

11/17/80

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

IN THE MATTER OF:

IN BANKRUPTCY NO.:

80-00707

M & M OFFICE SUPPLIES, INC.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER.

Debtor.

FILED
NOV 17 1980
CLERK
U.S. BANKRUPTCY COURT

George W. Crafts and Margaret C. Crafts, by their attorney, William F. Yeschek, and Martin J. Haugh and Deborah Haugh, by their attorney, Mark A. Mangerson of the law firm of Ruder, Ware, Michler & Forester, S.C., having filed a motion objecting to the jurisdiction of this Court over all assets and debts related to the appearance of the names of these objectors on the bankruptcy petition pursuant to Bankruptcy Rule 915; and said matter having come on for hearing before the Court pursuant to notice; and Stewart L. Etten having appeared on behalf of said Crafts and Haughs for oral argument of said motion; and Roy T. Traynor, attorney for the debtor in said proceedings having opposed said motion; and the Court having duly considered the affidavits submitted, the record and file herein, and having heard the argument of counsel, and having considered the written briefs filed by Mr. Etten and Mr. Traynor, and being fully advised in the premises, FINDS:

1. That said debtor duly filed a petition in a Chapter 11 proceedings on the 27th day of May, 1980, and thereafter on the 30th day of June, 1980, said matter was converted to a Chapter 7 proceedings, and Edward F. Zappen was named interim trustee and Arthur L. Eberlein was appointed attorney for the trustee.

2. That the schedules filed in said proceedings list at Schedule A-2 - Creditors Holding Security, the following items:

George W. and Margaret
C. Crafts
209 Shenandoah
Tucson, AR 85704

Parts, tools, wash tank,
compressor & inventory of
Lakeland Business Machines
9/1/75 - No recording info.
available

Amount of Claim - \$9,446.57

Martin Haugh
R. 10, Box 461-66
Charlotte, N.C. 28213

Building - Unrecorded
Lease-Purchase Agreement
Dated 9/1/76

Amount of Claim - \$149,500.00

Martin Haugh
R. 10, Box 461-66
Charlotte, N.C. 28213

Inventory - UCC Financing
Statement recorded in the
office of the Oneida County
Register of Deeds on
October 12, 1976 as
No. 4037 and 4038

Amount of Claim - \$25,567.39

On Schedule B-1 - Real Property, appears the description of real estate following the wording "Unrecorded lease with option to buy from Martin P. Haugh and Deborah Haugh, his wife" with a market value of \$175,000.00. On Schedule B-2 - Personal Property, is listed the following items:

Office equipment, furnishings, supplies and service parts	\$ 2,500.00
Machinery, etc.	\$ 3,000.00
Inventory (market value)	\$30,000.00

3. That the trustee duly filed an inventory on the 6th day of October, 1980, showing no real estate owned by the debtor corporation and listing the store inventory, including miscellaneous supplies at \$1,750.00 and miscellaneous service equipment, tools, parts, tanks and cleaning equipment at \$500.00 with a total valuation of \$2,250.00.

4. That the trustee advised the Court in person and by his attorney that they were not appearing at said hearing and that they did not believe the real estate above referred to was an asset or property of the debtor, and that said property had no equity to said bankruptcy estate if it were determined to be an asset of the debtor.

5. That the attorney for the debtor bases his contention that the property belongs to the debtor's estate on an assignment of lease by operation of law, and by a consent to the assignment by the Haughs and Crafts by their acceptance of checks of said debtor.

6. That the attorneys for the Crafts and Haughs contend that the promissory note and the lease of the real estate described therein and in the schedules, and the obligation arising out of said promissory note and security agreement and lease are not the obligation of the debtor corporation but are the obligation of James and Joan Carpenter.

7. That in September 1976 the business was sold by the Haughs to the Carpenters and it was clearly understood by all of the parties that the only way the Haughs would enter into the transaction was if the Carpenters personally were the debtors or obligors. Assignment of both the promissory note and the lease without the written approval of the other party is prohibited in the stock purchase agreement at paragraph six and in the lease at paragraph eighteen respectively. No such approval was sought by the Carpenters or granted by the Haughs.

8. That from all of the evidence there was no assignment of the lease or the promissory note to the debtor, or any consent obtained as required, and that the contention that there was an assignment of the lease by operation of law and a consent by acceptance of the checks cannot be sustained.

CONCLUSIONS OF LAW

That an order be entered granting the motion of the Crafts and the Haughs determining that this Court has no jurisdiction over the assets and debts related to the above described items in the bankruptcy schedules.

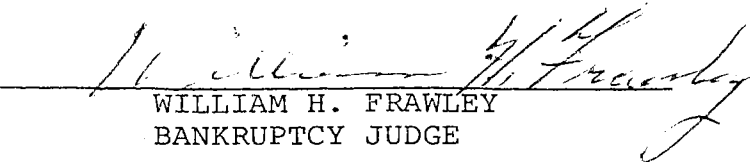
O R D E R

NOW, THEREFORE, IT IS ORDERED: That the promissory note and lease referred to in the schedules are determined not

to be obligations within the jurisdiction of the Bankruptcy Court in the above entitled proceedings, and that said motion of the Crafts and the Haughs herein is hereby granted.

Dated: November 17, 1980.

BY THE COURT:


WILLIAM H. FRAWLEY
BANKRUPTCY JUDGE