

FILED

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

OCT 31 1985

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

TERRACE CONVENTION CENTER, INC.,

EF11-85-01856

Debtor.

OPINION AND ORDER DENYING MOTION TO EXTEND STAY

Debtor Terrace Convention Center, Inc., has filed a motion requesting this court to extend the automatic stay imposed under 11 U.S.C. § 362 to protect Donald R. Bracht, David R. Bracht and Nancy L. Bracht. These individuals are, according to debtor, key employees of the debtor. Debtor claims that any action against these individuals will divert their attention and adversely affect debtor's reorganization.

A hearing on this matter was held September 30, 1985. Debtor appeared by Attorney Daniel R. Freund. No party appeared personally in opposition to debtor's motion. However, creditor Briggs and Morgan set forth its position in opposition to the motion to extend stay by written brief delivered to the court on the morning of the hearing. Letters opposing debtor's motion from creditors Somerset Oil Company, Inc., and Henri Brault were submitted subsequent to the September 30 hearing.

Following the hearing, the court issued an order extending the stay as requested until November 15, 1985. The debtor was

given until October 30, 1985, to reply to the Briggs and Morgan brief.

At the outset it is necessary to make this court's position clear concerning motion hearings which it schedules. Motion hearings are scheduled when the court is of the opinion that the presentation of oral argument and the personal presence of counsel is required or advisable. When a motion hearing is scheduled the court expects interested parties to participate personally, not through briefs. Participation through brief may save a party money; however, at the same time, it defeats the purpose of a hearing. Consequently, the parties should take note that if they desire to have their positions on a motion considered at a hearing they will have to appear or receive advance court approval of alternate arrangements.

In this instance, the court shall consider the arguments advanced by Briggs and Morgan since debtor has received an opportunity to respond to those arguments. Briggs and Morgan has made various jurisdictional arguments against debtor's motion and also argues that it should be denied on the merits. Because the court agrees that it would not be appropriate under the circumstances of this case to grant the motion, it is not necessary to consider any jurisdictional objections to the motion.

Staying third-party action not involving the debtor under the broad powers of sec. 105(a) has been described as an "extraordinary exercise of discretion." In re Brentano's, Inc., 36 B.R. 90, 92 (D.C.S.D.N.Y. 1984). This Court agrees. Since

Congress in enacting sec. 362 has chosen not to extend the automatic stay to the type of third-party actions attempted to be reached in this case, the court must be reluctant to exercise its discretionary power in this area. Compelling factual circumstances must exist in support of such action.

The facts of this case do not warrant the extraordinary action sought. Debtor in support of its motion states that certain creditors claim that the Brachts are liable for certain of debtor's obligations. It further states that Briggs and Morgan has initiated legal action against both debtor and Donald R. Bracht for legal fees from services rendered to the debtor. Even assuming the accuracy of these statements, and others made by debtor in support of its motion, there is no basis to extend the stay. A small corporation's financial obligations are often accompanied by personal guarantees from corporate officers or directors. Lawsuits may arise based on the personal guarantees. This common fact cannot, absent other compelling circumstances not present in this case, justify an extension of stay.

Seemingly innumerable corporate debtors have had to attempt to reorganize with distractions at least as serious as those faced by debtor. It would be inequitable to single out this debtor for special treatment which Congress has chosen not to provide.

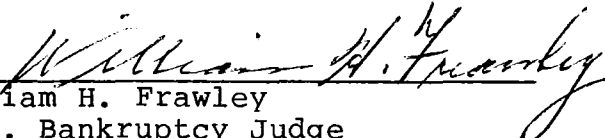
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT debtor's motion to extend the automatic stay imposed by 11 U.S.C. § 362 is denied.

Dated: October 31, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Daniel R. Freund
Attorney William J. Joanis
Attorney Warren W. Wood