

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re:

Brutger Equities, Inc., f/k/a  
Brutger Companies, Inc. for itself  
and as successor by merger to  
Brutger Companies, Inc., Sunwood Inns,  
Inc., Thrifty-Scot Motels, Inc.,  
and as general partner in Belleair  
Pines Apartments Limited Partnership,  
Blue Earth Family Housing Limited  
Partnership, Brookwood Estates Limited  
Partnership, Brookwood Investors  
Limited Partnership, Brookwood Manor  
Limited Partnership, Carmen Drive  
Estates Limited Partnership, Cedars  
Lakeside Limited Partnership, Clearwood  
Park Apartments Limited Partnership,  
Crystal Apartments Limited Partnership,  
Crystal Senior Housing Limited  
Partnership, Elk River Townhouses  
Limited Partnership, Ely Seniors Limited  
Partnership, Embassy Enterprises Limited  
Partnership, Falls South Apartments  
Limited Partnership, Glenwood Townhouses  
Limited Partnership, Investments I,  
I-35/Lakeville Limited Partnership,  
La Quinta BEI Joint Venture, LeSueur  
Apartments Limited Partnership,  
Oakwood Apartments Limited Partnership,  
Park Pointe Limited Partnership,  
Parkview Apartments Limited Partnership,  
Parkview Terrace Apartments Limited  
Partnership, Riverview Highlands Limited  
Partnership, South Falls Apartments  
Limited Partnership, Sunwood Inn/Bandana  
Square Limited Partnership, Washburn  
Apartments Limited Partnership, Woodbine  
Apartments Limited Partnership, Woodlands  
of Minnetonka Partners Limited Partnership,  
Woodridge Properties Limited Partnership,

BKY 3-90-5937

CHAPTER 11

Debtor.

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Chy Motel, Ltd.

Plaintiff,

vs.

Adv. No.3-91-83

Brutger Companies, Inc., a  
Minnesota corporation,  
Manadyne, Inc., a Minnesota  
corporation, Jerry Severson,  
individually, and Norwest  
Financial Equipment, Inc.,  
(formerly Norwest Leasing,  
Inc.) a Minnesota corporation,

Defendants,

and

ORDER

Brutger Companies, Inc. a  
Minnesota corporation, and  
Brutger Equities, Inc.  
a Minnesota corporation,

Third-party  
Plaintiffs,

vs.

Ronald L. Kopeska,  
Third-party  
Defendant.

Plaintiff,

v.

Manadyne, Inc. and Jerry W. Severson,

Defendants.

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This matter came before the Court on Motion of Brutger Equities, Inc. (the "Debtor") for partial summary judgment against Plaintiff Chy Motel, Ltd. and Defendant Ronald L. Kopeska. Appearances are as noted in the record. The Court having received and reviewed written arguments, having heard oral arguments, and now being fully advised in the matter, makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

The overall dispute in this case arises out of the purchase and sale of a motel. The Debtor was the seller and the Plaintiff was the purchaser. In connection with the transaction, Ronald Kopeska, a principal of the Plaintiff, borrowed the sum of \$100,000 from an institution known as Security Financial Banking and Savings to make a required downpayment. He claims that the loan was the Debtor's idea and a product of the Debtor's efforts after he was otherwise unable to raise the necessary funds for the payment. The Debtor guaranteed the loan.

Things did not go well, and a default occurred on both the note and the Plaintiff's obligation to the Debtor under the purchase agreement. Chy Motel commenced this litigation, alleging, among other things, fraud on the part of the Debtor in connection with the sale. In the meantime, the Debtor paid its guarantee

obligation on, and took an assignment of, the note.

The Debtor has now brought this motion for summary judgment on the note, claiming to be a holder in due course. Apparently, its theory is that, regardless of the Debtor's conduct in, or knowledge of, the transaction, it is entitled to step into the shoes of the assignor from whom it acquired the note as a holder in due course.

Whether the Debtor is a holder in due course is a question of fact, dependent upon the Debtor's conduct in, and knowledge of, the underlying transaction resulting in the note. Holder in due course status was not conferred by through the assignment just because the assignor was a holder in due course. See: *International Finance Corporation v. Rieger*, 137 N.W.2d 172 (1965); and *Goedard v. Folstad et al.*, 195 N.W. 281 (1923). Summary judgment is inappropriate because substantial questions of material fact regarding the Debtor's conduct in the underlying transaction are unresolved.

Accordingly, IT IS HEREBY ORDERED:

Brutger's motion for summary judgment is denied.

Dated: May 20, 1991.

Dennis D. O'Brien  
Judge of Bankruptcy Court