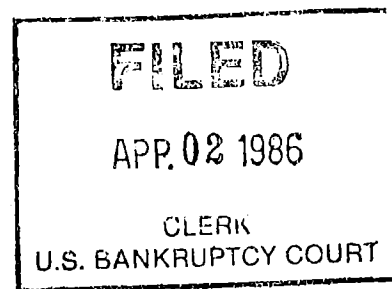


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

DALE L. SCHEFFLER  
DIANE M. SCHEFFLER

EF11-85-02127

Debtors.

OPINION AND ORDER

The First Wisconsin National Bank of Eau Claire (Bank), by Paul H. Weinke, filed this motion seeking relief from the 11 U.S.C. § 362 automatic stay. The debtors appear pro se and object to the motion. A hearing was held on February 7, 1986, a telephonic hearing was held on February 14, 1986, and a hearing was held on this matter on February 24, 1986. Both parties have been provided an opportunity to present evidence and make oral statements. It is the conclusion of the court, based on the evidence submitted, that the Bank is entitled to relief from the § 362 automatic stay.

The Bank was granted a Judgment of Replevin against the debtors in a court proceeding of the State of Wisconsin on April 25, 1985. The asset that was the subject of the replevin judgment was one 1977 Dodge W-200 Truck, Serial No. W24BF76169842. In October of 1985 the Bank obtained possession of said vehicle and prepared to sell same. The debtors believed there was impro-

priety in both the Judgment of Replevin and the Bank's actions in taking possession of the vehicle. The debtor took these issues up on appeal in state court and received an unfavorable decision. The debtors now request this court to review the state court decisions. However, it is not the function of this court to review state court decisions. In re Wally Findlay Galleries (New York). 36 B.R. 849 (Bankr. S.D. N.Y. 1984).

The relevant statutory reference for this relief from stay motion is found at 11 U.S.C. § 362(d)(2).

§ 362(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

- (2) with respect to a stay of an act against property under subsection (a) of this section if--
  - (A) the debtor does not have an equity in such property; and
  - (B) such property is not necessary to an effective reorganization.

In this relief from stay motion the Bank has the burden of proof with respect to the debtors' lack of equity in the property and the debtors must bear the burden of proof on all other issues. 11 U.S.C. § 362(g).

The evidence at the hearings indicated that the Bank has a security interest in the vehicle in the amount of \$1,405.26. The Bank introduced an appraisal of the vehicle that placed a value on it of \$800. The debtors introduced an appraisal of the

vehicle that placed a value on it of \$1,025. The debtors admitted at the February 7, 1986, hearing that they owed the Bank more than the vehicle was worth. Therefore, it is apparent that the Bank has met its burden of showing that the debtors have no equity in the property. 11 U.S.C. § 362(g).

The debtors did not introduce any evidence supporting the proposition that the vehicle was necessary for an effective reorganization. Instead, the evidence indicated that the vehicle was not needed for an effective reorganization. The debtors have not had the vehicle in their possession since October of 1985. Still, the income the debtors have received from their farming operation has not declined. There is no evidence that the debtors' financial situation has suffered at all as a result of being dispossessed of the vehicle.

The debtors have alleged in the course of their bankruptcy proceedings that they have been injured as a result of the loss of the vehicle. They allege that if they had the vehicle they would be better able to haul haylage and thus increase milk production. The debtors allege that this vehicle is one of their more important pieces of farm equipment. The court notes that the debtors have not introduced sufficient evidence to support any one of these allegations. If the debtors had offered this information properly the Bank would have had an opportunity to address it and challenge it. The court would also be in a better position to determine its significance. However, regardless, the

allegations of the debtors merely reveal that the debtors have been inconvenienced by the loss of the vehicle. There has been no evidence that the vehicle is necessary. The debtors have the burden of demonstrating that the vehicle is necessary for an effective reorganization. Allegations that the loss of the vehicle has inconvenienced the debtors are insufficient to show that the vehicle is necessary for their reorganization. The debtors, in addition, have been fully able to pay the Bank if they so desired. It is the conclusion of this court that the debtors have failed to carry their burden of proof and the Bank is entitled to relief from the § 362 automatic stay.

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

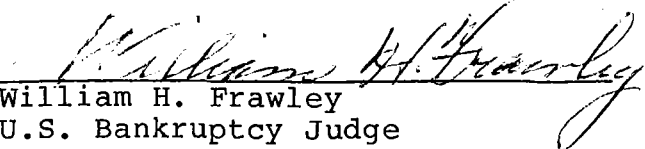
ORDER

NOW, THEREFORE, IT IS ORDERED THAT, the debtors' objection to the Bank's motion for relief from stay is denied.

IT IS FURTHER ORDERED THAT, the Bank's motion for relief from stay is hereby granted.

Dated: April 2, 1986.

BY THE COURT:

  
William H. Frawley  
U.S. Bankruptcy Judge

cc: Attorney Paul H. Weinke  
Mr. Dale L. Scheffler  
Mrs. Diane M. Scheffler