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DEC 08 1985

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

CLERK  
U.S. BANKRUPTCY COURT

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In re:

Case Number:

ARTHUR VALERIAN ZAJACKOWSKI

WF11-85-00488

Debtor.  
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OPINION AND ORDER GRANTING MOTION FOR RELIEF FROM STAY

The River Valley State Bank has moved for relief from the automatic stay imposed by 11 U.S.C. § 362. The bank possesses a perfected security interest in a 1976 Kenworth truck and a 1978 Mack truck owned by debtor Arthur Valerian Zajackowski. Debtor objected to the bank's motion and requested a hearing which was held on November 20, 1985. At that hearing the bank appeared by Attorney Jeffrey A. Hertz and debtor by Attorney Gary L. Dreier.

11 U.S.C. § 362(d)(2) provides that on request of a party in interest and after notice and hearing the court shall grant relief from stay if the debtor does not have an equity in the property at issue, and if such property is not necessary to an effective reorganization. The burden of proof on the issue of debtor's equity in the property lies with the party seeking relief, while the party opposing relief bears the burden of proof on all other issues. 11 U.S.C. § 362(g).

Jeffrey Tiffany, a vice-president with the bank, testified that the debt secured by the trucks was \$23,364 as of the hearing date. The 1978 Mack truck was appraised by debtor's expert

witness at \$12,000. This value was accepted by the bank. The debtor himself testified that the truck was worth \$22,500. This estimate apparently was based on the fact that earlier this year \$19,000 worth of repairs were done on that truck after an accident. The court must conclude that the value of the 1978 Mack truck is \$12,000. It is common sense that a vehicle may cost more to repair in some instances than it is worth. Nevertheless, because of insufficient funds to purchase another vehicle, or for other reasons, one may have such a vehicle repaired. The court cannot accept debtor's assessment as more reliable than the appraisal of his own expert witness.

The bank's expert witness testified that the 1976 Kenworth was worth \$3,000 to \$4,000 in its present condition. He also stated that the truck required an engine rebuild which if performed would place the truck's value at \$7,000. Debtor's appraiser testified that the 1976 truck was currently worth \$4,000 to \$6,000. He estimated that the truck would be worth \$14,000 with an engine rebuild and certain transmission work. Debtor stated that the truck was presently torn apart for the necessary repairs.

The court need not choose between the expert valuations in this case. Even accepting the high present value estimate of \$6,000 from debtor's witness, debtor would have no equity in the trucks. The value of the trucks at best totals \$18,000 against a debt of \$23,364. The court cannot utilize the values which are based on repairs taking place. The potential repairs do not

increase the present value of the 1976 Kenworth. Even if the repairs were completed the court is of the opinion that the value of the 1976 truck would not be greater than \$11,364, which would be necessary for equity to exist. The court concludes that debtor possesses no equity in the 1976 and 1978 trucks.

Since debtor has no equity in the trucks the court must consider whether these trucks are necessary for an effective reorganization. As pointed out earlier, the burden of proof on this issue lies with debtor. Debtor has offered absolutely no evidence or argument that the trucks are necessary for an effective reorganization. In In re Bialac, 15 B.R. 901 (Bankr.App. 9th Cir. 1981), the Ninth Circuit's Bankruptcy Appellate Panel addressed this precise situation. The appellate panel affirmed the trial court's finding that the property at issue was not necessary to an effective reorganization. Id. at 903. The lower court's finding was based on the debtor's failure to present evidence or persuasive argument on the issue. Id. As the court found in Bialac, this court must find that the trucks are not necessary to an effective reorganization.

Since debtor has no equity in the 1976 Kenworth and 1978 Mack trucks and since the trucks are not necessary for an effective reorganization, the bank's motion shall be granted.

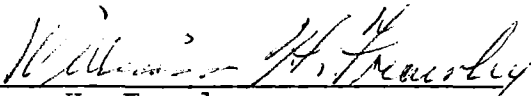
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT River Valley State Bank's motion for relief from stay is granted.

Dated: December 3, 1985.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney Gary L. Dreier  
Attorney Jeffrey A. Hertz