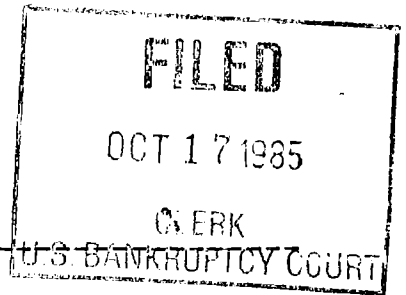


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



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In re:

Case Number:

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

WF11-85-00049

Debtor.

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OPINION AND ORDER DENYING MOTION FOR RELIEF FROM STAY

Bombardier Credit, Inc., has moved for relief from the automatic stay imposed by 11 U.S.C. § 362. Based on debtors' objection, a hearing on this motion was held. Bombardier Credit appeared by Attorney John H. Ames and debtors by Attorney John E. Danner.

Debtors are engaged in the business of selling and servicing snowmobiles. Bombardier Credit seeks relief from stay as to two groups of snowmobiles in debtors' possession. The first group consists of snowmobiles which are sale items and part of debtors' floor plan. The second group is made up of rental units. Bombardier Credit claims to have a security interest in both groups which is not being adequately protected.

Debtors concede the fact that Bombardier Credit has a perfected security interest in the floor plan snowmobiles. However, they contend that adequate protection is being provided by their agreement to turn over the proceeds of any snowmobile sale to Bombardier Credit.

The agreement to pay the proceeds of floor plan snowmobile sales to Bombardier Credit has been in effect since shortly after the filing of debtors' reorganization petition. The debtors claim to have abided by this agreement. Bombardier Credit does not challenge this claim.

The floor plan snowmobiles are insured, available for inspection and not decreasing in value significantly. The proceeds of any sale are being turned over to Bombardier Credit. These factors provide adequate protection in the form of the indubitable equivalent of Bombardier Credit's interest in the floor plan snowmobiles, as allowed by 11 U.S.C. § 361(3).

Under 11 U.S.C. § 362(d)(2) relief from stay shall be granted where the debtor does not have an equity in the property and the property is not necessary to an effective reorganization. Debtors' business, to a large extent, involves the sale of snowmobiles. The floor plan snowmobiles are necessary to the reorganization as sale items.

Since Bombardier Credit is being adequately protected and the floor plan snowmobiles are necessary to an effective reorganization, its motion for relief from stay as to the floor plan snowmobiles must be denied.

Debtors oppose the Bombardier Credit motion as to the rental snowmobiles on the basis that Bombardier Credit does not have a security interest in the rental units. These snowmobiles were purchased directly from Bombardier Corporation on September 25, 1984. The sale was not financed by Bombardier Credit.

Additionally, these rental snowmobiles were never included in the Bombardier Credit floor plan. A review of the Bombardier Credit brief in the matter makes that fact clear.

The security agreement between Bombardier Credit and debtors grants a security interest in all inventory "now owned or hereafter acquired . . ." Paragraph 2(a) of the security agreement which defines inventory states:

2. a) The term "Inventory" shall mean: All inventory sold by Bombardier Corporation to the Debtor above named of whatever kind or nature, wherever located, now owned or hereafter acquired, and all returns, repossessions, exchanges, substitutions, replacements, attachments, parts, accessories and accessions thereto and thereof, and all other goods used or intended to be used in conjunction therewith and all proceeds thereof (whether in the form of cash, instruments, chattel-paper, general intangibles, accounts or otherwise).

Bombardier Credit claims that the rental snowmobiles are secured as after-acquired inventory.

A reading of both the security agreement and the filed financing statement reveals a significant variation in the language of the two instruments. The financing statement provides that it covers all Bombardier Inventory as defined in the attached annex. That annex states:

As used herein, the term "Inventory" shall mean all goods, including but not limited to, all goods manufactured and/or sold by Bombardier Corporation, the purchase of which was financed, or floorplanned, by Bombardier Credit, Inc. for the Debtor above named of whatever kind or nature, wherever located, now owned or hereafter acquired and all returns, repossessions, exchanges, substitutions, replacements, attachments, parts, accessories and accessions thereto and thereof, and all other goods used or intended to be used in conjunction therewith and all proceeds and products thereof, and documents relating thereto.

The reference to goods financed or floorplanned by Bombardier Credit is not contained in the security agreement.

The security agreement provides that the validity, enforceability and interpretation of the agreement shall be governed by the laws of New York. Regardless of whether interpretation of the agreement is governed by the Wisconsin or New York version of the Uniform Commercial Code, the court concludes that the financing statement is insufficient to provide for a perfected security interest in the rental snowmobiles.

Section 9-402(8) of the UCC provides that a financing statement substantially complying with the requirements of that section is effective even though it contains minor errors which are not seriously misleading. A reasonable reading of the financing statement in this case could lead one to conclude that a security interest was held in Bombardier Corporation goods which were financed or floorplanned by Bombardier Credit. Since the rental snowmobiles were not financed or floorplanned by Bombardier Credit, a third party could very well conclude from the financing statement that Bombardier Credit did not have a security interest in them. The discrepancy contained in the financing statement is not minor; it is seriously misleading. Given the definition of inventory contained in the annex, the court cannot conclude that the financing statement is sufficient to put a person on notice of a Bombardier Credit security interest in the rental snowmobiles.

Sec. 9-110 requires a secured party to reasonably identify the collateral in a financing statement in order to obtain the status of a perfected, secured party. It is not overly burdensome to require secured parties to describe the collateral which they claim as secured in a clear manner. In re Middle Atlantic Stud Welding Co., 503 F.2d 1133, 1136 (3rd Cir. 1974). The description of the secured collateral in Bombardier Credit's financing statement is at best ambiguous and cannot be considered a reasonable description. Therefore, Bombardier Credit does not possess a perfected security interest in the rental snowmobiles.

The Buchholzès, as debtors-in-possession, have the rights and powers of a hypothetical judgment creditor. 11 U.S.C. §§ 544 (a) and 1107. Sec. 9-301(1)(b) of the UCC provides that an unperfected security interest is subordinate to the rights of a person who becomes a lien creditor before the security interest is perfected. A lien creditor includes a trustee in bankruptcy from the date of the filing of the petition. Sec. 9-301(3). Consequently, as debtors-in-possession, the Buchholzès have a claim in the rental snowmobiles which is superior to the Bombardier Credit unsecured interest. Bombardier Credit has no basis for seeking relief from stay as to the rental snowmobiles.

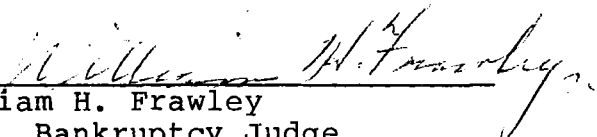
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT Bombardier Credit's motion for relief from stay is denied.

Dated: October 17, 1985.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

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