

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

In re:

WILLIAM D. BUTLER  
ARLYSS J. BUTLER  
d/b/a Chef Bill Butler's  
Village Square

Debtors.

In Bankruptcy:

EF11-81-01673 ✓

FILED

DEC 5 1983

-----CLERK-----  
U.S. BANKRUPTCY COURT

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS:

- 1) DENYING LIFTING OF STAY
- 2) DENYING REQUEST FOR MARSHALLING OF ASSETS
- 3) DETERMINING APPLICANT THORP FINANCE CORPORATION  
HAS NO LIEN ON THE FARM PERSONAL PROPERTY
- 4) DETERMINING VALUATION OF THE FARM REAL ESTATE  
AND FARM PERSONAL PROPERTY
- 5) DETERMINING THAT THE CLAIM OF THORP FINANCE IS UNSECURED

Thorp Finance Corporation having filed an application to lift the stay in the above entitled matter and requesting the marshalling of assets in said case; and the debtors having requested a valuation of the farm real estate and the farm personal property, and for a determination of the validity of the lien claim on the farm personal property by Thorp Finance Corporation; and the applicant appearing by Kenneth Wm. Jost, its attorney; and the debtors having appeared by Mart W. Swenson, their attorney; and hearings having been held from time to time relative to said issues;

and the Court having heard the evidence produced at the trials, the arguments of counsel, and having considered the appraisals, memorandums and the complete record and file, and being fully advised in the premises, FINDS:

1. That said debtors duly filed a petition and application for relief herein on the 25th day of September, 1981, as a Chapter 13 petition, and which matter was converted to a Chapter 11 proceedings on the 22nd day of October, 1981.

2. That the debtors operated a restaurant in the Village of Cameron, Barron County, Wisconsin, and were also engaged in farming in Barron County.

3. That during the administration of the estate, the restaurant business with the personal property and real estate was disposed of for the sum of \$140,000.00, and after the payment of authorized deductions there was credited on the Butler account with the applicant, Thorp Finance Corporation, \$112,911.38 on the 10th day of May, 1983.

4. That the farm real estate is subject to a first mortgage lien to the Farm Home Administration, and subject to a second mortgage lien to Thorp Finance Corporation, the applicant herein.

5. That the farm personal property is subject to a first, undisputed, mortgage lien to the Farm Home Administration, and an alleged claim of lien by the applicant, Thorp Finance Corporation.

6. That on the 29th day of January, 1982, the United States Attorney for the Western District of Wisconsin filed in said proceedings, in behalf of the Farm Home Administration, a claim for \$91,148.36, and being claim #29 herein; and the Thorp Finance Corporation filed a claim on May 13, 1982, for the sum of \$187,036.00 plus interest, as claim #35 herein.

7. That as of this date the approximate amount due to the Farm Home Administration on its mortgage liens herein is the sum of \$103,000.00.

8. That the amount due Thorp Finance Corporation, the applicant herein, as of this date is in excess of the sum of \$94,775.31 plus accrued interest.

9. That each of the parties employed appraisers who filed appraisals with the Court and testified as to the appraisals-- one in the sum of \$84,000.00, and the other in the sum of \$82,400.00, as to the farm values.

10. That in 1983 the parties had one appraisal of the

farm personal property by Elvin Riewestahl in the sum of \$35,625.00.

11. That the value of the farm real estate as found by the Court from said appraisals and testimony is the sum of \$83,000.00.

12. That said real estate is approximately \$20,000.00 below the amount due on the first mortgage lien of the Farm Home Administration.

13. That Thorp Finance Corporation has no equity in the farm real estate under its second mortgage.

14. That the debtors claim personal exemptions in the farm personal property.

15. That the security interest taken by Thorp Finance Corporation in said proceedings dated August 27, 1980, and being described in the file as Exhibit "C" and Deposition Exhibit 1, in the total amount of \$175,503.82, with interest at the rate of 19%, shows under the provisions for security four boxes, and the only box checked is under "Other (Describe) restaurant equipment and fixtures." The third box for "Farm Equipment and/or Products, including Livestock, Grain, Crops" is not checked.

16. The question of security agreements and their proper execution has been before this Court on many occasions, as well

as before Judge Bessman and Judge Martin in the Madison District and, therefore, a further discussion of the failure to check the box would accomplish no purpose. See In re Hein, 2 B.C.D. 486, Bankr. 20 UCC Rep. 745 (W.D. Wis. 1976) (Bessman, J.). See also In re Golden, 83-01174 (Bankr. W.D. Wis. Oct. 20, 1983)(Frawley, J.) and In re Kohl, 18 B.R. 670 (Bankr. W.D. Wis. 1982)(Martin, J.).

17. That the answer to the question of the validity of the Thorp claim of lien on the personal property is that Thorp has no lien on the farm personal property.

18. That the marshalling of assets as requested by Thorp is not applicable in this case; that to allow the marshalling of assets herein would be to defeat the constitutional rights of the debtors to their exemptions under the state and federal law and as claimed in said schedules.

19. That the value of the farm personal property is the sum of \$35,625.00.

20. That the claim of Thorp Finance Corporation herein is an unsecured claim for the amount due after the crediting of the sale of the restaurant, real estate and personal property.

21. That there is no equity in the farm real estate to

lift the stay as prayed for by the applicant, Thorp Finance Corporation, to foreclose its second mortgage.

That as Conclusions of Law, the Court enter an order as follows:

1. Denying the application to lift the stay.
2. To determine the value of the farm real estate and farm personal property in the sum of \$83,000.00 and \$35,625.00, respectively.
3. That the marshalling of assets doctrine is not applicable or proper in this case.
4. That the claim of Thorp Finance Corporation over and above the restaurant credit is unsecured.
5. That Thorp Finance Corporation has no lien on the farm personal property, and that said claim under Exhibit "C" and Deposition Exhibit 1 is null and void.

NOW, THEREFORE, IT IS ORDERED:

1. That the application to lift the stay is denied.
2. That the value of the farm real estate is determined to be \$83,000.00, and the farm personal property \$35,625.00.
3. That the application for the marshalling of assets doctrine is denied.

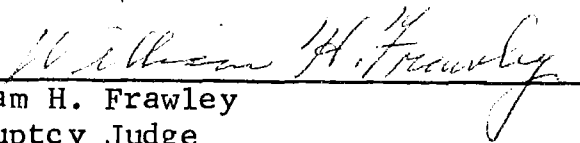
4. That the claim of Thorp Finance Corporation over and above the restaurant credit is unsecured.

5. That Thorp Finance Corporation has no lien on the personal property.

without costs to either of the parties.

Dated: December 5, 1983.

BY THE COURT:

  
\_\_\_\_\_  
William H. Frawley  
Bankruptcy Judge