

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

FILED

JUN 23 1986

CLERK  
U.S. BANKRUPTCY COURT

In re:

Case Number:

LEROY H. BUCHHOLZ, JR.  
LORETTA P. BUCHHOLZ

WF11-85-00049

Debtors.

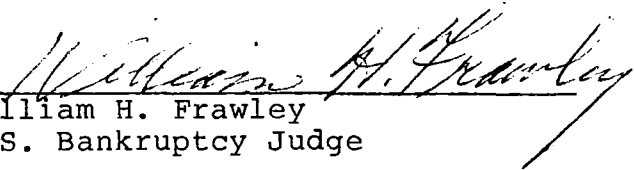
ORDER

The court having this day entered its memorandum opinion,  
findings of fact, and conclusions of law;

IT IS HEREBY ORDERED that Robert Hollister's motion seeking  
relief from the 11 U.S.C. § 362 automatic stay is hereby granted.

Dated: June 23, 1986.

BY THE COURT:

  
William H. Frawley  
U.S. Bankruptcy Judge

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MEMORANDUM OPINION,  
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Robert Hollister (Movant) by Steven Garbowicz, has brought this motion pursuant to Bankruptcy Rule 4001 seeking relief from the 11 U.S.C. § 362 automatic stay. The debtors appear by John Danner and contest the motion. A hearing was held on this matter on April 16, 1986, and an adjourned hearing was held on May 14, 1986. The court has carefully considered the evidence introduced and the testimony solicited at said hearings, and has reviewed the statements submitted by counsel. It is the conclusion of the court, based on the forementioned, that the relief requested should be granted.

The property that is the subject of this dispute is primarily a vacant parcel of wooded land. There is an older stable structure on the property; hence, hereinafter the property shall be referred to as the stable property. The fair market value of this property has been appraised at \$28,500.00. Subsequent to the appraisal the debtors made minor improvements to the property including improvements to the stable structure and the building

of a small shed. The debtors assert that the new fair market value of the property is \$29,000.00.

The debtors purchased the property from the movant on a land contract. Both parties agree that the amount owing on the land contract is in excess of the fair market value of the property. Thus, the debtors do not have any equity in the property. The only issue that needs to be determined is whether the property is necessary for an effective reorganization. 11 U.S.C.

§ 362(d)(2)(B). The debtors carry the burden of proof on this issue. 11 U.S.C. § 362(g).

The debtors propose to use the stable property for implementing a recreational horse business enterprise. There are state forests near the stable property and the debtors intend to conduct guided horse trail and ATV tours through these state forests. The debtors have not used the stable property for such purposes in the past, and they have not operated this type of business operation in the past. The debtors do have a daughter who has some familiarity with this type of business and she would apparently be willing to manage the proposed operation.

The principal business that the debtors are attempting to reorganize in this Chapter 11 case is a service center known as "Lee's Service Center." This business consists of auto service and sales and also includes snowmobile sales, service, and rentals. The service center is not adjacent to the stable property. However, there is only a few minutes drive by vehicle

between the two properties, and both properties are equipped with telephones.

The debtors assert that the stable property is necessary for an effective reorganization because the revenues that could be generated by the proposed stable business operation are necessary for the reorganization of the service center operation. It is alleged that the debtors may not be able to successfully reorganize the service station operation absent the income that could be produced through the business use of the stable property.

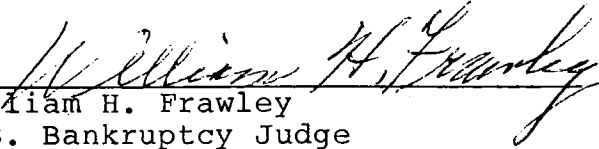
The court notes that the proposed business use of the stable property is of a significantly different nature than the principal business that the debtors are attempting to reorganize. The only apparent relationship between the two operations is the assertion that the revenue produced from the stable property is necessary for financing the principal business. This court has had a great deal of experience with new businesses. As a general rule, the expected income from a new business, if such income exists, is significantly less than the projected income. Also, there is a large degree of speculation involved in any new business venture. The debtor's bare assertions that the stable property will produce income, even though it has not been used for this purpose in the past, is insufficient to persuade the court that such a new business could in fact generate such revenues. Certainly the debtors' bare assertions are not sufficient to obligate the movant to finance the debtors' new business ventures.

The relationship between the stable property and the principal business property is so tenuated that it is practically non-existent. This is the type of situation that is contemplated by the Bankruptcy Code in the language "not necessary for an effective reorganization." It is the conclusion of the court that the debtors have not sustained their burden of proof and the movant should, therefore, be granted relief from the 11 U.S.C. § 362 automatic stay.

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

Dated: June 23, 1986.

BY THE COURT:

  
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William H. Frawley  
U.S. Bankruptcy Judge