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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

JAN 6 1986
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U.S. BANKRUPTCY COURT

In re:

PAUL W. HEMKER

Debtor.

Case Number:

LF11-84-00614

HUBBARD LEASING COMPANY
(Formerly Trans-Agri Leasing),

Plaintiff,

v.

PAUL W. HEMKER,

Defendant.

Adversary Number:

85-0283-11

MEMORANDUM OPINION AND ORDER

Plaintiff Hubbard Leasing Company has initiated this adversary proceeding which seeks a court determination that defendant Paul Hemker is indebted to it based on several claims, and that such indebtedness is nondischargeable. Defendant has taken the position that plaintiff's claims are premature and that they should be held in abeyance until completion of the bankruptcy proceeding of Hemker Oil Co., Inc.

A pretrial conference in this matter was held on December 3, 1985. The defendant appeared by Attorneys Frank A. Ross, Jr., and Alex B. Cameron, and plaintiff by Attorney Burleigh A.

Randolph. Both parties have submitted briefs on the issue of whether this matter is premature.

Defendant is president of Hemker Oil. On June 15, 1981, an agreement between plaintiff and Hemker Oil for the leasing of tractors by Hemker Oil was extended for five years. At the time of the original lease agreement defendant personally guaranteed the lease payments. On April 2, 1984, defendant and Hemker Oil filed Chapter 11 reorganization petitions. Defendant admits that when bankruptcy relief was sought Hemker Oil was in default on lease payments totalling \$34,034.94.

Defendant contends that this action is premature because Hemker Oil could propose a plan which would provide for 100 percent payment to all creditors, or could assume the lease with plaintiff which would require it to cure existing default. He further claims that only if a plan proposes less than full payment, or payments are not otherwise made, could plaintiff assert a claim against defendant.

Defendant's arguments are without merit. The personal guaranty issued by defendant arguably makes defendant immediately liable for amounts owed to plaintiff. The court reserves any final decision on the effect of the personal guaranty for a later date. It is sufficient at this point to state that defendant may arguably be presently liable for default amounts regardless of what may later transpire in the Hemker Oil bankruptcy.

In addition to asserting a claim for an account indebtedness, plaintiff has alleged that defendant is personally guilty

and liable for conversion. There is no reason why this action cannot be presently pursued.

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

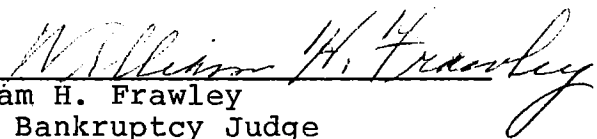
ORDER

IT IS ORDERED THAT this action is not premature and shall not be delayed on this basis.

IT IS FURTHER ORDERED THAT the parties shall contact each other and the court within 10 days of this opinion and order to establish a schedule for discovery.

Dated: January 6, 1986.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Frank A. Ross, Jr.
Attorney Alex B. Cameron
Attorney Burleigh A. Randolph