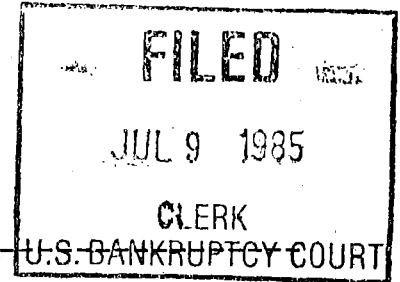


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

LeROY H. BUCHHOLZ, JR.
LORETTA P. BUCHHOLZ,
d/b/a LEE'S SERVICE CENTER,

WF11-85-00049

Debtors.

OPINION AND ORDER DENYING MOTION FOR
RELIEF FROM STAY AND FOR DECLARATORY RELIEF

Debtors LeRoy H. and Loretta P. Buchholz, d/b/a Lee's Service Center, have filed a Petition for Reorganization under Chapter 11 of the U. S. Bankruptcy Code, 11 U.S.C. § 101 et seq. Debtors' business primarily consists of the sales, service and rental of snowmobiles. Creditor Bombardier Corporation filed a Motion with this Court on May 13, 1985, seeking relief from the automatic stay provisions of 11 U.S.C. § 362 and certain other declaratory relief. Primarily, Bombardier requests a declaration that the dealership agreement between itself and Debtors has expired and that it may contract with a new dealer for Bombardier products.

A hearing before the Court on this matter was held on May 22, 1985. The parties have also submitted briefs. Bombardier in its briefs contends that there is a lack of adequate protection of its interest in Debtors' property. It also claims that the Debtors do not have an equity in such property and that the

property is not necessary for an effective reorganization. The existence of either one of these circumstances would necessitate lifting of the automatic stay. 11 U.S.C. § 362(d).

At the hearing on this matter Bombardier introduced evidence that Debtors owe a total of \$40,510.18. Debtors have not contested this amount. Approximately \$15,149 of this debt was incurred when Debtors purchased parts, clothing and accessories from Bombardier. Debtors admit that Bombardier possesses a perfected security interest in those parts, clothing and accessories as to the \$15,149 debt. The remaining amount due Bombardier of approximately \$25,000 arose from a 1984 purchase of snowmobiles. At this juncture the parties disagree. Bombardier argues that this debt is also secured by the above items. Debtors disagree.

11 U.S.C. § 362(g)(1) provides that the party requesting relief from the stay has the burden of proof on the issue of the debtor's equity in property. A necessary portion of this burden is a demonstration of any security interest claimed in that property. Bombardier has not satisfied this burden. There is simply no evidence from which the Court could conclude that Debtors' snowmobile debt of approximately \$25,000 is secured by the parts, accessories and clothing sold to Debtors. In an affidavit accompanying Bombardier's motion Russell Davis, the national sales manager for the company, set forth the exact basis of the security on the \$15,149 debt. He claimed no security interest in the items for the \$30,000 debt. He merely claimed

that it was owed. The same facts were borne out in his hearing testimony.

Bombardier's District Manager, Robert Schuetz, testified at the hearing that the items operating as security had a value of \$19,421.92. Since this amount is in excess of the \$15,149 secured debt, and since there is no evidence that the \$25,000 snowmobile debt is secured by these items, the Court must conclude that Debtors have an equity in this property.

The Court must next consider whether Bombardier's property interest is being adequately protected. Adequate protection is not defined by the Code. However, certain examples of adequate protection are contained in sec. 361 of the Code. In In re Schaller, 27 B.R. 959, at 962 (D.C.W.D.Wis. 1983) the Court noted that in some cases an equity cushion has constituted the "indubitable equivalent" example of adequate protection contained in sec. 361. In that case, though, the Court determined that the cushion itself did not offer adequate protection because it was being rapidly eroded. The present case is distinguishable from Schaller. The equity cushion in this case is slightly more than 28 percent. This cushion is arrived at by using the valuation by Bombardier's own employee. There is no evidence that the items are deteriorating in value rapidly. There certainly will be some reduction in value simply from items aging. The Court, nevertheless, is convinced that any reduction in value is not significant. Additionally, it is more than offset by the added retail sales revenue that potentially will occur from the sale of some or all

of these items. The Court concludes that Bombardier's property interest is being adequately protected.

As noted previously, Bombardier also seeks a declaration concerning the dealership agreement between itself and Debtors. 28 U.S.C. § 2201 empowers this Court to issue declaratory judgments. This statutory section does not provide an absolute right to declaratory judgments, but simply provides courts with discretionary jurisdiction. Public Service Commission v. Wycoff Co., 344 U.S. 237, at 241 (1952). The Supreme Court in Wycoff stated that "claims based merely upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention." Id. at 242. This Court declines to assume such discretionary jurisdiction. The facts and law concerning what this agreement provides for, or whether it is terminated, have not been fully addressed by the parties. The declaration Bombardier seeks would require this Court to interpret not only this agreement but potentially the law of Wisconsin and New York. Such an exercise by the Court over issues that have not been properly crystallized, but are at most speculative, would be unwise.

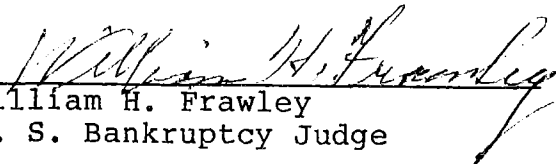
This Court should not determine that the automatic stay provisions of sec. 362, or for that matter the agreement itself, will not be violated before it can assess all the activity that is to occur. A declaration based on the generalities before the Court may very well mislead the parties.

ORDER

Based on the Court's conclusion that the automatic stay provisions of the Code should remain in effect and that declaratory judgment would not be proper here, Bombardier's motions are denied.

Dated: July 9, 1985.

BY THE COURT:


William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney John E. Danner
Attorney Robert A. Schwartzbauer