

FILED

SEP 29 1986

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

CLERK, U.S.
BANKRUPTCY COURT
CASE NO. ~~84-0170-7~~

In re:

Case Number:

TELEMARK MANAGEMENT COMPANY, INC.
THE TELEMARK COMPANY, INC.
TELEMARK LAND COMPANY, INC.
HISTORYLAND, INCORPORATED
THAW, INC.

EF7-81-00747
EF7-81-00748
EF7-81-00749
EF7-81-00750
EF7-81-00751

Wisconsin Corporations, d/b/a
Telemark Enterprises,

Debtors.

LAWRENCE J. KAISER, as Trustee of
the Estate of Telemark Management
Company, Inc., The Telemark Company,
Inc., Telemark Land Company, Inc.
Historyland Incorporated, and
Thaw, Inc.,

Plaintiff,

Adversary Number:

v.

84-0170-7

SHEILA WISE and ANTHONY WISE,
d/b/a Anthony Wise Enterprises,
d/b/a AWE, and American Classic
Competitions, Inc.,

Defendants.

MEMORANDUM OPINION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

A hearing was held on September 12, 1986, for the purpose of determining whether various items of decorative property are assets of the bankruptcy estate or whether they are personal assets of Anthony Wise (Wise). Wise appears pro se and the

trustee, Lawrence Kaiser, appears by Stephen Cohen. Peoples National Bank appears by Jeffrey Guettinger. At the hearing, the parties were provided opportunity to present evidence, call witnesses, and make oral arguments.

The Seventh Circuit Court of Appeals provided in its order of May 13, 1986, that Wise should be allowed to present evidence indicating that some decorative items, primarily Indian artifacts, were Wise's personal property rather than property of the bankruptcy estate. Matter of Kaiser, 791 F.2d 73 (7th Cir. 1986). "Wise is entitled to present evidence that (1) decorative items (2) paid for by personal check were in fact his and not Telemark's." Id. at 78. Wise did not present any evidence that he had purchased decorative items by personal check. However, this alone cannot defeat Wise's claim that some of the decorative items may be his personal property. A strict interpretation of the requirement for personal checks would ignore the fact that many of the items were received as gifts or were paid for long before the corporation came into existence. Of course, though, simply because an item of property was not purchased with corporation assets does not imply that such item could not become an asset of the corporation at a later date.

On September 12, 1986, Wise finally submitted a list to the court stating exactly what items of property he claims to be his own personal property. This list was quite extensive. Wise even included on the list several buildings that he claims are his own personal property. The list, though, can be broken down into two

categories: 1) the items at Telemark, and 2) the items at Historyland.

Wise initially listed ten items of property located at Telemark lodge as his own personal property. At the hearing of September 12, 1986, he amended this list to include only eight items:

1. Berkebeiner Wooden Statue.
2. Carved Wooden Indian Chief.
3. Viking Ship.
4. Swiss Canton Flags.
5. Sleigh (Enclosed).
6. Sleigh Cutter.
7. Buggy.
8. Barber's Chair.

All of these items are decorative in nature and not used for utilitarian purposes at the lodge. Most of these items were received as gifts. It is difficult to precisely determine whether the intended beneficiary of the gifts was Wise or the Telemark lodge. However, the court is inclined to presume that the gifts were made for the benefit of Wise and that he acquired an interest in the items as personal property.

The situation with the property located at Historyland is significantly different than the property located at the Telemark lodge. Historyland is a historical museum that displays various artifacts as part of a profit motivated enterprise. Wise argues that many of the display items at Historyland are his own personal property and are separate and distinct from property owned by the corporation. Wise did not present any evidence indicating that this property somehow remained separate from the corporate assets. It is evident that the display items in the context of

the profit oriented museum serve a very utilitarian function. These are not like a painting hung on an office wall. Instead, they are exhibits that people actually pay to view. This is not the type of property that the Seventh Circuit Court of Appeals was referring to as decorative items:

(4) The decorative items are different. If a person buys a work of art with his own money and places it in his office, there is no presumption that the business owns it; nor is a creditor likely to extend credit in reliance on the business's owning it, for businesses commonly rent works of art or display works loaned to it by its officers. Of course, Telemark may be the real owner of these artifacts even if they were paid for out of Wise's "personal" funds, for as we have said no distinction was maintained between personal and corporate assets. But the evidence of this is much weaker than in the case of the land and the utilitarian items of personal property. Wise is entitled to present evidence that (1) decorative items (2) paid for by personal check were in fact his and not Telemark's. There is no question of reliance by creditors on Telemark's owning these items; the items were never listed in any financial disclosure statement and a creditor would not think that they were necessarily Telemark's property.

Matter of Kaiser, 791 F.2d 73 (7th Cir. 1986). The property located at Historyland that Wise claims as his own personal property is substantially different in character than that contemplated in the May 13, 1986, opinion. Further, Wise has not presented one iota of evidence indicating that any of the property located at Historyland is in fact his own personal property.

Until 1957, Historyland was owned as a partnership by Wise and his wife, Sheila. The income tax return of December 31,

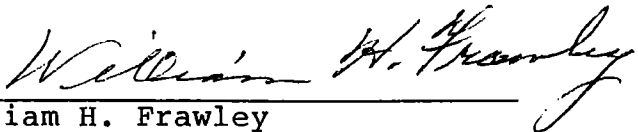
1956, for Historyland as a partnership was introduced into evidence as Exhibit #1 at the September 12, 1986, hearing. In 1957, the debtors incorporated Historyland and became the sole stockholders of Historyland Incorporated. The income tax returns of December 31, 1958, for Historyland Incorporated were introduced into evidence as Exhibit #2 at the September 12, 1986, hearing. "Museum displays" were specifically listed as assets of the corporation in this corporate tax return. Also, the buildings that Wise now claims as his own personal property were also listed as assets of the corporation and were depreciated in the depreciation schedule.

It is the conclusion of the court that Wise should be allowed to claim the eight items of personal property located at Telemark as his own personal property. This property, of course, may still be subject to any valid liens. The property located at Historyland is all property of the bankruptcy estate. Wise does not have a legal interest in any of the property located at Historyland.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

Dated: September 29, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge

N/M

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SHEILA WISE and ANTHONY WISE,
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ORDER

Defendants.

The court having this day entered its memorandum opinion,
findings of fact, and conclusions of law;

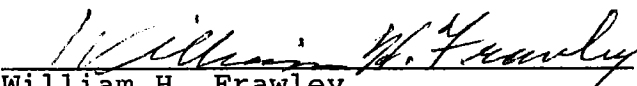
NOW, THEREFORE, IT IS HEREBY ORDERED that Anthony Wise is
the owner of the Berkebeiner wooden statue, carved wooden Indian
chief, Viking ship, Swiss canton flags, enclosed sleigh, sleigh
cutter, buggy, and barber's chair now at Telemark. This

ownership interest may be subject to any valid liens in said property.

IT IS FURTHER ORDERED that Anthony Wise does not have an ownership interest in any of the property located at Historyland or in any of the property located at any of the other Telemark properties except with respect to the eight items listed in the above paragraph.

Dated: September 29, 1986.

BY THE COURT:


William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney Stephen Cohen
Anthony Wise
Sheila Wise
Attorney Jeffrey Guettinger