

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
 TRI-CITY BEER COMPANY,) CASE NO. BK86-2327
)
 DEBTOR)

MEMORANDUM OPINION RE OBJECTION TO NOTICE OF SALE

Tri-City Beer Company filed a voluntary Chapter 11 petition on or about August 12, 1986. The company is a beer distributor in the Grand Island, Nebraska, area and, as part of its reorganization effort, entered into a written sales and purchase agreement with Westering Distributing Company, Inc., a Nebraska corporation, for the sale by debtor and debtor-in-possession and the purchase by "Westering" of substantially all of the assets of the debtor and debtor-in-possession. Such agreement was executed on or about the 22nd day of October, 1986, and was subject to certain requirements being met by the purchaser with regard to permits and subject to the seller obtaining Bankruptcy Court approval.

The purchaser apparently met all of its requirements and on January 21, 1987, Tri-City Beer Company notified all interested parties that it proposed to sell the assets pursuant to the agreement with "Westering". Such notice gave all interested parties an opportunity to object to such sale.

An objection was filed by John Folsom and Sallie Folsom on or about February 5, 1987.

Hearing on such objection was held in North Platte, Nebraska, on March 10, 1987. Evidence was submitted at such hearing by affidavit and the Court took the matter under advisement.

The Court, having had an opportunity to review the file and the affidavit evidence presented, and to consider arguments of counsel, does hereby find that the objection of John and Sallie Folsom to the sale to "Westering" should be and is overruled.

The objection is in two parts. First, that the Folsoms had made an offer to the debtor which would result in a payment to the debtor of an amount in excess of that which would be received from "Westering", but that such offer had not been submitted to Miller Brewing for approval. Second, the objection as related to the Court at the hearing included the fact that another third party had recently made an offer in excess of the amount which was to be received by the debtor from "Westering".

From the evidence presented, the Court concludes that Miller Brewing Company, the company which must approve the transfer of the franchise and distribution rights, was not likely to approve the Folsoms as a distributor of Miller products. Folsoms were the previous owners of the business and evidence was presented that during their operation Miller was not satisfied with the manner in which the business was operated and an official of Miller testified by affidavit that it would be unlikely that Miller would approve the Folsoms as distributors. In addition, the original offer made by the Folsoms included terms which were not acceptable to the debtor concerning payment and concerning certain offset of claims.

The most recent offer by a third party, Beverage Marketing, Inc., appears on its face to be in excess of the amount the debtor would receive from the "Westering" offer. However, this offer, as well as the Folsom original offer and second offer, are subject to the condition that the purchaser obtain a state liquor license, a federal basic permit and approval of Miller Brewing Company and Falstaff. Neither "Beverage" nor "Folsom" have a state liquor license, a federal permit or approval of the beer companies.

Neither the "Folsom" offer nor the "Beverage" offer suggested a length of time it would take to obtain such licenses and permits and approvals nor did the offers suggest the manner in which the seller could continue to operate with regard to future financing pending such approvals.

The evidence is clear that Five Points Bank of Grand Island, the current financing agency for the debtor and the debtor-in-possession, is not inclined to continue advancing funds to permit the continued operation of the business pending future approval of the latest offers.

"Westering" has the state liquor license, has the federal basic permit and has approval of the Miller Brewing Company. "Westering" has the financial ability to close the sale within ten days of Court approval. Even though the "Beverage" offer appears to result in a payment to the debtor of approximately \$25,000 more than the "Westering" offer, "Westering" has all of the approvals, the money and is ready to close immediately. Whether or not "Beverage" would be able to obtain the appropriate licenses, permits and consents on a timely basis is speculative at best. Since the debtor has no outside means of financing continued operations without the support of the bank, this Court is of the opinion that, as was stated by one of the counsel at the hearing, "a bird in the hand is better than two in the bush."

Finally, the "Westering" offer has been subject to withdrawal for some time because the debtor was unable to meet certain time requirements in the offer. The offer has remained open to enable the debtor to obtain Court approval but the evidence presented at the hearing is that the offer will most likely be withdrawn if closing cannot take place prior to the end of March, 1987. Therefore, time is of the essence, the speculative \$25,000 improvement in position is significant, but not so significant as to cause this Court to believe debtor should be required to continue to attempt to operate

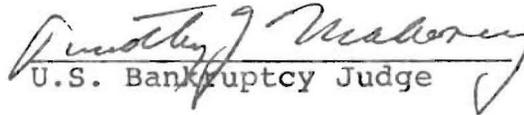
with no likelihood of financing and with only a speculative offer for its assets.

It is, therefore, ordered that the objection to the sale is overruled.

Separate Journal Entry shall be entered.

DATED: March 16, 1987.

BY THE COURT:


U.S. Bankruptcy Judge

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