Askee: MIke

QUESTION: Do bankruptcy reclamation rules apply in a foreclosure situation. In this example, a letter was received indicating the company is undergoing forced liquidation but there does not appear to be a bankruptcy filing.

RESPONSE: Foreclosures, forced liquidations, seizure of Assets by a bank or a WI Chapter 128 liquidation are all situations where a federal bankruptcy case hasn't been filed and a company is being liquidated. The company or its former owner's interest has ceased to exist. A company or entity may re-emerge, but it will be as a new company. Reclamation (demand to reclaim or repossess goods or products shipped to a debtor) can take place at any time. For example, a reclamation demand can be delivered to a debtor that is not in bankruptcy or when it has filed for bankruptcy relief. </p>

<p>The letters or communications delivered to the debtor are similar. Reclamation while a firm is in bankruptcy, allows creditors to formally demand that their products be set aside and that those products be returned or paid for. This demand does not guarantee that a creditor will get its goods back or that they will get paid for those pre-petition sales within 45-60 days of the commencement of the bankruptcy case. It forces the debtor to co-operate because of its status as a bankrupt company coming under the review of the bankruptcy court and or a US Trustee. However, it does put everyone (debtor, bankruptcy court and others) on notice that a specific creditor has certain rights in the case related to shipments made near the filing date. That may or may not provide some negotiation leverage for the creditor at some point within the administration of the case. </p>

<p>Reclamation when a firm is not in bankruptcy, allows creditors to formally demand their customer set aside products that the creditor will pick up or repossess because of the debtors unwillingness or inability to pay for those products. A creditor can make or formally send this reclamation demand at any time. The debtor however, does not have to, nor is the debtor required to segregate creditor's products, paving the way for a return of goods. A creditor can assert itself and can show up at a debtor's location to repossess or retrieve its product. If however, the debtor objects or refuses to let the creditor repossess its goods, the creditor must keep the peace and leave. If the creditor does not or breaks the peace, the creditor may be subject to civil complaints against it by the debtor. If a creditor is able to get back its product prior to a foreclosure, Chapter 128 liquidation, asset seizure, etc., a creditor will be much better off. Once a foreclosure, seizure, or forced liquidation begins, the assets are typically locked up by the bank or the liquidating attorney or trustee for the sole purpose of auctioning them off, selling them for cash or selling them in bulk. </p>

<p>A creditor can demand reclamation but is unable to get its hands on their products. Legal action is typically ineffective because while you're trying to get approval to get your hands on the goods the bank or trustee is selling them to cover secured debt. When a company is being liquidated but no bankruptcy has been filed, either a WI Chapter 128 liquidation is in process or a trustee has been hired or appointed to liquidate the assets of an entity. Both situations are supervised by an authority that is hired to sell all assets in order to pay debtors (secured, unsecured or otherwise). It's rare, if any creditors other than secured creditors get any money. In the situation where a bank (secured creditor) seizes assets of the company via foreclosure, an asset auction typically occurs and proceeds typically are paid to the secured lender or bank. Your reclamation claim or demand outside of bankruptcy can be ignored without any consequences. It is up to the creditor in this case, to be aggressive in reclaiming your product within the law and while keeping the peace when getting your goods back from the debtor on its property or location. </p>

<p>These are the basics related to your question. If a creditor has inside knowledge or feels, a customer may be going out of business at any time, the use of reclamation is a tool that can help a creditor if they are willing to take back goods to avoid losing them in liquidation or a foreclosure. It's rare that creditors use the tool or guess correctly on timing. Management or sales will hardly ever want to take goods back or reverse a sale, until it's too late. It can be effective nonetheless.