

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

FILED

JUL 19 1994

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U.S. BANKRUPTCY COURT

In Re:

Case Number:

JON C. SERUM
LINDA C. SERUM

EF11-82-01732

Debtors.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER ADJOURNING CONSIDERATION OF MOTION TO DISMISS

Creditor Borg-Warner Leasing, a division of Borg-Warner Acceptance Corporation, by Attorney Bruce J. Brovold of Kostner, Ward & Koslo, having moved for an Order dismissing the above captioned proceeding; and Creditor The American Bank (of Cochrane, Wisconsin), by Attorney C. Michael Chambers of C. Michael Chambers Law Offices, S.C., having made an identical Motion; and the matter having come on for a hearing; and the Movants appearing by counsel; and Debtors Jon C. and Linda C. Serum appearing in person and by Attorney Peter E. Grosskopf of Thornton, Black, Wachowski & Grosskopf, S.C., to oppose said Motions; and Creditor Production Credit Association of River Falls appearing by Attorney Peter F. Herrell of Jordan, Herrell & Thiel to oppose said Motions; the Court, having considered the arguments of counsel and the complete record and file herein, FINDS THAT:

1. On October 4, 1982, Debtors Jon C. and Linda C. Serum filed for relief under Chapter 11 of the Bankruptcy Code. The Debtors are farmers. 11 U.S.C. sec. 101(17).

2. Subsequently, the Debtors' attorney was disbarred, In re Disciplinary Proceedings Against Kelly, 109 Wis.2d 348, 325 N.W.2d 729 (Sup. 1982), and the Debtors retained new counsel.¹

3. The Debtors have actively prosecuted this Chapter 11 proceeding at all times since the retention of their current attorney.²

4. The Debtors are, as Movant Borg-Warner agreed at oral argument, hard working and honest people.

5. Throughout this proceeding the Debtors have been able to make regular payments to some creditors. For example, two Production Credit Association of River Falls loans will be paid in full in the Spring of 1985. At that time, monies used to service those PCA debts--over \$1,100 a month--will be freed for other creditors.

6. On the other hand, at least three major creditors (the Movants and Commodity Credit Corporation) have not received pay-

¹Immediately following the disbarment, the Debtors retained another attorney in their original attorney's office; shortly thereafter, the Debtors' current attorney was retained.

²An automobile accident involving the Debtors' attorney and a subsequent, unrelated, hospitalization of Debtor Linda Serum unavoidably delayed matters in the early Summer of 1983.

ment since the Debtors filed for relief. Interest on these debts has been accruing at a rate of approximately \$2,624 a month.

7. This proceeding has involved a number of complicated issues which have hindered Debtors' attempts to propose a confirmable plan of reorganization. Most of said issues have now been resolved. See, e.g., this Court's May 9, 1984, Order valuing and classifying debts.

8. On June 25, 1984, the Debtors conceded that--in light of this Court's May 9, 1984, Order--their current Amended Plan of Reorganization was not feasible. See 11 U.S.C. sec. 1129(a)(11).

Discussion

9. The Movants request that the above captioned matter be dismissed under the standard set forth in 11 U.S.C. sec. 112(b)(1) ("continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation").

10. "While a debtor should have a fair opportunity to reorganize, such opportunity must be balanced against protection of creditors' interests." L. King, Collier on Bankruptcy para. 112.03[2][d][i] (15th ed. 1983).

11. In striking the balance set forth above, this Court is mindful that a successful reorganization is in the best interest of all creditors. In re Fitzsimmons, 725 F.2d 1208, 1210 (9th Cir. 1984); In re Levinsky, 23 B.R. 210, 215-216 (Bankr.E.D.N.Y. 1982).

12. In the final analysis, even if there is cause to dismiss under sec. 1112(b), "the bankruptcy judge, in his sound discretion, must make the ultimate decision." In re L. S. Good & Co., 8 B.R. 315, 318 (Bankr.N.D.W.Va. 1980) (citation omitted).

CONCLUSIONS OF LAW

1. Consideration of the Motions to dismiss the above captioned proceedings should be adjourned until September 11, 1984.

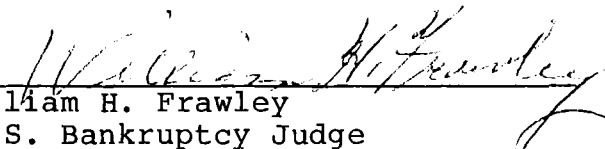
2. At that time this Court will consider said Motions further unless a Plan of Reorganization is confirmed on or before September 10, 1984.

ORDER

IT IS ORDERED THAT consideration of the Motions of Borg-Warner Leasing and of The American Bank to dismiss the above captioned proceedings be, and the same hereby are, ADJOURNED until September 11, 1984.

Dated: July 19, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge