Assignment 11
Tracing Collateral Value During Bankruptcy

Monday, September 29, 2003
• Globus holds SI in Hotel (land, equipment, inventory, “all income, rents, revenues, issues, profits, fees, accounts and other proceeds”)  
• Hotel files bankruptcy  
• Postpetition revenues: how much is Globus’ cash collateral?  
  – Under § 552(b)?  
  – Under Hotel Sierra?  
  – Under Delbridge?

Problem 11.4

<table>
<thead>
<tr>
<th></th>
<th>Revenues</th>
<th></th>
<th>Expenses</th>
<th></th>
<th>Net Profit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Room</td>
<td>$510K</td>
<td>Room</td>
<td>$520K</td>
<td>$  11K</td>
</tr>
<tr>
<td></td>
<td>Food</td>
<td>$121K</td>
<td>Food</td>
<td>$100K</td>
<td>$631K</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$631K</td>
<td>Total</td>
<td>$620K</td>
<td></td>
</tr>
</tbody>
</table>


Problem 11.4

• Rights to payment generated by hotel operations are “accounts” [§ 9-102(a)(2)]
  – Security interest in after-acquired accounts ordinarily cut off by virtue of BC § 552(a)
  – But § 552(b)(2): SI does extend to the postpetition “fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties” (akin to proceeds)
Problem 11.4

• No SI in postpetition food revenues
  – These are “after-acquired” [§ 552(a)], and don’t fit within § 552(b) (they are not payments for the “use or occupancy of rooms and other public facilities”)

• Globus has SI in postpetition room revenues (which are covered under § 552(b)(2))
  – Technically, all the postpetition room revenues are Globus’ “cash collateral” [§ 363(a)]
Problem 11.4

• Debtor can’t use cash collateral unless:
  – Secured creditor consents, or
  – Court authorizes use after notice/hearing [§ 363(c)(2)]

• Debtor must segregate/account for cash collateral in its possession (except cash it is authorized to use) [§ 363(c)(4)]

• Creditor’s interest in cash collateral must be “adequately protected” [§§ 362(d)(1), 363(e)]
Problem 11.4: Hotel Sierra Vista

- Can Hotel use postpetition room revenues to pay its operating expenses needed to generate those revenues?
- Court: yes, because SI attaches only to “net” room revenues [p. 191]
- In Problem 11.4, there are no net room revenues (operating expenses >> gross expenses) [cash collateral = $0]
Problem 11.4: *Delbridge*

- Can Hotel use the $510K room revenues to pay its operating expenses?
  - *Delbridge*: cash proceeds of postpetition milk were “cash collateral”
  - “Equities of the case” exception in § 552(b) allows court to set aside lien on cash collateral to extent necessary to pay operating expenses needed to produce postpetition milk (*e.g.*, feed and labor)
Problem 11.4: *Delbridge*

- Can Hotel use the $510K room revenues to pay its operating expenses?
  - *Delbridge*: debtor can’t use that proportion of cash collateral that reflects depreciation of the collateral (capital expenditure financed by lender)
  - Note: this should be average or expected depreciation (in an accounting sense), not the actual fluctuation in FMV of the hotel
Assignment 12
The Legal Limits on What May Be Collateral

Monday, September 29, 2003

• Limits on SIs in Consumer Goods
• Limits on SIs in Wages and Pension Rights
• SIs in Licenses or “Non-Property”
Problem 12.3

• Bank plans to lend $125,000 to Saul Finkel to buy Harry’s Bar
  – Bar’s assets include its furniture, fixtures, lease, inventory, and liquor license
  – State law: liquor license “shall continue as a personal privilege granted by the [Board of Liquor Control] and nothing herein shall constitute the license as property”

• Can Bank take a security interest in the liquor license?
“Licenses” as Property?

• Bank may argue license is a “general intangible” (catchall category as defined in § 9-102(a)(42))

• “Security interest” = interest in “personal property” which secures payment or performance of an obligation [§ 1-201(35)]

• Traditional view: if statute says license isn’t property, it can’t be subject of a security interest [Jackson v. Miller, p. 206]
“Licenses” and Security Interests

• Does *Jackson* approach seem sensible?
  – On the one hand, it should be up to the state to decide who gets a liquor license (Bank shouldn’t be able to dictate, by sale of license, who state must accept as a licensee)
  – On the other hand, the license is valuable, and one might take the view that the law should permit the debtor to use this “value” as a means to grant security and get favorable credit terms
Problem 12.3

• Modern trend approach: *Ridgely* (p. 210)
  – Even if license isn’t transferable vs. the licensor (the state), the license has significant value, if the licensor permits its transfer
  – There’s no reason why licensee can’t grant an Article 9 SI in the right to receive payment for a *permitted transfer* of the license
  – That right to payment is a property right — a “general intangible” under § 9-102(a)(42) — that licensee can use as collateral, even if the license itself isn’t “property”
Problem 12.3

• Under *Ridgely*, Bank would take a SI in all of Finkel’s “general intangibles” (incl. its liquor license and the right to payment from a permitted transfer of that license)
  – If Finkel later sold bar, and Board of Liquor Control granted license to buyer, then sale proceeds attributable to the license would be “proceeds” of general intangible

• What if Finkel defaults but refuses to sell the bar?