

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

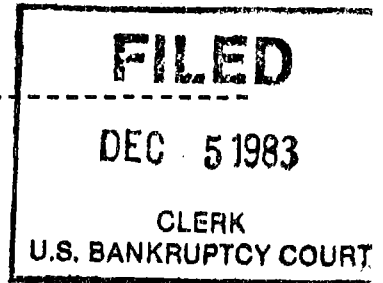
In re: WAUSAU HOUSE OF WOOD, LTD.

Debtor

In Bankruptcy:

WF11-83-01276 ✓

ORDER DENYING APPLICATION FOR RELIEF
FROM STAY AND RELEASE OF COLLATERAL



The Citizens Bank and Trust Company of Wausau, Wisconsin, having filed an application to terminate the automatic stay and for release of collateral herein; and the debtor having requested a hearing, and claiming that said security agreement is invalid and fails to describe the collateral, and that the Bank does not have a lien on the debtor's property; and said matter coming on for hearing before the Court on the 21st day of September, 1983, and on the 19th day of October, 1983; and the applicant having appeared by Thomas F. Mallery, its attorney; and the debtor having appeared by Lawrence J. Kaiser, its attorney; and the Court having heard the arguments of counsel and considered the briefs filed herein, and upon all the records and proceedings herein, FINDS:

1. That the debtor filed its Chapter 11 petition for

relief on the 11th day of August, 1983.

2. That on September 15, 1983, the Citizens Bank and Trust Company filed its application for termination of automatic stay and for release of collateral.

3. That the security interest under which the Bank claims is Exhibit B attached to its application and which, on the second page, under "Description of Collateral", contains six boxes for checking relative to the collateral claimed.

4. That none of said boxes are checked.

5. That counsel for the applicant contends:

". . . Although the parties failed to check a box pertaining to specified collateral, the parties did have an additional paragraph typed on the document prior to signing the agreement. The additional paragraph reads as follows:

'Parties intend a continuing business relationship, and bank will lend to Debtor at any time upon request, \$1.00 payable on demand at bank's prime rate and such other amounts as bank in its sole discretion agrees to lend, upon such terms and conditions as may then be agreed upon by the parties, using the collateral as security.'

The Selective Business Security Agreement which purports to convey a security interest to Citizens Bank & Trust was perfected by filing a Financing Statement with the Secretary of State of the state of Wisconsin. On the face of the Financing Statement, the following language is typed which reflects the items of property subject of the underlying Security Agreement:

'All debtor's equipment, fixtures, inventory (including all goods held for sale, lease or demonstration or to be furnished under contracts of service, trade-ins and repossessions, raw materials, work in process and materials or supplies used or consumed in debtor's business, documents relating to inventory, general intangibles, accounts, contract rights, chattel paper and instruments whether now owned or hereafter acquired, and all additions and accessions to, all spare and repair parts, special tools, equipments and replacements, for all returned or repossessed goods and sale of which gave rise to the foregoing, wherever located.'

6. That counsel for the applicant further contends that parol evidence is admissible to explain the said security agreement and the failure to check the boxes.

7. The question of security agreements and their proper execution has been before this Court on many occasions, as well as before Judge Bessman and Judge Martin in the Madison District and, therefore, a further discussion of the failure to check the box would accomplish no purpose. See In re Hein, 2 B.C.D. 486, Bankr. 20 UCC Rep. 745 (W.D. Wis. 1976) (Bessman, J.). See also In re Butler, 81-01673 (Bankr. W.D. Wis. Dec. 5, 1983) (Frawley, J.), In re Golden, 83-01174 (Bankr. W.D. Wis. Oct. 20, 1983) (Frawley, J.) and In re Kohl, 18 B.R. 670 (Bankr. W.D. Wis. 1982) (Martin, J.).

8. That the failure to check the proper boxes and insert a description of the collateral results in the applicant having no lien on the personal property as contended by it; that

the added paragraphs do not cure the errors of execution; and that the description in the financing statement does not carry over to complete the security agreement. (See the above cases.)

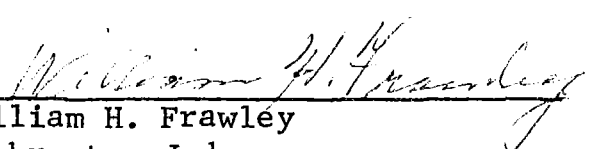
CONCLUSIONS OF LAW

That an order be entered denying the application to lift the automatic stay and to release the collateral.

NOW, THEREFORE, IT IS ORDERED, that the application by the Citizens Bank and Trust Company of Wausau, Wisconsin, to lift the automatic stay in the above entitled matter and to release the collateral described in its petition dated September 9, 1983, be and the same is hereby denied, without costs to either of the parties.

Dated: December 5, 1983.

BY THE COURT:



William H. Frawley
Bankruptcy Judge