

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

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In Re

TELEMARK MANAGEMENT COMPANY, INC.,  
and others

Debtors

Case No. EF11-81-00747

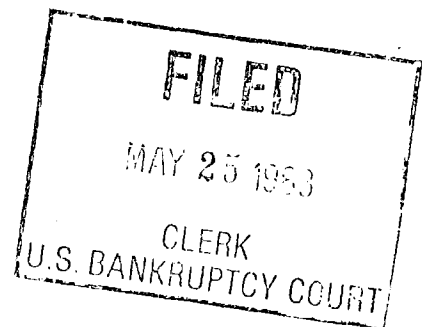
ARNOLD & O'SHERIDAN, INC.,  
a Wisconsin Corporation

Plaintiff

vs.

TELEMARK MANAGEMENT COMPANY, INC.;  
THE TELEMARK COMPANY, INC.; TELEMARK  
LAND COMPANY, INC.; HISTORYLAND,  
INCORPORATED; THAW, INC.; J. H.  
FINDORFF & SONS, INC., all the fore-  
going defendants being Wisconsin  
Corporations; THE PEOPLES NATIONAL  
BANK OF HAYWARD, a National Banking  
Association; CARLEY CAPITAL GROUP,  
a Wisconsin general partnership;  
and ELS DESIGN GROUP, a California  
partnership,

Adversary No. 82-0310



Defendants.

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW and ORDER

The plaintiff, Arnold & O'Sheridan, Inc., a  
corporation performing engineering services, with an office  
in Madison, Wisconsin, having filed a complaint herein, claim-  
ing a balance of \$28,528.59 plus interest due on account from

the defendant E.L.S. Design Group, and praying for payment by the defendant Peoples National Bank of Hayward out of an escrow fund now in its hands; and as an alternative to its judgment above stated, to modify the automatic stay provided by Section 362 of the Bankruptcy Code to permit the plaintiff to foreclose its claim for a construction lien, and for such other and further relief as may be just; and said defendant either by direct motion or by answer having moved the court to dismiss the plaintiff's complaint; and the matter having come on for hearing by telephone conference, at which time the court heard the arguments of counsel in support of the motions and the objections thereto; and briefs having been filed by the respective attorneys; and the court having duly considered the record, the arguments of counsel and the memorandums, and being fully advised in the premises, FINDS:

1. That on the 30th day of April, 1981, the debtors Telemark Management Company, Inc., The Telemark Company, Inc., Telemark Land Company, Inc., Historyland, Incorporated, and Thaw, Inc. filed petitions under Chapter 11 of the Bankruptcy Code.

2. That in November 1978 the defendant E.L.S. Design Group retained the plaintiff to provide structural and mechanical calculations and drawings and miscellaneous other engineering services for a ski chalet to be constructed for debtors in Cable, Wisconsin.

3. That plaintiff did furnish said services and said ski chalet was constructed.

4. That the plaintiff alleges that E.L.S. Design Group is indebted to it in the sum of \$28,528.59 plus interest.

5. That on or about May 5, 1981, plaintiff mailed to the debtors a notice of intent to file a lien claim as provided in the Wisconsin lien law.

6. That on June 8, 1981, the plaintiff filed with the Clerk of the Circuit Court of Sawyer County, Wisconsin, a construction lien claim against the real estate of the debtors in the amount of \$28,528.59 plus interest from December 20, 1980.

7. That on or about September 27, 1979, the debtors entered into an escrow agreement with the defendant Peoples National Bank for the deposit of \$2,597,434.80 to pay for the construction of the ski chalet.

8. That in June 1982 certain amounts were ordered disbursed from said escrow account to certain creditors.

9. That the defendants Carley and Findorff moved the court for dismissal of this action on the grounds that said controversy is a dispute between the plaintiff and defendant E.L.S. Design Group over an unpaid account; that neither party to said dispute is a bankrupt and that adjudication of the dispute is outside the jurisdiction of the bankruptcy court; and that the complaint fails to state a claim upon which relief can be granted.

10. That thereafter Findorff and Carley forwarded letters to the court requesting the court to pay from the escrow account the amount to satisfy the plaintiff's claim.

11. That the defendants Telemark companies filed an answer and counterclaim claiming E.L.S. negligently performed the architectural services and describing certain items therein, and making claim in an estimated amount of \$100,000.00.

12. That on or about March 16, 1981, E.L.S. Design Group filed a demand for arbitration with the American Arbitration Association.

13. That defendant E.L.S. Design Group filed its answer herein and a cross-complaint for certain determination of rights as to the escrow account.

14. E.L.S. Design Group claims the court has no jurisdiction because the plaintiff is not a party in interest as defined by the Bankruptcy Code. It is not a creditor of the estate, has no lien or other interest in property to the estate, and is related only to the estate as a creditor of a creditor of the estate; and further it has no claim against any of the other parties to this proceedings, and that as a result the court is powerless to grant plaintiff its remedy, regardless of the merits of its claim.

15. The fact is that the plaintiff filed a mechanic's lien under the Wisconsin lien law and asks in the alternative to lift the stay herein to allow it to proceed to foreclose its

said mechanic's lien.

16. That from a complete examination of all of the pleadings and the record on file herein, and from a careful analysis of the legal ramifications arising out of the various claims, and the fact that the court has approved and confirmed the plan of reorganization in the Chapter 11 proceedings, it is to the best interest of the debtors' estate and all of the parties herein that said action be dismissed and that plaintiff be permitted to commence a foreclosure action of its mechanic's lien in the Circuit Court of Sawyer County, Wisconsin.

CONCLUSIONS OF LAW

That an order be entered granting the motions to dismiss said action and lifting the stay to permit a foreclosure of the mechanic's lien in the Circuit Court of Sawyer County, Wisconsin, and to permit, if the parties so desire, the continuation of the arbitration matter referred to above.

O R D E R

NOW, THEREFORE, IT IS ORDERED:

1. That the plaintiff's complaint be and the same is hereby dismissed without prejudice for further action to collect its account.

2. That the automatic stay in the Chapter 11 proceedings of the debtors be and the same is hereby lifted to permit the plaintiff to forthwith proceed with the foreclosure of its mechanic's lien in the Circuit Court of Sawyer County,

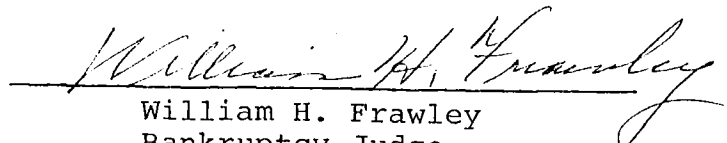
Wisconsin, and to permit the trial of defendants' counter-claim in said action.

3. That the parties to the arbitration proceedings be allowed to proceed with it if they so desire.

4. That no costs be allowed to any of the parties herein.

Dated: May 25, 1983.

BY THE COURT:

  
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William H. Frawley  
Bankruptcy Judge