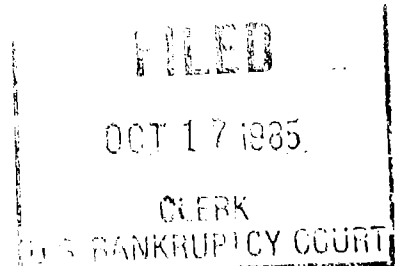


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



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In re:

Case Number:

THE NORTHERNAIRE, INC.

WF7-82-02028

Debtor.

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OPINION AND ORDER ESTABLISHING CONDITIONS FOR SALE  
BY TRUSTEE OF PERSONAL PROPERTY AND TRADE NAME

Northern Title and Abstract Company Profit Sharing Trust has moved this court for an order approving its purchase of all the debtor's personal property, including the trade name "Northernnaire," free and clear of all liens and encumbrances. The debtor has objected to this proposed sale.

Hearings on this matter were held on August 21 and September 18, 1985. The debtor appeared by Attorneys John Sattler, Gary B. Simon and Bruce A. McIlroy. Northern Title was represented by Attorney Gary Knudson. The trustee, Peter F. Herrell, appeared personally. The parties have subsequently submitted briefs.

On January 7, 1985, Judge Martin lifted the automatic stay imposed under 11 U.S.C. § 362 as to personal property previously attached, seized or levied upon by Dietz Construction, Inc. The stay was lifted to allow Dietz Construction to obtain sheriff's sale of that personal property through previously commenced state court proceedings. At the very least Judge Martin's order prevents this court from approving a sale free and clear of any

interests in the personal property possessed by Dietz Construction. Any other conclusion would render the order lifting stay meaningless. A sale free and clear of any interests pursuant to sec. 363(f) cannot, therefore, be approved.

The lifting of the automatic stay so that Dietz Construction may obtain a sheriff's sale does not remove any interest the bankruptcy estate may have in that property. The trustee may after appropriate notice sell whatever rights the estate possesses in the personal property. Such sale would be subject to all existing liens and claims on the personal property.

The parties are in agreement that the lifting of the stay did not encompass the trade name "Northernnaire." However, the parties are in disagreement as to whether the trade name is an asset of the estate. For purposes of this motion it is unnecessary to decide this issue. It is sufficient to state that the trustee may sell whatever interest the estate possesses in the trade name, subject to existing claims or interests in it.

Since the trade name and personal property are completely separate items, any sale of those items by the trustee should be separate. Trustee shall provide such notice of a sale as he finds appropriate. Notice shall comport with Bankruptcy Rule 2002. Any sale shall occur by way of sealed bids submitted to the trustee.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

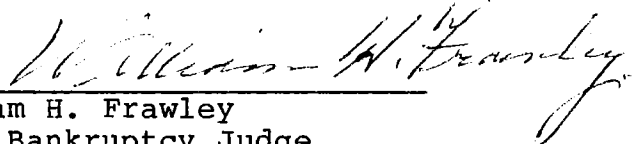
ORDER

IT IS ORDERED THAT Northern Title's motion for an order approving its purchase of all the debtor's personal property including the trade name "Northernaire" free and clear of any liens and encumbrances is denied.

IT IS FURTHER ORDERED THAT the trustee may sell, subject to the conditions contained in this opinion, the interest that he possesses in the personal property and trade name.

Dated: October 17, 1985.

BY THE COURT:

  
\_\_\_\_\_  
William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney John Sattler  
Attorney Gary B. Simon  
Attorney Bruce A. McIlnay  
Attorney Gary Knudson  
Attorney Peter F. Herrell  
Attorney Jerome R. Kerkman  
Attorney David Ebben - 10/22/85