

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

In Re:

IN BANKRUPTCY

MELVIN E. KRUEGER, JR.
and SHERRY KRUEGER,
d/b/a The Blossom Shop

No. WF7-82-01501

Debtors.

ORDER DENYING APPLICATION FOR RELIEF
FROM AUTOMATIC STAY AND FOR ABANDONMENT
OF PROPERTY

The Price Credit Union, a creditor in the above proceedings, having filed an application with the Court for an order lifting the automatic stay and for abandonment by the trustee of said property on October 15, 1981; and the debtors having requested in writing a hearing relative to said application; and a pre-trial hearing having been held on said matter; and the Court having heard the arguments of counsel; and briefs having been filed; and the Court having considered the entire record and being fully advised in the premises, FINDS:

1. That the debtors filed a petition for relief in the above matter on the 28th day of August, 1981.
2. That on September 24, 1976, the debtor, Melvin E. Krueger, Jr., executed a note and security agreement in favor of the Price Credit Union and using as security one 1974 Chevrolet.
3. That said security agreement was duly filed as required by law.
4. That on August 10, 1979, said debtor secured another loan evidenced by a note to the Price Credit Union using the same security.

5. That in 1980 the debtor defaulted on the terms of said agreement and a replevin action was commenced in the Circuit Court of Price County and a judgment of replevin was granted on October 28, 1980.

6. That at the time of the entry of judgment on said date the debtor appeared and arranged with the creditor to keep the car and to continue the monthly payments, and that he has retained possession of the car to this date.

7. The question raised by counsel is, "Where a creditor has a security interest in collateral which secures all debtor's present and future debts to the creditor, does that security interest survive the judgment of replevin?" Counsel have argued the relative merits of the above question in their briefs, and the debtor contends that there was an election of remedy and that no further secured debt exists after the entry of the judgment of replevin, the creditor allowing the debtor to keep the property, as well as contending that the doctrine of Res Judicata applies.

8. The debtor in his schedules listed the Price Credit Union as an unsecured creditor stating that there was a dispute as to the validity of the lien of said creditor.

9. The debtor also claimed an exemption of the vehicle in his schedules and showing a value of \$500.00.

10. The Trustee at the time of the hearing made no determination as to the exemption, and in that the question of the validity of the mortgage was raised at the first meeting, determined to leave it to the Bankruptcy Judge to make the determination of validity.

11. It is undisputed that the security agreement as stated in the brief of the creditor was to secure "all debtor's present and future debts, obligations and liabilities of whatever nature to the secured party." The creditor claims the second note was secured by the security

agreement dated September 24, 1976, and containing the future debts.

12. That the applicant has no lien on said vehicle by virtue of said replevin judgment and not taking and perfecting a new security agreement.

CONCLUSIONS OF LAW

That an order be entered:

1. Determining that the security agreement filed on September 24, 1976, was extinguished by the judgment of replevin entered on October 28, 1980.

2. That the application for abandonment of the security and lifting of the stay be denied.

3. That the exemption claimed by debtors be allowed.

O R D E R

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:

1. That the security agreement filed on September 24, 1976, was extinguished by the judgment of replevin entered on October 28, 1980.

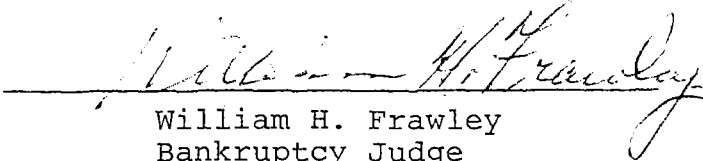
2. That the applicant has no lien on said vehicle.

3. That the application for abandonment and lifting of the stay is hereby denied.

4. That the exemption claimed by said debtors is hereby allowed.

Dated: March 5, 1982.

BY THE COURT:


William H. Frawley
Bankruptcy Judge