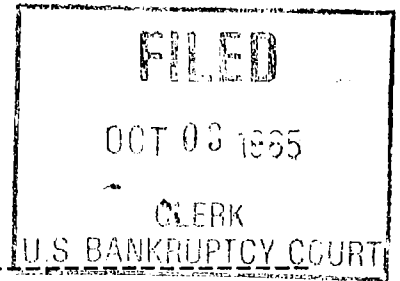


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

DENTON WEST PARTNERS

LF11-84-01686

Debtor.

DENTON WEST PARTNERS,

Plaintiff,

Adversary Number:

v.

85-0125-11

DALE A. WERNECKE,

Defendant.

OPINION AND ORDER DIRECTING PAYMENT OF REASONABLE RENT

Plaintiff Denton West Partners has filed this adversary action seeking a court order directing defendant Dale A. Wernecke to turn over to the plaintiff, as debtor-in-possession, certain rents collected by defendant and to pay reasonable rent for the use of personal property belonging to plaintiff's bankruptcy estate. A pretrial conference was held on June 26, 1985. Plaintiff was represented by Attorney Donald J. Harman and defendant by Attorney James W. McNeilly. Attorney Gerard O'Flaherty appeared on behalf of certain creditors. The parties have filed briefs on this matter.

This action arises from a land contract sale of a group of apartment buildings by defendant to plaintiff. Included in that

sale was personal property contained in the apartment buildings including furniture, stoves and refrigerators. On January 29, 1985, defendant obtained a lifting of the automatic stay imposed by 11 U.S.C. § 362 in order to proceed with a foreclosure action of the land contract with plaintiff. In early April, 1985, the La Crosse County Circuit Court appointed defendant receiver of the real estate sold under the land contract. At that time he took possession of both the real estate and the personal property.

The parties have reached a settlement as to plaintiff's initial claim for certain rent collected by defendant. The remaining issue is whether defendant shall be required to pay reasonable rent for his use of the personal property.

Defendant admits that it has no security or other interest in the personal property. Nevertheless, he maintains that he should not be required to pay rent since use of the personal property allows him to collect rent from the apartments which reduces defendant's debt under the land contract.

Defendant's argument must be rejected. Since defendant has no interest in the personal property, it became property of plaintiff's bankruptcy estate upon filing of the reorganization petition. Under 11 U.S.C. § 541(a)(1) and (6) any equitable or legal right to rent for use of the personal property is property of the estate. It would be improper to allow one creditor to utilize property of the estate without payment and in derogation of other creditors' claims. This is especially the case where

any purported benefit to the estate for such use is at best speculative. Therefore, after a hearing on rental value, the court shall direct defendant to pay reasonable rent for use of the estate's property.

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

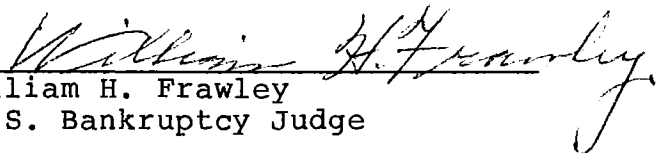
ORDER

IT IS ORDERED THAT defendant shall pay to the bankruptcy estate reasonable rent for use of estate property.

IT IS FURTHER ORDERED THAT a hearing to determine reasonable rental value shall be scheduled.

Dated: October 3, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Donald J. Harman
Attorney James W. McNeilly
Attorney Gerard O'Flaherty *ca*