

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
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January 25, 2002

John S. Lovald, Plaintiff-Trustee
P.O. Box 66
Pierre, South Dakota 57501

Robert E. Hayes, Esq.
Counsel for Defendant
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Sioux Falls, South Dakota 57101-1030

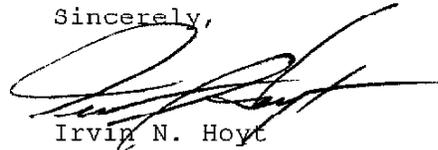
Subject: *Trustee John S. Lovald v. Dakota Truck Underwriter
(In re Fischer Enterprises, Inc.,) Adv. No. 01-4027;
Chapter 7; Bankr. No. 01-40442*

Dear Counsel:

Upon consideration of the parties' recently filed briefs and the applicable statutes and case law and in light of the undisputed facts presented, the Court concludes that the bankruptcy estate's interest in the subject funds is contingent on the contract provisions, which allow up to a three-year delay in full disbursement. Although Defendant's choice in delaying full payment of the subject funds to the bankruptcy estate appears relatively indefensible, Trustee Lovald does not acquire any greater right to payment than what Debtor had on the petition date. See *Dolphin Titan International, Inc. v. Gray & Co. (In re Dolphin Titan International, Inc.)*, 93 B.R. 508 (Bankr. S.D. Tex. 1988); *Cedar Rapids Meats, Inc. v. Hager (In re Cedar Rapids Meats, Inc.)*, 121 B.R. 562 (Bankr. N.D. Iowa 1990). Accordingly, the Court has no authority under either § 542 or § 543 to alter the contract terms and expedite the turnover. Unfortunately, creditors will have to wait.

An order granting summary judgment for Defendant will be entered.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

JAN 28 2002

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By *LN*

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
Entered

JAN 28 2002

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

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