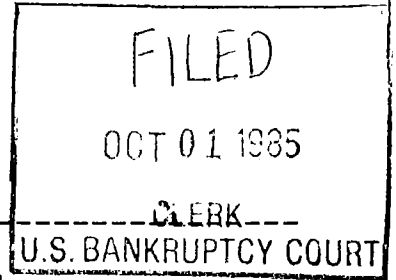


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

IRVING THOMAS LARSON
CATHERINE N. LARSON

LF11-85-00554

Debtors.

LOCKWOOD CORPORATION,

Adversary Number:

Plaintiff,

85-0151-011

v.

IRVING THOMAS LARSON &
CATHERINE N. LARSON;
STANTON E. THOMAS;
EDWARD F. ZAPPEN, as
Interim Trustee for
Potatogation, Inc.;
PETER HERRELL, as
Interim Trustee for
Larry Malin Hendrickson
and Mary Beth Hendrickson;
FIRST AMERICAN NATIONAL
BANK OF WAUSAU and SECURITY
STATE BANK,

Defendants.

OPINION AND ORDER DENYING MOTION TO DISMISS
FOR LACK OF JURISDICTION

Plaintiff Lockwood Corporation has filed a complaint for declaratory and injunctive relief. Defendant Stanton E. Thomas has moved the court for an order dismissing the complaint for lack of jurisdiction. A pre-trial conference in this matter was held on July 31, 1985. Plaintiff was represented by Attorney

Michael D. Lieder and defendants Irving and Catherine Larson by Attorney Maureen Kinney. Defendant Thomas appeared by Attorney Thomas Walz. Edward F. Zappen, interim trustee in the Potatogation, Inc. bankruptcy proceeding, appeared personally and by Attorney Cathy J. Gorst. The parties have subsequently submitted briefs on the motion to dismiss.

On February 27, 1981, plaintiff entered into a Dealer-Sales Agreement with defendant Potatogation, Inc. This agreement provided plaintiff with a security interest in all Potatogation inventory purchased from plaintiff along with the proceeds of such inventory. Later in 1981 the Larsons purchased two irrigation systems from Potatogation. As of January 7, 1982, the debt for this purchase stood at \$26,000 with interest accruing at 12 percent annually. On February 13, 1984, the Larsons, Potatogation and defendant Thomas executed an agreement providing that Thomas would pay to Potatogation all of the rent he owed Larsons for 1984, up to \$29,640, in order to reduce or eliminate the Larsons' debt to Potatogation. Shortly thereafter, plaintiff obtained a Wisconsin trial court order directing Potatogation to surrender collateral and proceeds based on Potatogation's default in payments to plaintiff. Among the proceeds allegedly assigned to plaintiff pursuant to the court order was the note or account receivable from the Larsons.

The plaintiff claims that Thomas is willing to make the payments due under the assignment of rents but is not certain who is entitled to the money. The plaintiff, therefore, seeks an order

directing Thomas to pay it all of the 1984 rent, up to \$29,640. Further, it requests a court declaration of the total amount, including interest and other charges, owed by the Larsons on the account receivable. Finally, plaintiff seeks a declaration that it has a claim against the Larsons for any amount by which the Larson account receivable exceeds \$29,640.

The essence of Thomas' objection to jurisdiction is that this matter is properly one for the bankruptcy proceeding filed by Potatogation, not the Larson bankruptcy case. Thomas asserts that the Larson assignment of rents constituted an accord and satisfaction, releasing the Larsons from any liability to Potatogation for its account receivable. Based on this assertion, Thomas argues that plaintiff's complaint does not involve a claim against the Larsons' estate.

A review of the language contained in the Larson assignment of rents suggests that the assignment itself did not operate as an accord and satisfaction of the debt to Potatogation. The assignment is described as an irrevocable assignment of rents. However, the assignment also states that payment from Thomas to Potatogation, up to a maximum of \$29,640, shall be made in order to reduce or eliminate the debt to Potatogation. From this language it would appear that the Larsons' debt to Potatogation is reduced, dollar for dollar, based on what is paid by Thomas. If for whatever reason, Thomas pays less than the full amount of \$29,640, the debt would apparently only be reduced by that amount.

The amount that was not paid would remain a liability of the Larsons.

Thomas has offered an affidavit in which he states that it was his understanding that Potatogation agreed to release its claim against the Larsons in return for the assignment. At this juncture, this statement cannot override the language of the assignment. At trial of this matter the court shall fully consider any proper evidence introduced by the parties. The court reserves any decision concerning the legal affect of the rental assignment until trial. It is sufficient to now conclude that, for purposes of determining the jurisdictional motion before the court, Thomas must fail in his assertion that the assignment operated as a complete release of the Larsons from any liability on their note to Potatogation.

Depending on the outcome of this matter at trial, and a determination of the amount owed on the Larson account receivable, it is entirely possible that plaintiff may have a claim against the Larson estate. Based on that potential claim this matter is a core proceeding arising in a case under Title 11. Consequently, pursuant to 28 U.S.C. § 157(b)(1) the court may hear this matter and enter an appropriate order. Jurisdiction of this matter in the Larsons' bankruptcy proceeding is proper.

Under 28 U.S.C. § 157, jurisdiction of this matter in the Potatogation bankruptcy proceeding would also be proper. The outcome of this matter may affect both bankruptcy estates. Since no interested party will be adversely affected, and since the

matter can be conveniently and expeditiously decided in this bankruptcy proceeding, the court shall retain jurisdiction over this case as filed.

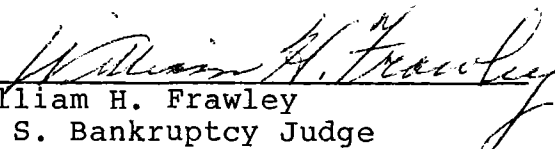
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT defendant Thomas' motion to dismiss for lack of jurisdiction is denied.

Dated: October 1, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Michael D. Lieder
Attorney Maureen Kinney
Attorney Thomas Walz
Attorney Edward F. Zappen
Attorney Cathy J. Gorst
Attorney Stewart L. Etten *ca*