

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
The Petition of Theo Bullmore &) CASE NO. BK03-42145
Simon Whicker as Joint Official)
Liquidators for NATIONAL) In an ancillary case
WARRANTY INSURANCE RISK) under 11 U.S.C. § 304
RETENTION GROUP, d/b/a National)
Warranty Insurance Company and)
National Warranty Insurance)
Group,)
)
Debtor in)
foreign proceedings.)

ORDER

Hearing was held in Omaha, Nebraska, on September 4, 2003, on the following matters:

Filing #2, Motion for Temporary Restraining Order with Order to Show Cause filed by National Warranty Insurance Risk Retention Group

Filing #7, Temporary Restraining Order

Filing #14, Objection to Temporary Restraining Order filed by Johnny's Enterprises, Inc.

Filing #15, Response to Summons filed by pro se Dolphin Transmissions, Inc.

Filing #23, Response to Summons for National Warranty Insurance filed by pro se Burton and Rhonda Johnson

Filing #31, Response to Summons & Petition for National Warranty Insurance filed by pro se Amanda Lanahan

Filing #36, Response to Summons & Petition of National Warranty Insurance filed by pro se Daniella and Gerald Richer

Filing #37, Response to Summons & Petition of National Warranty Insurance filed by pro se Timothy Roe.

Filing #39, Response to Summons & Petition of National Warranty Insurance filed by SC & E Administrative Services, Inc.

Filing #54, Response to and Limited Objection to Motion for Temporary Restraining Order and Order to Show Cause filed by Consumer Automotive Consultants, LLC

Filing #94, Response to and Limited Objection to Motion for Temporary Restraining Order and Order to Show Cause filed by Commonwealth Dealers Life Insurance Company

Filing #107, Notice of Appearance and Request for Notice filed by Christopher Meacham on behalf of Riverside Cars & Trucks, Inc.

Filing #108, Request for Notice Pursuant to Neb.R.Bankr.P.2002 filed by George Kurisky on behalf of Vista Acquisition Reinsurance Co., Ltd.

Filing #113, Motion to Dismiss Case filed With Answer, and CounterClaim Filed by pro se Charlie Mae Cooper.

Filing #114, Response to 11 USC Section 304 Petition and Counterclaim filed by pro se Charlie Mae Cooper

Filing #124, Motion For Contempt and for Sanctions for Violation of Preliminary Injunction by Prudential Securities and Request for Expedited Hearing filed by Commonwealth Dealers Life Insurance Company.

Filing #131, Response to and Limited Objection to Motion for Temporary Restraining Order and Order to Show Cause filed by pro se Michael Gomez

Filing #137, Joinder in Motion by Commonwealth Dealers Life Insurance Company and for Contempt and for Sanctions for Violation of Preliminary Injunction by Prudential Securities filed by Bobcat Reinsurance, Ltd.

Filing #148, Amended Response to Certain Aspects of the Injunctive Relief that has been Requested and Granted by the Court and Original Response of American Prime Asset, Inc. Relating to Injunction filed by American Prime Asset, Inc., SC & E Administrative Services, Inc.

Filing #150, Response to Commonwealth Dealers Life Insurance Company's Motion for Contempt and for Sanctions filed by Prudential Securities, Inc.

Filing #153, Response to 11 U.S.C. § 304 Petition and Counterclaim filed by pro se Charlie Mae Cooper

Appearances

Joseph H. Badami and Krista L. Kester for Petitioner
Joseph Pierce and O. Luke Davis III for SC & E Administrative Services, Inc. and
American Prime Asset, Inc.
R. Scott Moore and Chris Basilevac for Consumer Automotive Consultants, LLC
Martin Pelster for Commonwealth Dealers Life Insurance Company
Thomas Saladino and Mitch Milby for Bobcat Reinsurance Ltd.
Jon Blumenthal and Brian Kilpatrick for Prudential Securities, Inc.
Tim Herman and Lynn Butler for Warranty Gold, Ltd.
Justin Lucey for Johnny's Enterprises, Inc.

George Kurisky, Jr. for Vista Acquisition Reinsurance Co., Ltd. & Vista Group
Michael Gomez, pro se
Dave Scott for various dealers
Ken Roberts for Lithia Motors, Inc.
John Smaha for Phyllis Hoffman

On June 20, 2003, the court entered an Ex Parte Temporary Restraining Order, Filing #7, and on August 19, 2003, the court entered an Order, Filing #128, making permanent the terms of the Temporary Restraining Order. The terms of the temporary restraining order and the permanent injunction arguably prohibit distribution of certain funds held in what the parties have deemed "reserve accounts." Those accounts are held by Prudential Securities, and that entity has refused to release any funds to the owners of the "reserve accounts."

In response to the initial issuance of the temporary restraining order and scheduling of a final hearing on the matter, numerous parties filed objections or requests for the court to find that the injunctive relief did not call for Prudential to freeze the accounts and did not prohibit the use of the "reserve accounts" by the owners of such accounts.

The hearing on the issue of whether the injunctive relief does or should freeze the "reserve accounts" was held on September 4, 2003. Evidence was presented and argument made. At the end of the hearing, the court ruled from the bench that the injunction should not be construed by the parties to require a freeze of the "reserve accounts." This Order memorializes the findings read into the record on September 4.

During the hearing, Filings #139 and #143, declarations presented on behalf of the debtor, were offered into evidence. Various objections to the admissibility of the exhibits were stated. After a review of the exhibits, I find that they should be and are hereby admitted in full, including all attachments.

FINDINGS

1. The "reserve accounts," sometimes referred to as escrow funds, which are the subject of this contested matter, are not property of the debtor.
2. The debtor is not a beneficiary of the "reserve accounts."
3. The funds are not property involved in the foreign proceeding.
4. Entities that have ownership interests in the "reserve accounts" may eventually have claims against the debtor, and perhaps the Vehicle Service Contract owners may eventually have such claims. In addition, the debtor may well have claims against the owners of the "reserve accounts." However, such claims are separate from the right to use, control and distribute the funds contained in the "reserve accounts." Those funds, which do not belong to the debtor, may be used by the owners of the "reserve accounts" to administer claims of the Vehicle Service Contract holders, and to distribute funds in payment of properly adjudicated claims.
5. The injunction, initially entered on June 20, 2003, as a Temporary Restraining Order, and

made permanent by the Order filed on August 19, 2003, is hereby modified or clarified to the following extent:

The injunction does not require Prudential or any other party holding the funds represented by the "reserve accounts" to freeze such accounts and prohibit the use of the funds by the actual owners of the funds. The debtor has no ownership interest in the funds and no sufficient interest in the funds or the contractual arrangements tangentially related to the funds to permit the debtor to control the use or distribution of the funds. Prudential, or any other entity that is in possession of or in control of the funds represented by the "reserve accounts," is directed to release the freeze on the funds which the injunctive relief purportedly required.

SO ORDERED.

DATED this 5th day of September, 2003.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the court electronically to:

Joseph H. Badami
Chris Basilevac
Martin Pelster
Thomas Saladino
Jon Blumenthal
John Smaha
John Guthery

Notice given by the court by mail to:

Krista L. Kester
Justin Lucey
George Kurisky, Jr.
O. Luke Davis, III
John B. Pierce
R. Scott Moore
Brian Kilpatrick
Ken Roberts
Mitch Milby
Lynn Butler
Christopher Meacham
Tim Herman
Dolphin Transmissions, Inc.
Burton & Rhonda Johnson
Amanda Lanahan
Gerald & Daniella Richer

Timothy Roe
Charlie Mae Cooper
Michael Gomez