

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

AARON FERER & SONS CO.,

DEBTOR

WILLIAMS & GLYN'S BANK  
LIMITED and AARON FERER &  
SONS LIMITED, in Liquidation,

Plaintiffs

vs.

AARON FERER & SONS CO.,  
Debtor and Debtor in  
Possession and THE OFFICIAL  
CREDITORS COMMITTEE,

Defendants

CASE NO. BK74-0-482

VACATION OF INJUNCTION

MEMORANDUM AND ORDER

I have before me a motion for summary judgment filed by plaintiffs in proceedings to determine whether plaintiffs should be relieved from stay orders or injunctions in the Chapter XI proceeding involving Aaron Ferer & Sons Co., BK74-0-482. Defendants have filed a resistance to the motion, and all parties have requested oral argument. This request will be granted, subject to the limitations set out in this opinion.

Granting relief from a stay is discretionary with this Court even where cause is shown. Bankruptcy Rule 11-44(d). Certain issues argued by the parties in their briefs are not material either to a showing of cause or to the exercise of this Court's discretion. For example, much of the proposed evidence and many of the arguments in the briefs focus on evidentiary issues of liability which the state court will be required to resolve if plaintiffs are allowed to proceed with their state lawsuit. Whether or not plaintiffs will prevail in a suit against the officers of the debtor is not material to these proceedings.

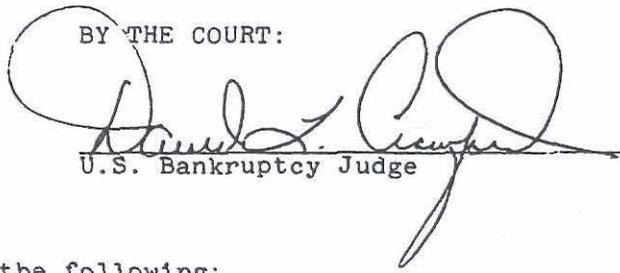
In my opinion, the only material issue in this proceeding is the issue of whether relief should be granted when proceedings involving the same or similar subject matter are pending before this Court. See Aaron Ferer & Sons Co. v. Williams & Glyn's Bank, Ltd., Unreported Memorandum Decision, CV. No. 78-0-28 (D. Neb. 1979). Thus the parties should focus their arguments and their offering of exhibits on whether a genuine issue of material fact exists in that area. If no such factual issue exists, this controversy may be resolvable by summary judgment, even though a decision of the matter will necessarily entail the exercise of judicial discretion. See 6, part 2, Moore's Federal Practice para. 56.16, at 56-661 (2d ed. 1979). Accordingly, it is

ORDERED that the motion for summary judgment be heard on the 23rd day of April, 1980, at the hour of 2:30 P.M. in the U.S. Bankruptcy Courtroom, 8th Floor, New Federal Building, Omaha, Nebraska; and it is further

ORDERED that the parties focus their argument and exhibits on the issue of whether this Court should permit proceedings in another court when proceedings involving the same or similar subject matter are pending before this Court.

DATED: April 7, 1980.

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies mailed to each of the following:

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