UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

ROBLIN INDUSTRIES, INC. Case No. 85-11161 K

Debtor

MARINE MIDLAND BANK, N.A.
CHEMICAL BANK

Plaintiffs

-vs- AP 92-1073 K

WILLIAM E. LAWSON AS TRUSTEE-IN-BANKRUPTCY OF ROBLIN INDUSTRIES, INC.

Defendant

In this adversary proceeding the question presented is whether the Chapter 7 estate's recoveries of certain insurance premium overpayments fall within the scope of a lien granted by this Court[1] to Marine Midland Bank, N.A. and Chemical Bank. That lien arose when the Court approved post-petition borrowing under 11 U.S.C. § 364 and ordered that Marine and Chemical were granted a security interest in all of the debtor's

> pre-petition and post-petition personal property now owned or hereafter acquired, including but not limited to present and future accounts, inventory, chattel paper, general intangibles (except for recoveries by or on behalf of the debtor under 11 U.S.C. § 547 and 548).

The Trustee recovered disability benefit insurance premium overpayments in the amount of $3,732.68, and State

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[1]The Order was granted by the Hon. John W. Creahan, United States Bankruptcy Judge, now retired.

Insurance Fund premium overpayments in the amount of $55,933.48. The banks request judgment awarding them the refunds, and directing the trustee to pay to them the refunds, along with any interest earned thereon.

The Trustee's argument is to the effect that these funds, and their origin in insurance premium overpayments, are too unique to have been within the clear contemplation of the language used in the order of the Court, and that the Court, rather, must look to State Law definitions in determining the scope of the terms used in the order. Under State Law, the Trustee explains, an interest in an insurance policy can only be given as security by assignment and by filing of the assignment; hence,

> this specific type of security interest does not lend itself to inclusion within the Borrowing Orders as there is no evidence of intent of any of the parties nor the Court in including same within the scope of secured property.

The Borrowing Orders in question were "Consent Orders," agreed to between the then debtor-in-possession and the banks. It has been stated that

> [a] judgment by consent is contractual in nature and should be construed as a written contract, duly signed and delivered, embodying therein the terms of the said judgment. Its meaning is to be gathered from the terms used therein, and the judgment should not be extended beyond the clear import of such terms; the judgment cannot be supplemented by agreements which are not a part of it, in the absence of an attack thereon for fraud or mistake.[2]

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[2]47 Am.Jur.2d, Judgments § 1085 (citations omitted).

Furthermore,

> [a]s a general proposition, where the terms of a writing are plain and unambiguous, there is no room for construction, since the only purpose of judicial construction is to remove doubt and uncertainty.... It is fundamental that the principles of construction cannot be applied to vary the meaning of that which is otherwise clear and unambiguous, and, in this respect, it is to be noted that if the language of the contract is plain and unambiguous, the intention expressed and indicated thereby controls, rather than whatever may be claimed to have been the actual intention of the parties.[3]
>
> It is not within the function of the judiciary to look outside of the contract before the court to get at the intention of the parties and then carry out that intention regardless of whether the instrument contains language sufficient to express it.... In other words, the object to be attained in construing a contract is to ascertain the meaning and intent of the parties as expressed in the language used.... It is not necessarily the real intent, but the expressed or apparent intent, which is sought.... If the language used by the parties is plain, complete, and unambiguous, the intention of the parties must be gathered from that language, and from that language alone, no matter what the actual or secret intentions of the parties may have been. Presumptively, the intent of the parties to a contract is expressed by the natural and ordinary meaning of their language referable to it, and such meaning cannot be perverted or destroyed by the courts through construction. Only when the language of the contract is ambiguous may a court turn to extrinsic evidence of the contracting parties' intent.[4]

The language of the orders in question is clear and unambiguous. The refunds are "property" or "proceeds" of property. Summary judgment is granted in favor of the banks. The Clerk shall

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[3]17A Am.Jur.2d, Contracts § 337 (citations omitted).

[4]17A Am.Jur.2d, Contracts § 352 (citations omitted).

enter judgment directing the Trustee to turn over to the banks the insurance premium overpayments in his custody, together with any interest earned thereon.

SO ORDERED.

Dated: Buffalo, New York
June 12, 1992

U.S.B.J.