

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

APR 3 1981

William L. Olson, Clerk

By _____

IN THE MATTER OF:)
AARON FERER & SONS CO.,)
Debtor,)
AARON FERER & SONS CO.,)
DEBTOR AND DEBTOR IN POSSES-)
SION, and THE OFFICIAL CREDI-)
TORS COMMITTEE,)
Plaintiffs,)
vs.)
WILLIAMS & GLYN'S BANK, LTD.,)
and DONALD ALFRED JAMES)
DRAPER, LIQUIDATOR FOR)
AARON FERER & SONS CO. LTD.,)
IN LIQUIDATION,)
Defendants.)

BK. NO. 74-0-482

CV. NO. 80-0-507

MAGISTRATE'S FINDINGS
AND RECOMMENDATIONS

There has been referred to the undersigned United States Magistrate, for submission of findings and recommendations, this appeal taken by the defendants from an order of the Bankruptcy Court entered on June 30, 1980, denying their motion to reconsider a prior order which stayed enforcement of a judgment entered on June 26, 1980. That judgment directed payment to defendants of \$66,148.70 from a fund then under joint control of the parties and invested as previously directed by the Bankruptcy Court. That judgment was appealed by plaintiffs and is presently pending before Chief Judge Urbom. This is but one of several adversary proceedings pending in this Bankruptcy case and, for brevity, is identified by the parties as "Codelco I".

Briefs have been submitted and oral argument was heard on March 19, 1981.

In Bankruptcy Judge Crawford's order granting plaintiffs' motion to stay enforcement of the judgment he found that:

In view of the fact that the monies in dispute are invested, no prejudice to the defendants would appear.

Such a stay order is authorized by the provisions of *Bankruptcy Procedure* Rule 905.

Defendants then filed the motion to reconsider asserting:

that the Court had no jurisdiction to enter the said order having determined that the property involved did not belong to the debtor, debtor in possession, or confirmed debtor and as a result, the said order is void.

Judge Crawford's brief Memorandum and Order denying the motion to reconsider his previous grant of the stay took note of the quoted assertion of the motion and found:

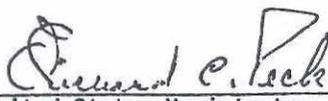
This argument is without merit.

I agree. The only issue on this appeal is whether Judge Crawford abused his discretion in not dissolving the stay. Defendants contend that once the Bankruptcy Court determined that a portion of the invested funds belonged to them, it somehow lost jurisdiction to do anything further with respect to that portion other than to order its immediate disbursement to them. Simply stated, that is not the law. The stay order does no more than maintain the status quo until the judgment becomes final by affirmance or is set aside by reversal. Whether Judge Crawford correctly decided the case on its merits and whether plaintiffs' appeal from that judgment is frivolous are not matters to be reached by the instant appeal.

I find that no abuse of discretion has been shown.

IT IS THEREFORE RECOMMENDED to District Judge Robert V. Denney that an order be entered affirming the order of the Bankruptcy Court denying the motion to reconsider the stay order.

DATED this 3rd day of April, 1981.


United States Magistrate