

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

In Re: IN BANKRUPTCY
BERNARD LEOPOLD SPATZ and No. WF11-81-01728
LORRAINE GERALDINE SPATZ,
d/b/a The Green Bough and
Spatz Real Estate,
Debtors.

FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER

Bertha Brockman, holder of a mortgage on the real estate of the above named debtors, having filed an application to lift the automatic stay; and the Court having postponed any action thereon until the filing of the plan; and a supplemental hearing relative to said application having been held on the 18th day of February, 1982, at which time the debtors appeared in person and by Roy T. Traynor, their attorney; and Bertha Brockman, the applicant, by Rodney Lee Young and Rhea A. Myers, her attorneys; and the Court having heard the arguments of counsel, and having considered the record and all of the proceedings herein, FINDS:

1. That the debtors filed an application for Chapter 11 relief on the 5th day of October, 1981, and that at the time of the filing of the schedules Bertha Brockman was the holder of a certain mortgage in foreclosure on the property of the debtors known as The Green Bough.

2. That the appraisal dated September 18, 1981, submitted by the applicant at the hearing on the lifting of the stay showed a value of \$215,000.00; and that the appraisal dated June 26, 1978, submitted by the debtors showed a value of \$300,000.00 for said property.

3. That a judgment of foreclosure was entered in the Circuit Court of Marathon County, Wisconsin, and pursuant to said judgment a notice of sheriff's sale was duly given by publication and other required service; that the debtors filed their petition just prior to said sale which was stopped by the automatic stay.

4. That due application for lifting of the stay was made to the Court.

5. That the applicant, Bertha Brockman, duly adopted the two debtors herein.

6. That the amount due on the judgment of foreclosure as of February 18, 1982, the date of the hearing, was the sum of \$261,144.70.

7. That taxes are delinquent on said property for the years 1977, 1978, 1979, 1980 and 1981 in the approximate sum of \$24,000.00.

8. That debtors defaulted on the original mortgage by making no payments thereon; by failing to pay the fire insurance and by allowing the taxes to become delinquent as hereinabove found.

9. That debtors operate the said business, which is a tavern with musical entertainment catering to the older clientele in the Wausau area, on Friday, Saturday and Sunday of each week.

10. That at the time of the hearing the debtors submitted photostatic copies of their receipts and disbursements from October 1981 through January 1982, and that a careful examination of the receipts and disbursements shows that the operation barely breaks even on different weeks, and that no provision for the payment of principal, interest, taxes or insurance can be made from the present operation although the debtors contend they plan to open and operate on other days of the week in the near future, but an examination of

the operation would show that it would still be insufficient to take care of all of the fixed payments necessary to retire the mortgage.

11. That the debtors advised the Court they had no commitment for any refinancing loans at the time of the hearing and that the Small Business Administration did not have any funds at this time for said purpose.

12. That Marathon County extended the time for taking a tax deed on the 1977 taxes to April 1, 1982.

13. That the appraisal submitted by the debtors includes the property located at 1313 South 12th Avenue, Wausau, Wisconsin, which is a home of the approximate value of \$35,000.00. (Page 43; Transcript of Proceedings 11-12-81.)

14. That the appraiser for the debtors did not use the "income approach" of the property as stated in his appraisal.

15. That the bar equipment is also subject to a separate security interest which is in default in the sum of \$5,373.16.

16. That the debtors were to file a plan by the 5th day of February, 1982, but failed to do so, and have made application for an extension to April 5, 1982, to file the plan. This has been noticed for hearing on March 18, 1982.

17. That it appears from all of the facts and the general condition of the times that there is no ready market for the sale of real estate or available cash funds for refinancing.

18. That there is no equity to the debtors in said property considering the values based on the appraisal, the accumulated taxes, insurance and the foreclosure judgment, and that there is added to said judgment an additional amount of approximately \$85.00 per day plus the accrued amount on the taxes.

19. That the advertised sale of the property should be re-advertised in that the automatic stay stopped said sale at the time that it was noticed.

CONCLUSIONS OF LAW

That an order be entered lifting the automatic stay herein to permit the applicant to proceed with the foreclosure action in the state court on condition that the applicant re-advertise the foreclosure sale.

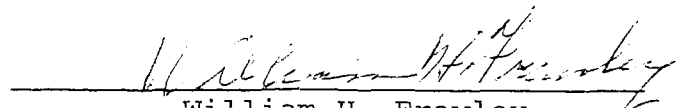
O R D E R

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:

That the automatic stay herein be and the same is hereby forthwith lifted, and the applicant permitted to proceed with said foreclosure sale on the condition that she re-advertise the same pursuant to Wisconsin law.

Dated: March 5, 1982.

BY THE COURT:



William H. Frawley
Bankruptcy Judge