

*Walter  
Naufer*

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA.

**FILED**  
97 AUG 19 PM 4: 52  
DIST OF SOUTH CAROLINA

IN RE:  
  
C.C. Rider, Inc.,  
  
Debtor.

C/A No. 97-05754-W

**JUDGMENT**

Chapter 11

**ENTERED**  
AUG 20 1997  
V. A. C.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Motion for Relief from Stay filed by Insty Prints, Inc. ("Insty Prints") pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) is granted.

*John G. Waites*  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
August 19, 1997.

97-194  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
27 AUG 19 PM 4:52  
COURT CLERK  
SOUTH CAROLINA

IN RE:  
C.C. Rider, Inc.,

C/A No. 97-05754-W

ORDER

Chapter 11

Debtor.

ENTERED  
AUG 20 1997  
V. A. C.

This matter is before the Court on the motion of creditor, Insty Prints, Inc. ("Insty Prints"), seeking relief from the automatic stay of 11 U.S.C. §362(a) ("Motion"). The Debtor, through counsel, filed an objection to the Motion.

After reviewing the pleadings in this matter, receiving testimony, considering all the evidence, and weighing the credibility of the witnesses, the Court, pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable herein by Rule 7052 of the Federal Rules of Bankruptcy Procedure, makes the following Findings of Fact and Conclusions of Law<sup>1</sup>:

**FINDINGS OF FACT**

In or around October, 1986, C. C. Rider, Inc. ("Debtor"), entered into a Franchise Agreement with Insty Prints whereby the Debtor was permitted to open and operate an Insty Prints franchise in North Myrtle Beach, South Carolina. The evidence before the Court indicates that the business in question was a printing operation whereby the Debtor would offer to the public printing services under the name "Insty-Prints." Debtor began its franchise operations at that time.

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<sup>1</sup> The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

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On or about April 29, 1992, in furtherance of the operations of the Franchise, Debtor executed and delivered to Insty Prints a Promissory Note and Security Agreement in the original principal amount of \$72,509.27 ("Contract"). The Contract was secured by liens on all of Debtor's accounts receivable, inventory, merchandise, stock-in-trade, equipment, and furniture and fixtures used in Debtor's business ("Collateral").

In or around May, 1996, Clifford Cochran, principal of the Debtor or a close relative, formed a corporation named Printers Ink, Inc. ("Printers Ink"). Printers Ink engages in the same type of business as the Debtor. Without the consent or knowledge of Insty Prints, the Debtor transferred the Collateral, which represented most, if not all of Debtor's operating assets, to Printers Ink under a lease agreement for \$1,000 per month.<sup>2</sup>

Prior to both the filing of the petition, and to the transfer of the Collateral, Debtor defaulted under the terms of both the Franchise Agreement and Contract. Insty Prints terminated the Franchise Agreement as provided for in the Franchise Agreement and, on or about September 26, 1996, Insty Prints filed an action against the Debtor in the United States District Court, captioned *Insty-Prints, Inc., a Minnesota Corporation v. Clifford E. Cochran and C.C. Rider, Inc.*, Case No. 4:96-2908-12 ("Federal Action"). The Federal Action sought damages for Debtor's breach of the Franchise Agreement as a result of Debtor's failure to make royalty payments and advertising fees as required by the terms of the Franchise Agreement.

In addition to the Federal Action, on or about January 6, 1997, Insty Prints filed a claim and delivery action in state court for the recovery of the Collateral securing the Contract, and

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<sup>2</sup> This figure is set forth in Debtor's Schedules.

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damages for Debtor's breach of the Contract, captioned *Insty Prints, Inc. v. Clifford E. Cochran, individually and d/b/a C.C. Rider, Inc.*, 97-CP-26-021 ("State Action"). Insty Prints posted a bond and sought immediate possession of the Collateral. Debtor objected to Insty Prints' demand for immediate possession of the Collateral, and demanded a pre-seizure hearing.

A hearing was held on Debtor's request for a pre-seizure hearing and, after considering the arguments of the Debtor and Insty Prints, the State Court granted Insty Prints' request for possession of the Collateral. On April 24, 1997, an Order for Possession granting Insty Prints immediate possession of the Collateral was executed and entered by the State Court.

The Order for Possession was served on the Debtor on July 2, 1997. At this time, Debtor was advised by the Horry County Sheriff's Department that the Collateral would be seized on July 11, 1997. On July 10, 1997, the day before the scheduled seizure of the Collateral, Debtor filed a petition under Chapter 11 of the Bankruptcy Code, solely to prevent the seizure of the Collateral. As a result, Insty Prints was prevented from obtaining an execution of the Order for Possession and possession of the Collateral.

Insty Prints filed its motion for relief within days of the petition date, seeking relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) and (2). Insty Prints' Certification of Facts, filed with the Motion, indicated that Insty Prints holds multiple claims against the Debtor. Its first claim, for the sum of approximately \$103,694.61, plus interest, fees, and costs, ("Claim 1") is secured by liens on the Collateral. Insty Prints' remaining claims, which are unsecured, represent damages claimed by virtue of Debtor's breach of the Franchise Agreement and its termination. The parties agreed at the hearing on this matter, and the Court finds, that there is no equity in the Collateral.

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## CONCLUSIONS OF LAW

Title 11 U.S.C. § 362 sets forth two grounds under which a creditor can obtain relief from the automatic stay. First, section 362(d)(1) provides that relief from the automatic stay may be ordered for cause, including a lack of adequate protection for a creditor's interest in its collateral. 11 U.S.C. §362(d)(1). When considering an early filed motion for relief under this section, the Court first determines, under the facts presented, whether the reorganization in these early stages would be objectively futile and whether the case was filed subjectively in bad faith, such that relief is warranted under 11 U.S.C. §362(d)(1).

The second section, §362(d)(2), provides that a relief from stay is appropriate when the debtor does not have equity in the subject collateral, and that the collateral is not necessary to an effective reorganization of the Debtor. 11 U.S.C. §362(d)(2); *see In re Carolin Corporation*, 886 F.2d 693 (4th Cir. 1989); *see also In re Dunes Hotel Assoc.*, 188 B.R. 162 (D.S.C. 1996). Under the Code, the movant bears the burden on the issue of equity, or lack thereof. 11 U.S.C. §362(g). Once the movant meets its burden, the burden of proof shifts to the Debtor to show either that the movant is adequately protected or that the property is necessary for reorganization. This has been interpreted to mean that there is a reasonable possibility of successful reorganization within a reasonable time.

Taking all matters into account, the Court finds that ample grounds exist to grant Insty Prints' Motion under both §362(d)(1) and (d)(2).

With regards to the granting of relief pursuant to §362(d)(1), the Court found a number of factors to be significant when deciding that cause existed to modify the stay. First, is the fact that Insty Prints terminated the Franchise Agreement pre-petition. Second, is the pre-petition

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transfer of the Collateral to Printers Ink after the Debtor's defaults under the Franchise Agreement and Contract. Not only was the transfer done without notice or the consent of Insty Prints, the transfers left the Debtor an empty corporation, with no operating assets and minimal income and, more importantly, no ability to generate sufficient income to service its debts.

In its Objection to the Motion, the Debtor offered to make adequate protection payments to Insty Prints to resolve the matter. However, there is no significant or substantiated evidence before the Court that the Debtor has the ability to make adequate protection or debt service payments to Insty Prints. Of the Debtor's scheduled \$1,000 in monthly income, over half is earmarked by the Debtor for costs in the nature of attorneys fees. In addition, as the Debtor is not operating as a business, there is no possibility that the Debtor's income can or will increase enough to generate sufficient protection payments to Insty Prints.

The Court also finds that Insty Prints is also entitled to relief pursuant to §362(d)(2). The parties stipulated at the hearing that there was no equity in the Collateral securing Insty Prints' claim, at which point the burden shifted to the Debtor to show that the Collateral was necessary for its reorganization. The Court finds the Debtor has not met its burden of proof.

As discussed above, the evidence before the Court indicates that the Collateral, which is essential to the Debtor's business, has been transferred for less than adequate, or no, consideration. The record indicates that there is no formal legal obligation to convey value back between the party that now holds the property, Printers Ink, and the Debtor. No evidence was submitted that the Debtor intends to regain possession of the Collateral and to recommence operations.

The Debtor presented testimony indicating that it was aware of possibilities for changing

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its business or for receiving income associated with the Collateral. However, the Court finds that those possibilities are questionable, with no contractual basis. Furthermore, the testimony presented confirmed that has been virtually no development or pursuit of those business possibilities, and that these avenues of revenue generation are speculative, at best. There is no evidence that the Debtor is capable of successfully reorganizing within a reasonable time, much less that the Collateral at issue will enable it to do so. The Court also notes there has been no mention by the Debtor of insurance on this property for the benefit of Insty Prints. For those reasons, and other reasons stated above, it is therefore,

**ORDERED**, that Insty Prints' motion for relief from the automatic stay is hereby granted.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
August 19, 1997.

  
UNITED STATES BANKRUPTCY JUDGE

*J.W.*