

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1795

IN THE MATTER OF: HIPP, INC.,

Debtor.

PHOENIX GRAIN, INC.,

Appellant,

versus

THOMAS J. GRIFFITH, as Trustee for Hipp, Inc.,

Appellee.

Appeal from the United States District Court for
the Northern District of Texas
(2:88 CV 215)

August 31, 1993

Before REAVLEY, DUHÉ and BARKSDALE, Circuit Judges.

PER CURIAM:*

Robert Tolar, as trustee of Oles Grain Company, entered into an agreement with Phoenix Grain, Inc. on October 23, 1986 (the Agreement). As of this date, the Oles Grain estate owned a claim

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

for pre-paid rent against Hipp, Inc. See *In re Hipp Inc.*, 71 B.R. 643, 651-52 (Bankr. N.D. Tex. 1987). The Agreement states:

[Tolar] transfer[s] to Phoenix ... all interests, if any, which ... Tolar ... may have, directly or indirectly, in that certain promissory note dated October 1, 1973, in the principal amount of \$2,000,000.00 executed by Hipp, Inc. payable to John Hancock Mutual Life Insurance Company, and the collateral securing the John Hancock Note This transfer ... is to be construed broadly

The bankruptcy court held that this language did not transfer any claim for pre-paid rent to Phoenix because a claim for pre-paid rent is not an interest in any note or collateral for the note, and, further, because the Hancock note was extinguished prior to the above agreement. Phoenix argued to the district court that this holding is erroneous, and the district court responded:

The clear holding [of the Bankruptcy Court] was that the Hancock note at the time of its transfer [to Phoenix] carried no right to repayment of the sums paid by Oles Grain to purchase the note. The effect of the court's holding was that the Trustee of Oles Grain transferred no value to Phoenix when he transferred his rights, if any, in the Hancock note. The court below had already held the Hancock note to be worthless at the time of its transfer from Oles Grain. This holding is affirmed here.

We agree with both courts below that Tolar did not transfer any claim that Oles Grain had for pre-paid rent to Phoenix on October 23, 1986.

In this court Phoenix urges that the district court found for it on the pre-paid rent claim. That is clearly wrong. Even if Phoenix were correct, the judgment and not the reasoning of the district court, is on appeal. That judgment was that no value was

transferred by Tolar to Phoenix by the above quoted portion of their agreement. We agree.

The appeal is frivolous; double costs are awarded appellee.
FED. R. APP. P. 38.

AFFIRMED.