

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
DEC 10 2008
[Signature]
CLERK

SUPER 8 MOTELS, INC.,
A South Dakota Corporation,

Plaintiff,

-vs-

SAWICKY BROS., INC, and
DAVID J. SAWICKY,

Defendants.

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CIV 07-1009

ORDER

Plaintiff filed a second motion, Doc. 21, for a default judgment. Plaintiff seeks a default judgment only against defendant Sawicky Bros, Inc.

Plaintiff notified the Court that defendant David J. Sawicky filed a petition for bankruptcy relief under Chapter 7 of the United States Bankruptcy Code. Exhibit B to the complaint shows that the franchise obligations at issue in this matter were assumed by Sawicky Bros., Inc. on June 5, 1996. David J. Sawicky signed the assignment and assumption agreement as President of Sawicky Bros., Inc. He also signed a personal guarantee. Exhibit B also reflects that David J. Sawicky is a 50% owner of Sawicky Bros., Inc.

David J. Sawicky filed his Chapter 7 petition in the United States Bankruptcy Court for the Western District of Wisconsin on October 2, 2007. The matter was assigned docket number 07-13859. I take judicial notice of the documents filed in that case. Sawicky's petition states that his debts are primarily business debts. He lists his property as including a 105 room hotel located in Marshfield, Wisconsin, which has a secured debt of \$2,631,000.00. Plaintiff is listed as a personal creditor for "fees & charges due under franchise agreement both past due and for termination" in the amount of \$105,000.00.

The bankruptcy petition further states that Sawicky's executory contracts include:

franchise agreement for Super 8 branding, reservations, etc. Debtor is personal guarantor. Sawicky Bros., Inc. is the franchisee. Sawicky bros.

(sic) will have no assets immediately after this filing as debtors will transfer them to themselves or a new entity subject to the encumbrance of the Stratford State bank (sic). Only assets of corp are furniture and fixtures worth maybe \$30,000.

Sawicky listed this action as a proceeding for the collection on his guaranty of the franchise agreement and stated on the petition form that judgment had been entered. That was not and is not true. Sawicky listed the motel business as a proprietorship.

The bankruptcy petition filed by defendant David J. Sawicky is still pending. Based upon the foregoing, it is not at all clear to the Court that this matter may proceed to default judgment. The motion for a default judgment should be denied absent plaintiff addressing the issue of whether the automatic stay should not apply to the debt plaintiff seeks to enforce herein.

Now, therefore,

IT IS ORDERED that the motion, Doc. 21, for a default judgment is denied, without prejudice.

Dated this 10th day of December, 2008.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
DEPUTY
(SEAL)