demonstrate that it had a security interest which had been both properly created and properly perfected in order to have priority over the interest of a trustee or debtor-in-possession with the status of a "perfect lien creditor" under Section 544.

As in *Lanzatella* and *Colonial Transport*, the documents offered by Benton Foundry do not satisfy the requirements of New York or Pennsylvania law so as to permit this Court to find that it had a security interest in the patterns and core boxes owned by the Debtor for the following reasons: (1) none of the Benton Quotations produced by Benton Foundry that it has alleged made all of its transactions with the Debtor subject to the general conditions contained on the back, were signed on behalf of the Debtor; (2) even if any original Benton Quotations had been signed by the Debtor, because of the language contained therein,

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those quotations and any resulting security interest and lien could reasonably be interpreted to apply only to the specific transaction or transactions covered by that quotation, not to any subsequent transactions which would have required the execution of additional quotations for there to be a further security interest and lien; (3) Benton Foundry produced no signed Benton Quotations for the specific sales transactions covered by the Benton Foundry Claim; (4) except for some bills of lading which were signed on behalf of the Debtor, none of the paperwork for the specific sales transactions covered by the Benton Foundry Claim referred to the general conditions or any security agreement or lien; (5) in this Court's opinion, the bills of lading produced by Benton Foundry were only receipted for by someone at the Debtor to indicate that the shipment was received in good condition, and Benton Foundry has produced no evidence to indicate that the individual receipting for the goods: (a) was an authorized representative of the Debtor for the purpose of binding the company to the general conditions;¹ or (b) knew what the general provisions provided for, or that he or she was signing other than to indicate that the shipment was

¹ The quotations were to be signed specifically by an authorized representative of the purchaser, whose title was to be listed.

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received in good condition; and (6) as in *Lanzatella* and *Colonial Transport*, when all of the documents produced by Benton Foundry are read together, they do not, in this Court's opinion, satisfy the requirement of New York UCC Section 9-203(a)(3)(A) or Pennsylvania Statute 13 Pa.C.S.A. Section 9203, that the Debtor has authenticated a security agreement that provides a description of the collateral.²

² Section 9-203. Attachments and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites

(a) Attachment. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Enforceability. Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;

III. Artisan's Lien

Based upon the evidence presented, Benton Foundry has not met its burden to demonstrate that it has an artisan's lien on any of the patterns and core boxes in its possession for the following reasons: (1) although Benton Foundry has provided detail as to the repairs, modifications and enhancements it made to the patterns and core boxes, it has provided the Court with insufficient information as to: (a) exactly when the repairs, modifications or enhancements were made; (b) whether they were minor, routine or otherwise expected to be made in the industry without compensation; (c) what the cost to make them was; or (d) what the enhanced value to the particular pattern or core box could reasonably be; (2) Benton Foundry has provided no evidence that the Debtor had agreed that Benton Foundry would be separately compensated for any repairs, modifications or

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement.

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enhancements that it made to the patterns or core boxes, either in general, or in connection with any particular repair, modification or enhancement, See In re Herman Hassinger, Inc., 41 B.R. 787 (Bankr. E.D.Pa. 1984); (3) since there was no supply agreement entered into between Benton Foundry and the Debtor, Benton Foundry could only have expected to be compensated, if at all, for any repairs, modifications or enhancements from any then-existing confirmed order, so that to the extent that Benton Foundry used repaired, modified or enhanced patterns or core boxes to produce goods which were delivered to the Debtor and fully paid for, even any inferred right to compensation may have been fully satisfied; and (4) even if this Court were to find that Benton Foundry had an artisan's lien, it would limit the lien to the demonstrated value³ of the enhancement to the patterns and core boxes, and would not extend the lien to the unpaid amount for goods produced with the repaired, modified or enhanced patterns or core boxes, especially if there was absolutely no reasonable relationship between: (a) the costs to make the repairs, modifications or enhancements or their enhanced value to the patterns and core boxes; and (b) the

³ As indicated above, Benton Foundry has provided absolutely no evidence of value enhancement from which this or any Court could make a finding of value.

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unpaid balances due for the goods produced. See *Hunter v. Challinor-Dunker Co.*, 50 Pa.Super. 617, 619 (1912).

IV. Attorney's Fees

In its response to the Objection, based once again upon the assertion that general conditions were applicable to the sales transactions covered by the Benton Foundry Claim, Benton Foundry has sought to amend its Claim to include attorney's fees incurred in connection with the Claim. Any attorney's fees incurred by Benton Foundry are not recoverable under Section 506 or otherwise, because Benton Foundry has failed to produce any Benton Quotation signed by an authorized representative of the Debtor.

CONCLUSION

The Benton Foundry Claim is found to be an unsecured non-priority claim in the amount of \$27,126.68. Any funds being held in escrow to pay Benton Foundry as a secured creditor can be released and otherwise utilized and distributed in accordance with the confirmed plan. Benton Foundry shall immediately surrender the patterns and core boxes to the purchaser of those assets.

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IT IS SO ORDERED.

HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE

Dated: January 7, 2003