

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
RONALD F. PATTERSON)
and CAROL J. PATTERSON,)
)
Debtors,)
)
RONALD F. PATTERSON and)
CAROL J. PATTERSON,)
)
Plaintiffs,)
)
v.)
)
BANK OF PAPIILLION,)
)
Defendant.)

CV. 84-0-769

BK. 84-0-251

MEMORANDUM AND ORDER

FILED
DISTRICT OF NEBRASKA
AT _____ M
APR 25 1985
William L. Olson, Clerk
By _____ Deputy

This matter comes on for determination on appellants' application for temporary stay (Filing No. 8), and appellants' motion styled as a "motion for reconsideration and objection to bankruptcy court findings and conclusions" (Filing No. 9). After consideration of the briefs in support of and in opposition to said motions, and the applicable law, the Court denies both motions.

Ronald F. Patterson and Carol J. Patterson (appellants) filed for bankruptcy under Chapter XI of the Bankruptcy Code on February 9, 1984. On November 15, 1984, the bankruptcy court granted the motion of the Bank of Papillion (appellee) for relief from the automatic stay. Appellants have appealed this order of the bankruptcy court to this Court.

On November 28, 1984, appellee filed an action in replevin in the District Court of Sarpy County to recover property previously protected by the automatic stay. In response to the replevin action, appellants have filed a motion in this Court for stay pending appeal (Filing No. 8).

On December 18, 1984, appellants attempted to remove the replevin action from the District Court of Sarpy County to this Court, but by order of January 15, 1985, Judge Beam denied appellants' request. Appellants then filed a second removal action, this time attempting to remove the replevin action to the bankruptcy court. On April 5, 1985, the bankruptcy court similarly determined that removal was improper. Appellants now request this Court to review the orders denying removal.

Insofar as appellants' motion for stay pending appeal is concerned, the Court must consider four factors:

- 1) The likelihood that the party seeking the stay will be successful on the merits of the appeal;
- 2) Whether the moving party will be subject to irreparable injury if the stay is not granted;
- 3) Whether granting the stay will cause irreparable harm to other interested parties; and
- 4) Whether granting or declining to grant the stay will be harmful to the public interest.

In re Copeland, CV. 84-0-24 (D.Neb. June 18, 1984), In re Old South Coors, 30 B.R. 412 (N.D.Miss. 1983); In re Babco, Inc., 25 B.R. 325 (W.D.Pa. 1982).

Appellants do not demonstrate that they will likely succeed on appeal. Indeed the appellants' argument is devoid of any suggestion that they will prevail on the merits. In the absence of any showing that appellants will likely succeed on appeal, their motion for stay pending appeal must be denied.

Appellants' "motion for reconsideration and objection to bankruptcy court findings and conclusions" must likewise be denied. This Court has jurisdiction only over the action presently before it, namely CV. 84-0-769, which is an appeal from an order of the bankruptcy court granting appellee relief from the automatic stay. Appellants' separate action, CV. 84-0-805, is not properly before this Court and, therefore, no issue in that case will be decided here. In any event, the bankruptcy court order to remand is not a final judgment, order or decree which is appealable to this Court. 28 U.S.C. § 1334(a). For the foregoing reasons, appellants' motion for reconsideration must also be denied. Accordingly,

IT IS HEREBY ORDERED that plaintiffs' motion for stay pending appeal (Filing No. 8) should be and the same is hereby denied;

IT IS FURTHER ORDERED that plaintiffs' motion styled "motion for reconsideration and objection to bankruptcy court findings and conclusions". (Filing No. 9) should be and the same is hereby denied.

BY THE COURT:



JUDGE, UNITED STATES DISTRICT COURT