

FILED

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

MAR 18 1986

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

DAVID L. GUNDERSON
f/d/b/a Lud and Dave's Bar
and/or Adler's Bar,

EF7-85-01914

Debtor.

OPINION AND ORDER

The trustee, Peter F. Herrell, has moved this court for authority to sell a liquor license pursuant to 11 U.S.C. § 363(b) and (f) and Wisconsin Statute § 125.04(12). Sadie Adler, by Eugene J. La Fave, objects to the motion. A hearing was held on this matter on January 27, 1986. The issue has been submitted for determination by briefs. The court has considered the arguments of both parties and concludes that the trustee should be allowed to sell the liquor license.

John Adler was the owner of the land on which Dean Steahr operated a tavern. Dean Steahr owned the fixtures and furnishings of the tavern and was the name holder of a properly issued liquor license. On June 15, 1977, a three-party contract was entered into by John Adler, Dean Steahr, and Duane Gunderson. Under the terms of this contract Duane Gunderson was to purchase the fixtures and furnishings, business name and goodwill of the tavern from Dean Steahr. This contract contemplated that John Adler and Duane Gunderson would enter into a lease agreement.

Also, the purchase was contingent on the ability of Duane Gunderson to have the liquor license in the name of Dean Steahr transferred and issued in his name. The contract contained a clause providing that Duane Gunderson was under an obligation, "in the event of any default on his part in payments provided for in his Agreement with [John Adler], to take all necessary means to insure transfer of all licenses involved in the operation of the tavern business to [John Adler]."

The liquor license was issued by the City of Eau Claire in the name of Duane Gunderson and the sale did take place. Duane Gunderson and John Adler entered into a lease agreement for the premises on which the tavern was located on July 5, 1977.

John Adler died on March 30, 1978. Sadie Adler claims to be a successor to his interests as surviving spouse. Subsequently, Duane Gunderson became disabled and David Gunderson, son of Duane and debtor herein, took over the operation of the tavern. David Gunderson had the liquor license transferred and issued in his name.

On September 30, 1982, Duane Gunderson and David Gunderson entered into an agreement in which Duane Gunderson assigned his interest in his lease agreement with John Adler to David Gunderson. Sadie Adler signed approval of this assignment with the reservation that "[t]he approval is contingent upon assignee protecting the undersign's interest in operating licenses pursuant to prior agreements between John P. Adler and Duane W. Gunderson providing that lessee shall take all means possible to

have licenses issued in John P. Adler or the undersigned as his widow in the event Duane W. Gunderson or his assigns for any reason cease operating the tavern premises."

David Gunderson continued to operate the tavern until August, 1985. The debtor filed a Chapter 7 bankruptcy petition on October 11, 1985. 11 U.S.C. Chapter 7. The trustee was appointed and he now asks for authority to sell the liquor license free and clear of liens. 11 U.S.C. § 363(f). Sadie Adler argues that the trustee should transfer the liquor license to her pursuant to Wisconsin Statute § 125.04(12) in compliance with the contractual duties of the debtor.

A liquor license is property of the bankruptcy estate. In re Telemark Management Company, 43 B.R. 579, 581 (Bankr. W.D. Wis. 1984). A trustee can sell property of the estate free and clear of any interest in the property if applicable non-bankruptcy law permits such sale. 11 U.S.C. § 363(f)(1). Under applicable Wisconsin law a license to sell alcohol beverages may be transferred to persons other than the licensee if the licensee becomes bankrupt. Wis. Stat. § 125.04(12)(b).¹ It is clear that the trustee can sell the liquor license free and clear of liens unless Sadie Adler possesses an interest that is enforceable under state law that precludes such a sale.

¹ (b) From person to person. 1. Licenses to sell alcohol beverages may be transferred to persons other than the licensee if the licensee, or an applicant for a subsequently granted license, dies, becomes bankrupt or makes an assignment for the benefit of creditors during the license year or after filing the application....

In Wisconsin "[t]he outright sale, transfer, or assignment of a liquor license is illegal and unenforceable except as specifically authorized by statute." Variance, Inc. v. Losinske, 70 Wis.2d 31, 237 N.W.2d 22, 24 (Wis. 1976). However, contractual provisions which do not directly call for the transfer of a liquor license may be enforceable. Id. Sadie Adler has not provided this court with any statutory authority that would have allowed the debtor to transfer his liquor license to her. To the extent that Sadie Adler is alleging that the debtor was contractually obligated to effectuate such a transfer, that obligation would be unenforceable.

Next, Sadie Adler argues that the debtor was contractually obligated to perform in such a manner so as not to hinder her ability to have the liquor license issued in her name. Hence, Sadie Adler requests the court to order the trustee to transfer the liquor license to her. To the extent that the debtor was under such a contract, that contract did not create an interest in the liquor license on the part of Sadie Adler. The purpose of a Chapter 7 proceeding is to provide a fair distribution of the assets of the estate to all creditors. Sadie Adler does not have an interest in the liquor license that places her in a position above the other creditors. It is the conclusion of this court that the trustee should be allowed to sell the liquor license free and clear of liens.

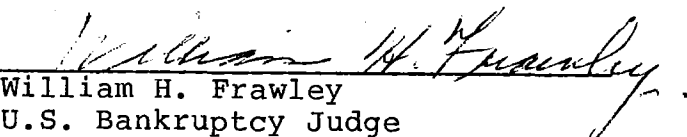
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT, the objection of Sadie Adler is denied and the trustee's motion for authority to sell the liquor license is hereby granted.

Dated: March 18, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney Peter F. Herrell
Attorney Eugene J. LaFave
Attorney Paul Weinke