

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

FILED

DEC 05 1985

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U.S. BANKRUPTCY COURT

In re:

Case Number:

LEROY H. BUCHHOLZ, JR.  
LORETTA P. BUCHHOLZ  
d/b/a Lee's Service Center,

WF11-85-00049

Debtor.

OPINION AND ORDER DENYING MOTION FOR RECONSIDERATION

On October 17, 1985, this court issued an order denying the motion of Bombardier Credit, Inc., for relief from stay. Bombardier Credit has moved for reconsideration of that order. A telephonic hearing of this matter was held on November 22, 1985. Bombardier Credit appeared by Attorney John H. Ames and debtors by Attorney John E. Danner.

In denying Bombardier Credit's motion this court concluded that Bombardier Credit possesses a perfected security interest in certain floor plan snowmobiles which was adequately protected. Additionally, the court concluded that Bombardier Credit does not have a perfected security interest in rental snowmobiles. Bombardier Credit has requested the court to reconsider these conclusions which were the basis of its denial of the motion for relief from stay.

In support of its motion as to the floor plan snowmobiles Bombardier Credit reiterates certain arguments made on its original motion. These arguments shall not be addressed since they

were previously considered by the court. The other arguments concerning floor plan snowmobiles each assert factual circumstances which Bombardier Credit has been, or should have been, aware of since well before the hearing of this matter in August. Rule 60 Fed.R.Civ.P. is applicable to this motion for reconsideration. Bankruptcy Rule 9024. A reading of that rule leads to the inescapable conclusion that a motion under that rule may not be utilized to set forth evidence which was within the purview of a movant's knowledge at or before the original hearing in the matter. Bombardier Credit has offered no explanation of why it did not raise these arguments at the August hearing or in its brief. The court shall not allow it to now advance evidence and arguments which were readily available before the August hearing.<sup>1</sup>

In support of its motion for reconsideration of the court's determination that it did not possess a perfected security interest in rental snowmobiles, Bombardier Credit asserts that the court considered the wrong financing statement. It points out that subsequent to filing its original motion for relief from stay it discovered that the wrong financing statement had been attached as an exhibit. This error was corrected by filing the correct copy with the court. Upon review of the file in this

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<sup>1</sup> It should be noted that in any event Bombardier Credit's arguments are unpersuasive. After considering the memorandum and affidavit filed in opposition to the motion for reconsideration, the court remains of the opinion that Bombardier Credit's interest is being adequately protected.

matter the court has verified that this indeed did occur. The debtor has conceded that the later-filed financing statement was the correct copy. Therefore, the court must consider whether the original motion for relief from stay should be granted based on the corrected evidence.

The debtors originally argued that Bombardier Credit had waived its security interest in the rental snowmobiles. The court did not reach this argument because of its conclusion that Bombardier Credit never possessed a perfected security interest in the rental snowmobiles. However, this argument must now be addressed since the correct copy of the financing statement demonstrates a perfected security interest.

A party may waive its security interest by conduct subsequent to the attachment of such interest. In re Thomas, 43 B.R. 201, 206 (Bankr.M.D.Ga. 1984). The court concludes that Bombardier Credit's actions subsequent to obtaining a perfected security interest in the rental snowmobiles constitute a waiver of that interest. On December 6, 1984, Bombardier Corporation informed debtors that it was transferring the rental snowmobiles from C.O.D. to the Bombardier Credit floor plan.<sup>2</sup> In March, 1985, the debtors were informed by Bombardier Corporation that its understanding was that Bombardier Credit had refused to accept the rental snowmobiles for its financing program and that

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<sup>2</sup> Bombardier Corporation and Bombardier Credit are separate entities. Bombardier Credit operates solely in a financing capacity.

Bombardier Credit had never asserted any interest in those snowmobiles. The court is convinced that Bombardier Credit did refuse to accept the rental snowmobiles as part of its floor plan and financing program. This action by Bombardier Credit constitutes a waiver of its security interest in those units. It would be inequitable at this juncture to ignore this refusal and allow Bombardier Credit to assert a security interest. Bombardier Credit no longer possesses a security interest in the rental snowmobiles.

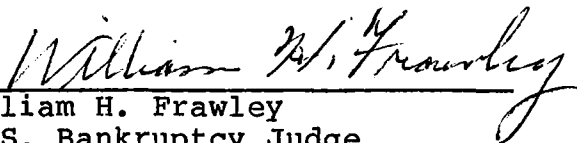
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT Bombardier Credit's Motion for reconsideration and a granting of its original motion for relief from stay is denied.

Dated: December 5, 1985.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney John E. Danner.  
Attorney John H. Ames *ca*