IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SJR ENTERTAINMENT, INC., d/b/a BROWN DERBY LOUNGE,	)	CV87-L-507
Appellant,	)	
vs.	)	
FIRST NATIONAL BANK AND TRUST COMPANY OF KEARNEY, NE,	)	
Appellee.	)	

SJR ENTERTAINMENT, INC., d/b/a BROWN DERBY LOUNGE,	)	CV87-L-569 ✓
Appellant,	)	
vs.	)	
FIRST NATIONAL BANK AND TRUST COMPANY OF KEARNEY, NE,	)	
Appellee.	)	

MEMORANDUM OF DECISION

The debtor, SJR Entertainment, Inc., d/b/a Brown Derby Lounge (SJR), appeals from the May 11, 1987, order of the bankruptcy court granting the creditor bank's motion for relief from the automatic stay. The court denied SJR's motion for stay of the order on June 1, 1987. The judgment of the bankruptcy court "shall not be set aside unless clearly erroneous." Fed.R.Bankr.P. 8013.

As of April 11, 1986, the date that it filed for reorganization under Chapter 11, SJR owed the First National Bank and Trust of Kearney $36,497.47 in principal and $5,681.21 in interest on an April 13, 1983, promissory note. The bank has a lien on the business property under a security agreement. It also has liens on property of Sandra and Delmont Ruhter, SJR's owners and co-signers, who have filed for relief under Chapter 13. That property includes two vehicles, a boat and trailer, and a residence and leasehold.

The bank sought relief from the automatic stay under both provisions of 11 U.S.C. § 362(d):

(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 --

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(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 its May 11, 1987, order, the bankruptcy court wrote:

Creditor granted relief against business property. No Insurance. Based upon affidavit of Debtor -- any plan would be liquidating plan, not necessary to effective reorganization. No report on file.

In its oral statements, the court said:

I find that the debtor does have, based upon the evidence presented, equity in the property. On the other hand, the debtor is not adequately protecting the interest of the creditor. There is no insurance on the business property.

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In addition, this debtor has been in this Bankruptcy Court for a significant amount of time, and that is since April of 1986, and there have been no monthly reports on file, even though the local rule was in effect.... So they are in violation of a local rule for a significant amount of time.

Based upon the affidavits that were presented by the debtor, this business cannot be effectively reorganized but through a liquidation, and I guess in some cases I say that's a reorganization, but in this case, since they're not protecting the interests of the creditor, I'm going to grant relief to the creditor as to the business property....

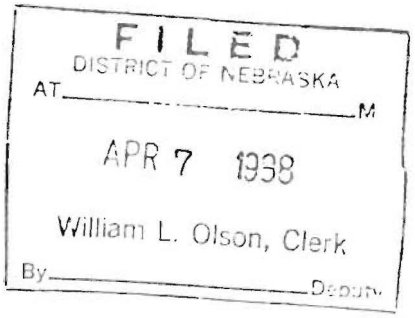
Tr. 11.

Despite the bank's suggestions to the contrary in its brief, it appears that the bankruptcy court based its decision on § 362(d)(1) only because it expressly found that SJR had equity in the property, precluding relief under subsection (d)(2). Thus, the only issue is whether granting relief from the stay under § 362(d)(1) was clearly erroneous.

There was no evidence before the court that the collateral was insured, and the debtor had failed for thirteen months to file the required monthly reports. SJR did not meet its burden of proof in resisting the motion for relief from the stay for cause. § 362(g)(2).

I have considered the other arguments raised in SJR's brief, as well as the issues listed in its "designation of items to be included in record on appeal," and find them to be without merit.

Dated April 7, 1988.

BY THE COURT

United States District Judge