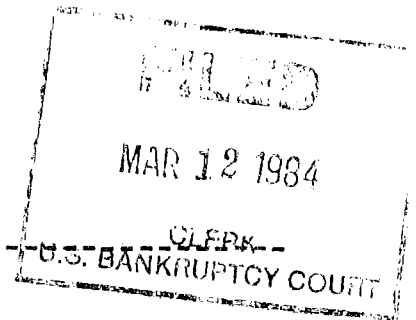


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

ANDER-MAY, INC.,

EF 7-82-01695

Debtor.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER DETERMINING RIGHT OF TRUSTEE TO FUNDS

A motion to determine the right to proceeds from the sale of a liquor license in the above entitled matter having come on for trial on the 13th day of February, 1984; and Lawrence J. Kaiser, the trustee, having appeared in person and as his own attorney; and Peter F. Herrell having appeared as attorney for the debtor corporation; and Duane Herrick and Jeffrey W. Guettinger having appeared as attorney for Alvin M. Larson, a claimant to said funds; and the Court having heard the testimony of the witnesses and the oral argument of counsel and having duly considered the briefs filed herein; and after an examination of the entire record and proceedings and being fully advised in the premises, FINDS:

1. That Lawrence J. Kaiser is the duly appointed, qualified

and acting trustee in said matter.

2. That Ander-May, Inc., the debtor, purchased from Alvin M. Larson, or entered into an agreement to purchase Mr. Larson's Class "B" retail liquor license, #1109, issued by the City of Eau Claire to the said Alvin M. Larson, for the sum of \$30,550, payable pursuant to the terms of a certain agreement of sale, being Exhibit 1 herein and dated the 5th day of November, 1980.

3. That thereafter, on the 26th day of November, 1980, said debtor executed a promissory note to the said Alvin M. Larson in the sum of \$24,000.

4. That \$6,550 was paid down as earnest money at the closing on said purchase, and that the note, with interest at the rate of 12% per annum commencing December 26, 1980, was to be paid off in the sum of \$288.05 per month, with full payment to be due and payable on the 26th day of December, 1984.

5. That said sales agreement, paragraph 3, reads as follows:

(3) This sale is conditioned upon the approval thereof by the Eau Claire City Council and upon issuance to Buyer, on or before November 26, 1980, of a Class "B" retail liquor license by the Eau Claire City Council. Buyer shall make timely application to the Eau Claire City Council for a Class "B" retail liquor license and will diligently prosecute such application by furnishing and filing all information and all documents required by such authority. In the event the Eau Claire City Council fails to issue to Buyer a retail Class "B" liquor license on or

before November 26, 1980, this offer shall be void and all money paid hereunder, including earnest money, shall be returned to the Buyer forthwith.

6. That the City of Eau Claire issued a liquor license to said debtor, Ander-May, Inc., following the execution of the sales agreement.

7. That no security agreement was taken for said unpaid balance.

8. That Alvin M. Larson had been advised in 1980 that he should stay off his feet because of a phlebitis problem in his left leg, and thereafter reached the agreement described in Exhibit 1, with the debtor.

9. That Mr. Larson had closed his tavern and there was no sale of either real estate, tavern equipment, inventory or any personal property involved, and the only item was the license described in Exhibit 1.

10. That the trustee sold said license pursuant to Wisconsin law and received the sum of \$25,000 therefor.

11. That Mr. Larson, by his attorneys, claims that, under Section 125.04(12)(b) of the Wisconsin Statutes, the sale was illegal and unenforceable and that, therefore, the trustee has no interest in the license.

12. That the trustee contends that the claim of Mr. Larson should be an unsecured claim and that the proceeds belong to the trustee, and that the original agreement described in Exhibit 1 was a legal sale and was enforceable under Chapter 409 of the Wisconsin Statutes.

13. That the case of Variance, Inc. v. Losinske, 70 Wis.2d 31, 237 N.W.2d 22 (1976), is the leading case relative to sales of liquor licenses or contracts for sale.

14. That the parties, when they executed Exhibit 1, undoubtedly tried to comply with the terms of the Variance case and the provisions therein relative to the disposition of a liquor license, and certainly it must be believed that they had the intent to do so.

15. That they certainly did not intend to draft an illegal contract.

16. That as to the actual outcome, it is not necessary for the Court to determine whether it is an enforceable contract or an illegal contract.

17. That under either determination--that it was legal or illegal--the funds would remain in the hands of the trustee free and clear of any claims of Mr. Larson for the following reasons:

a. If it was legal, there was no security or basis for Mr. Larson

to claim to have a lien on the license for the balance due;

b. If it was illegal, it is a stated legal policy in Wisconsin under Ehrlich v. City of Racine, 26 Wis. 2d 352, 132 N.W.2d 489, 493 (1965), which holds, in part, as follows:

(4) It is our conclusion that the parties should be left where this court finds them. In other words, the contract being unconstitutional, it cannot be enforced. However, since the parties must be considered equally responsible for entering into this agreement and performing under it pro tanto, neither side is entitled to judicial intervention with reference to activities which were previously consummated under the agreement.

Also see 17 Am.Jur.2d Contracts sec. 216, page 584.

CONCLUSIONS OF LAW

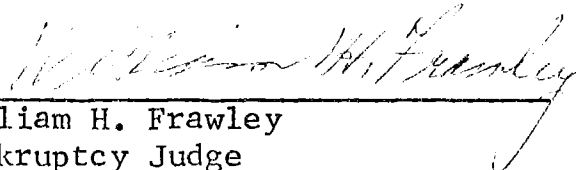
That the Court enter an order determining that the \$25,000 proceeds of the sale of the liquor license involved herein is the property of the trustee for disposition under the Bankruptcy Code.

ORDER

IT IS ORDERED THAT the claim of Alvin M. Larson to the proceeds of the sale of the liquor license herein be, and the same is hereby denied, and that the claim of the trustee to said funds is granted, and that no costs be allowed to any of the parties.

Dated: March 12, 1984.

BY THE COURT:



William H. Frawley
Bankruptcy Judge