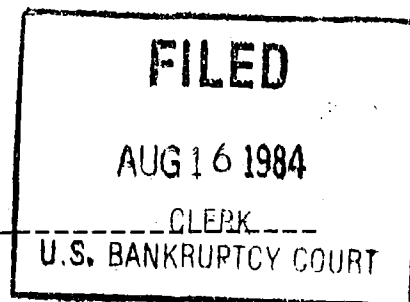


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

ROBERT L. PARR
KAREN M. PARR,

EF11-82-01922

Debtors.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER FOR VALUATION HEARING

Patz Company, by Attorney John C. Kellogg of McKenzie, Hebbe, Downey & Kellogg, S.C., having filed a Motion for Valuation; and a hearing having been held; and the Movant appearing by Robert W. Dernbach of Dernbach and Brunner, S.C. (with Attorney Mark J. Brunner on brief); and Debtors Robert L. and Karen M. Parr having appeared in person and by Attorney Peter E. Grosskopf of Thornton, Black, Wachowski & Grosskopf, S.C.; and briefs having been submitted; the Court, being fully advised in the premises, FINDS THAT:

1. On May 19, 1981, Debtor Robert L. Parr entered into an agreement to "lease" barn cleaning equipment from Movant Patz Company (Patz).
2. On October 29, 1982, Debtors Karen M. and Robert L. Parr filed for relief under Chapter 11 of the Bankruptcy Code.
3. The Debtors scheduled Patz as a secured creditor with a claim of \$750--no value of the secured property was listed.

Schedule A-2 (Creditors Holding Security) (filed October 29, 1982).

4. On November 12, 1982, Patz filed a proof of claim for \$808.53. Patz claimed to be fully secured by its "Security Interest in this Leased Property" under a "LEASE SECURITY AGREEMENT".

5. On February 7, 1984, the Debtors filed a Proposed Financial Disclosure Statement and a Chapter 11 Plan. Said disclosure statement provided, in pertinent part:

V. TREATMENT OF CLAIMS:

Filed and/or admitted claims of debtors:

A. Admitted Secured claims:

<u>COLLATERAL</u>	<u>NAME OF CREDITOR</u>	<u>AMOUNT</u>
.
Barn Cleaner	Patz Barn Cleaner	350.00**
.
. . .		

** The amount claimed is \$750.00, however the value of the collateral is only \$350.00, so this will be the amount of the secured claim paid, with the remainder being treated as an unsecured claim.

. . .

B. Admitted unsecured claims:

[Patz not listed]

Said plan proposes to pay the "allowed secured claim held by Patz" in full together with 12% interest and, apparently, to pay

the allowed unsecured claim of Patz only in the event that certain surpluses develop during the reorganization.

6. On March 15, 1984, Patz filed a Motion for Valuation:

For a determination that the valuation of the barn cleaner in which Patz Company has a purchase money security interest exceeds the amount of the balance due Patz Company and that accordingly Patz Company is fully secured.

See Fed.R.Bankr.P. 3012 (Valuation of Security).

7. No objection to the allowance of the Patz claim has been filed with this Court. See Fed.R.Bankr.P. 3007 (Objections to Claims).

8. On June 11, 1984, for the first time, Patz argued that it retained a lessor's interest in the barn cleaning equipment. But see In re Smith Management, Inc., 8 B.R. 346 (Bankr.W.D.Wis. 1980) ("lease" found to be a security agreement).

CONCLUSIONS OF LAW

1. Patz may not be heard to argue that it is a lessor. 28 Am.Jur.2d Estoppel and Waiver sec. 69 (1966) ("The rule against inconsistent positions applies generally to positions assumed . . . in the course of the same action or proceedings . . .").

2. Patz is deemed to have an allowed claim for \$808.53. 11 U.S.C. sec. 502(a).

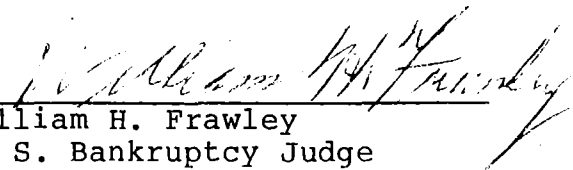
3. Patz's Motion for Valuation should proceed to hearing. 11 U.S.C. sec. 506(a) (Determination of secured status).

ORDER

IT IS ORDERED THAT a hearing be held to permit Patz Company and Debtors Robert L. and Karen M. Parr to present evidence of the value of the barn cleaning equipment which secures the Patz Company debt.

Dated: August 16, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge