

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

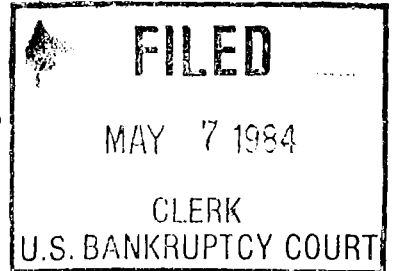
In Re:

LEONARD E. SWEENEY
BARBARA A. SWEENEY

Debtors.

Case Number;

LF7-83-01726



FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDERS (1) FINDING BANK TO BE FREE OF CONTEMPT
(2) DENYING MOTION FOR VACATING STATE COURT ORDER

Debtors Leonard E. and Barbara A. Sweeney, by Attorney Charles Kyle Kenyon, Jr. of Kenyon Law Offices, having applied for an order to show cause why Creditor Norwest Bank LaCrosse should not be held in contempt and having moved for an order vacating a Wisconsin Circuit Court order and for reinstatement of a satisfaction of judgment; and a hearing having been held; and the Debtors appearing in person and by counsel; and Creditor Norwest Bank LaCrosse appearing by Attorney Galen W. Pittman with Attorney Robert W. Berg of Johns, Flaherty & Gillette, S.C., on the brief; and Trustee Peter F. Herrell appearing in person and on his own behalf; and the matter being submitted on briefs; the Court having considered the parties' briefs and all filings and proceedings herein, FINDS THAT:

1. On October 24, 1983, at 8:00 AM, Debtors Leonard E. and Barbara A. Sweeney, received an order for relief under Chapter 7 of the Bankruptcy Code. See 11 U.S.C. sec. 301.

2. On the same day the Monroe County (Wisconsin) Circuit Court held

an initial hearing in a replevin action filed against the Debtors by Creditor Norwest Bank.

3. Prior to said hearing the Bank's representative called the Bankruptcy Court Clerk's office and was informed that there was no record of the Debtors' bankruptcy petition.

4. The Debtors did not appear at said hearing; the Bank was represented by a non-attorney loan officer.

5. At said hearing the Circuit Court Clerk informed the Circuit Court Judge and the Bank's representative that she had received a telephone call from Debtors' counsel advising of the filing of the Debtors' bankruptcy petition.

6. The Circuit Judge ruled that communication with the Circuit Court Clerk was insufficient notice of the filing of a bankruptcy petition, and granted a default judgment to the Bank.

7. Upon returning to the Bank and learning that the Debtors' counsel had called to advise of the bankruptcy filing, the Bank's representative again called the Bankruptcy Court Clerk. This time, the Clerk's office verified the filing of the petition.

8. Upon confirming that a bankruptcy petition had been filed, the Bank's representative prepared and transmitted a Satisfaction of Judgment instead of a release to the Clerk of Courts for Monroe County. Said Satisfaction was filed with the Circuit Court on October 25, 1983.

9. The 11 U.S.C. sec. 341 first meeting of creditors was held on November 30, 1983.

10. On December 15, 1983, on ex parte motion of the Bank, the Circuit

Court vacated the Judgment and Satisfaction described in Paragraphs 6 and 8 of this Decision.

11. On February 8, 1984, the Bank filed a Request for Terminating and Modifying Stay and Abandonment of Interest in Said Property by Said Trustee. Notice of same was addressed to Trustee Jerry Armstrong who was not acting as a Trustee in the case at bar and who has no interest in this proceeding. Notice of same was sent to Trustee Peter F. Herrell who is acting as a Trustee in the case at bar.

12. The turnover of the secured property by the Debtors was pursuant to 11 U.S.C. sec. 542 and has no bearing on the matters at bar.

DISCUSSION

13. The Debtors and the Trustee have argued that the Bank should be found in contempt because the Bank's actions in this matter violated 11 U.S.C. sec. 362(1), (4) & (5).

14. Judgment. Formal notice of the section 362 automatic stay is not required to render a violation of the stay contemptuous, In re Eisenberg, 7 B.R. 683, 687 (Bankr. E.D.N.Y. 1980).

15. However, in this case--where the Bank's representative had reason to believe that no bankruptcy petition had been filed, see Paragraph 3 supra, and there is no evidence that the Bank's representative pursued a default judgment after the Circuit Court Clerk announced Debtors' counsel's telephone call--there is no contempt.

16. The Judgment of October 24, 1983, Paragraph 6 supra, was void ab initio. See Kalb v. Feuerstein, 308 U.S. 433, 438-444, 60 S.Ct. 343, 84 L.Ed. 370 (1940) (Judgment of Wisconsin State Court a nullity under stay

of Bankruptcy Act of 1898 sec. 75, 11 U.S.C. sec. 203 (1976) (repealed)); In re Miller, 10 B.R. 778, 780 (Bankr. D.Md. 1981) (creditor act is void ab initio under sec. 362), aff'd, 22 B.R. 479 (D.Md. 1982). Cf. Schmidt v. Judd, 113 Wis.2d 68, 71, 334 N.W.2d 562, 563-564 (App. 1983) ("a statutory stay of the commencement of an action means that state courts have no jurisdiction.").

17. Accordingly, the Bank's security interest was unaffected by the post-petition judgment. Cf. In re Chaseley's Foods, Inc., 726 F.2d 303, 308 (7th Cir. 1983) (lapsed financing statement: "the date of filing the petition in bankruptcy is the critical time as of which the status of the secured claim ought to be determined.")

18. Satisfaction. Whether the Bank had an affirmative duty to attempt to expunge the void Judgment, see In re Dennis, 17 B.R. 558, 561 (Bankr. M.D.Ga. 1982) (when creditor violates stay, creditor must cure violation), is not before this Court because the Bank, admirably, did so attempt.

19. The Bank's representative's attempt to cure the violation with a Satisfaction of Judgment (and the resulting motion by the Debtor to vacate the Judgment vacating the Satisfaction) is a rather striking demonstration of the pitfalls which may entrap the pro se litigant. However, it is not contempt.

20. Motion to Vacate. By the same token, the Bank's Motion to Vacate was an admirable---albeit belated---attempt to return matters to the pre-petition status quo.

CONCLUSION OF LAW

The actions of Norwest Bank, LaCrosse, in this matter did not violate the automatic stay provisions of 11 U.S.C. sec. 362.

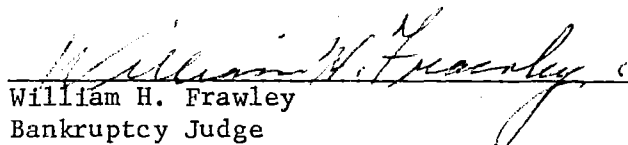
ORDER

IT IS ORDERED THAT Norwest Bank, LaCrosse, be, and the same hereby is, found free of contempt.

IT IS FURTHER ORDERED THAT the Debtors' motion for an order vacating the circuit order of December 27, 1983, and reinstating the satisfaction of judgment in said Court be, and the same hereby is, DENIED without costs.

Dated: May 7, 1984.

BY THE COURT:


William H. Frawley
Bankruptcy Judge