

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-14374-CIV-MOORE/LYNCH

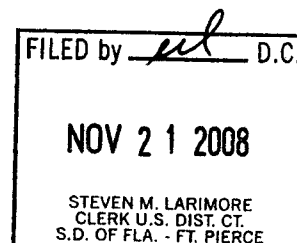
TEXTRON FINANCIAL CORP.,

Plaintiff,

v.

ANCHORS AWEIGH MARINE, INC.
a/k/a MOSQUITO LAGOON
OUTFITTERS, INC., CHARLES R. SHOUP,
NANCY L. SHOUP, and MARCUS FIELDBROOK, INC.,

Defendants.



**REPORT AND RECOMMENDATION ON
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER [D.E. #5],
MOTION FOR ORDER TO ISSUE PRE-JUDGMENT WRIT OF REPLEVIN [D.E. #6]
AND MOTION FOR EMERGENCY BREAK ORDERS [D.E. #7]**

THIS CAUSE having coming on to be heard for an evidentiary hearing on November 21, 2008 in respect to the aforementioned motions and the parties having appeared with counsel at the hearing advised the Court of an agreement as follows:

1. The parties have resolved their differences and will submit a proposed stipulated order regarding the request for injunctive relief [D.E. #5]. The Plaintiff orally moved to voluntarily dismiss its Motion For Order To Issue Pre-Judgment Writ Of Replevin [D.E. #6] and Motion For Emergency Break Orders [D.E. #7]. This Court advised the parties that it would issue a Report and Recommendation to Judge Moore generally advising him of the terms of the agreed upon settlement and that the parties will sign a stipulation with a proposed order to be forwarded directly to Judge Moore's chambers for entry within fourteen (14) days.

2. The parties agreed that the Defendant has a pending refinancing of all of the debt with a third party concerning the property which is the subject of this litigation. The proceeds from that refinancing will pay all remaining debt owed to the Plaintiff in this matter.

3. The parties waive the requirements of any bond and that the Plaintiff not be required to post bond for issuance of the District Court's injunction.

4. The Defendant will be permitted to sell collateral. However, any proceeds from collateral and/or deposits on sale of collateral will be deposited in a "blocked account" for the benefit of the Plaintiff and the Defendant. At closing of any transaction involving the sale of a particular vessel, all proceeds from that sale will be payable to the Plaintiff except for any costs of closing or commissions owed on any particular sale.

5. The Defendant will provide a list of manufacturers of boats that it presently has in its inventory which may be subject to the Plaintiff's liens. The Defendant will do so in an effort to have some of these boats returned to the manufacturer. The Plaintiff will then have ten (10) days after receiving that list from the Defendant to object to any return of boats to the manufacturers. If there are no objections as to any particular boats, the Defendant will be reimbursed or given full credit for the amount of that return. The Defendant will be obligated to be responsible for any costs of refurbishment in respect to any particular boat returned to a manufacturer.


6. Each party will pay their own costs and fees in regards to this litigation.

7. As mentioned above, Plaintiff has moved to voluntarily dismiss its request for replevin and for break orders, the motions are [D.E. #6] and [D.E. #7] filed herein.

ACCORDINGLY, this Court recommends to the District Court that the Plaintiff's Motion For Pre-Judgment Writs Of Replevin [D.E. #6] and Motion For Emergency Break Orders [D.E. #7] be **DISMISSED** without prejudice, and that the District Court enter the stipulated order when presented by counsel for the Plaintiff and the Defendant which sets forth in more specific detail the agreement that was reached and referred to by the parties herein above in respect to the Motion For Temporary Restraining Order [D.E. #5].

The parties shall have ten (10) days from the date of this Report and Recommendation within which to file objections, if any, with the Honorable K. Michael Moore, United States District Judge assigned to this case.

DONE AND SUBMITTED this 2/6 day of November, 2008, at Fort Pierce, Northern Division of the Southern District of Florida.



FRANK J. LYNCH, JR.
UNITED STATES MAGISTRATE JUDGE

Copies furnished:
Hon. K. Michael Moore
Kelly J.H. Garcia, Esq.
Leif J. Grazi, Esq.