

FILED

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

DEC 27 1985

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

LEROY H. BUCHHOLZ, JR.
LORETTA P. BUCHHOLZ

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 subsequently moved for reconsideration of that order. That motion was denied on December 5, 1985. Bombardier Credit has again moved for reconsideration. This court must again deny such motion.

In its motion, Bombardier Credit questions the court's conclusion that Bombardier Credit waived its security interest in certain rental snowmobiles owned by debtors. It points out that the security agreement contains an anti-waiver provision. Bombardier Credit asserts, with absolutely no supporting case law, that this provision precludes the court from finding a waiver.

The court cannot agree with Bombardier Credit's proposition. The United States Court of Appeals for the Tenth Circuit has noted that there is a split in case law on the issue of whether an anti-waiver clause precludes a finding of waiver.

Westinghouse Credit Corp. v. Shelton, 645 F.2d 869 (1981).

Nevertheless, the court stated that the weight of authority is that an anti-waiver clause is subject to waiver like any other term of the contract. Id. This court agrees with the Tenth Circuit's conclusion.

The court finds that the action of Bombardier Credit which constitutes a waiver of its security interest in the rental snow-mobiles, outlined in the December 5, 1985 opinion and order, also constitutes a waiver of the anti-waiver clause. Bombardier Credit's motion for reconsideration must, therefore, be denied.

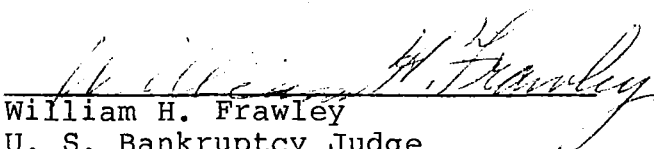
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

Bombardier Credit's motion for reconsideration is denied.

Dated: December 27, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

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