

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
STEVEN R. WILLIAMSON,) Bankruptcy Case No. 96-
60701)
d/b/a BROADWAY VIDEO,)
)
Debtor.)
_____)
LOWELL E. KELSEY,)
)
Plaintiff,)
)
vs.) Adversary Case No. 96-6041
)
STEVEN R. WILLIAMSON, and)
DONALD HOAGLAND, Trustee,)
)
Defendants.)

OPINION

This matter having come before the Court on a Petition for Temporary Restraining Order and Injunctive Relief filed by Lowell E. Kelsey and a Response thereto filed by Trustee, Donald Hoagland; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

In order to obtain a temporary restraining order and a preliminary injunction, the Plaintiff must show: (1) that he has no adequate remedy at law; (2) that he will suffer irreparable harm if the preliminary injunction or temporary restraining order is not issued; (3) that the irreparable harm he will suffer if the injunction is not granted is greater than the irreparable harm the defendants will suffer if the injunction is granted; (4) that he has a reasonable likelihood of

success on the merits; and (5) that the injunction sought will not harm the public interest. Brunswick Corp. v. Jones, 784 F.2d 271 (7th Cir. 1986); Lee/O'Keefe Insurance Agency, Inc. v. Ferega, 163 Ill. App.3d 997 (1987).

Assuming for the sake of argument that all other requirements necessary have been met to grant the relief requested, the Court is not convinced that the Plaintiff has shown a sufficient probability of success on the merits to warrant the issuance of a temporary restraining order or any other type of preliminary injunctive relief. There is a question of fact concerning the validity of the Plaintiff's security interest in various assets which are, at present, part of the Debtor's bankruptcy estate. Until such time as the assets which are claimed to be subject to the security interest of the Plaintiff are abandoned or otherwise disposed of, it is the Trustee in Bankruptcy's responsibility to manage and care for those assets in a manner which is in the best interests of all of the Debtor's creditors. The Trustee has demonstrated a need to close the three video stores which the Debtor was operating prior to the time of his bankruptcy to protect the assets and inventory of those businesses from further diminution in value until such time as it can be determined whether the Plaintiff, Lowell E. Kelsey, has a perfected security interest in those assets or whether those assets should be liquidated for the benefit of the unsecured creditors of Debtor's bankruptcy estate.

In addition to finding that the Plaintiff has failed to show a reasonable likelihood of success on the merits, the Court further finds that the Plaintiff has failed to show that he does not have an adequate remedy at law. There is an adversary proceeding currently pending

which will determine whether the Plaintiff has a secured interest in the assets which, if determined in Plaintiff's favor, will result in an adequate remedy for the Plaintiff in that he will be allowed to take control of the assets and use or dispose of them as he sees fit.

The Court further finds that the Plaintiff has failed to show that he will suffer any irreparable harm if a temporary restraining order or some other type of preliminary injunction is not issued. There is no indication that the assets in question will not remain intact pending a determination by the Court of the rightful owner of those assets. Furthermore, the Court finds that the issuance of a temporary restraining order or a preliminary injunction could result in irreparable harm to the Defendants which outweighs the irreparable harm, if any, that Plaintiff may suffer. For if the injunction is allowed to issue, the assets in question could be dissipated without the Trustee's knowledge and without recourse by the Trustee on behalf of the unsecured creditors. Until such time as it is determined that the assets in question are the secured collateral of the Plaintiff, the Trustee has the responsibility to maintain those assets and see that they bring the highest value possible for the benefit of the Debtor's unsecured creditors. Under the facts as presented by the parties, the Court finds that the actions already taken and contemplated by the Trustee are appropriate and should not be disturbed at this time.

In conclusion, the Court finds that the Plaintiff has failed to show the necessary elements to obtain a preliminary injunction or temporary restraining order. As such, the Petition for Temporary Restraining Order and Injunctive Relief filed on January 7, 1997, must be denied.

ENTERED: February 20, 1997.

/s/ GERALD D. FINES
United States Bankruptcy Judge