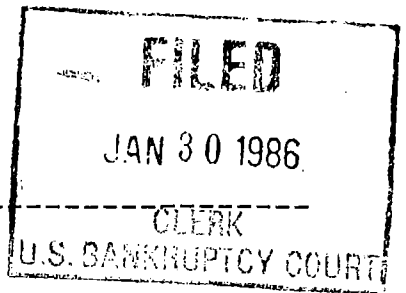


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

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

WF11-85-00049

Debtors.

OPINION AND ORDER

Donald R. Annis (Movant) has requested this court to grant him the protections of the 11 U.S.C. § 362(a)(1) automatic stay. The movant has been sued in a state court proceeding and is unable to implead the debtor because of the application of the § 362 stay. He states that the allegations against him arise from the same legal and factual basis as the allegations he would bring against the debtor were he so allowed to implead the debtor. A telephonic pretrial conference was conducted in this matter on January 14, 1986. The debtors were represented by John E. Danner and they do not object to this motion. The movant was represented by Steven C. Garbowicz. Ken Vance Motors was represented by Joe Mirr. Dan Welke was represented by Lawrence J. Kaiser.

The relevant facts in this case are very few. The debtor sold a car to the movant. He sold the car to Ken Vance Motors. Ken Vance Motors sold same car to Dan Welke. Dan Welke

discovered that the vehicle had previously been stolen and commenced state court action against Ken Vance Motors and movant.

11 U.S.C. § 362(a)(1) provides for a stay to arise upon the filing of a petition under the Bankruptcy Code. This stay is automatic and arises without a court order. The wording of this section of the Code is clear and only applies to proceedings "against the debtor." "The automatic stay provisions of Section 362(a) of the Bankruptcy Code apply only to the debtor, and cannot be construed to apply to its co-defendants as well." In re Anje Jewelry Co., Inc., 47 B.R. 485, 486 (Bankr. E.D. N.Y. 1983).

[1] In light of the clear language and legislative history of Section 362(a), the promulgation of a specific provision to stay proceedings against co-defendants of Chapter 13 debtors and case law interpretation, this court holds that Section 362 is limited in scope to the debtor and does not operate to stay actions against the co-defendants of this debtor.

Matter of Johns-Manville Corp., 26 B.R. 405, 414 (Bankr. S.D. N.Y. 1983).

The movant cites case law for the proposition that a co-defendant can be under the application of the § 362(a) automatic stay when the allegations against the debtor and co-defendant arise from the same factual and legal basis. Federal Life Ins. Co. (Mut.) v. First Financial Group of Texas, Inc., 3 B.R. 375 (Bankr S.D. Tex. 1980). There are instances where the debtor's property or debtor's estate are so involved with litigation in another court that the § 362(a) automatic stay might be triggered. However, this would arise by the automatic provisions of the

Bankruptcy Code and not by court order. This court has not been provided with any authority that would allow it to expand on the provisions of 11 U.S.C. § 362(a).

The court has power to grant injunctive relief under 11 U.S.C. § 105. In re Ange Jewelry Co., Inc., 47 B.R. 485 (Bankr. E.D. N.Y. 1983). However, this is not an issue that has been presented for determination.

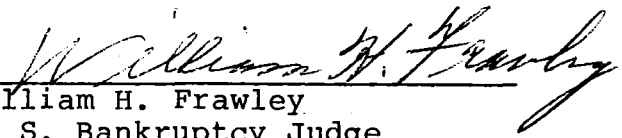
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the motion of Donald R. Annis to be granted the protections of the automatic stay is hereby denied.

Dated: January 30, 1986.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney John E. Danner
Attorney Steven C. Garbowicz
Attorney Joseph R. Mirr
Attorney Lawrence J. Kaiser