

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 04-15482)
)
INTERIORS BY PRISCILLA & PERRY, INC.)
)
Debtor)
)
)
GARY AND REBECCA FRICK)
)
Plaintiff)
)
vs.) PROC. NO. 05-1080
)
INTERIORS BY PRISCILLA & PERRY, INC.)
)
Defendant)

DECISION ON MOTION FOR TEMPORARY RESTRAINING ORDER

At Fort Wayne, Indiana on April 22, 2005.

Plaintiffs initiated this adversary proceeding on April 22, 2005, in order to enjoin the debtor from selling property of the bankruptcy estate. The sale is apparently being held as a result of the court's order of February 11, 2005 and is scheduled to take place tomorrow, April 23, 2005. In addition to their complaint, the plaintiffs have also filed a motion for temporary restraining order, together with a brief and other materials submitted in support thereof. See, N.D.Ind.L.B.R. B-7065-1. It is that motion which is presently before the court and whether or not it is granted is a matter committed to the court's discretion. It is the court's conclusion that the motion should be denied because it fails to make a sufficient showing for the extraordinary relief requested.

In the first instance the court considers the motion to be untimely. Plaintiffs' concerns about the upcoming sale and the property being offered for sale have been known for some time. They

seem to have arisen shortly after the court entered the order authorizing the sale. While the court understands that – accepting the plaintiffs’ characterization of the situation – it may not have been until recently that they became fully aware of the problem, the court does not feel that, having their knowledge and their doubts, plaintiffs can delay taking formal action until the very last minute. The sale is scheduled for Saturday, April 23, and it was not until the afternoon of Friday, April 22, that the plaintiffs asked the court to enjoin it. Their request is untimely.

Plaintiffs have also failed to make an adequate demonstration that they have an inadequate remedy at law. It seems to be the essence of plaintiffs’ complaint that the debtor will sell something that it should not and which should, instead, be delivered to the plaintiffs. As a general proposition, this type of loss of personal property is usually and readily compensable by money damages; thus precluding injunctive relief. Even if we accept the plaintiffs’ thesis that because this is a bankruptcy case and the estate may lack sufficient funds to fully compensate plaintiffs’ losses, there would seem to be nothing which would prevent the plaintiffs from attending the sale and buying the property in question. They would then have the property they so covet and the parties could debate, at leisure, whether the plaintiffs are entitled to receive their money back. All this assumes, of course, that a sale to a third party with plaintiffs and the estate subsequently debating the disposition of the sale proceeds would not constitute an adequate remedy at law.

Finally, there is the matter of security that the movant is required to post in order to compensate the enjoined party from any damages it might sustain in the event the injunction is wrongly issued. Here, plaintiffs contend that no bond should be required because the only consequence of the injunction will be a delay in sale. This overlooks the fact that public sales are generally conducted after some sort of advertisement or promotion, which is not a costless endeavor.

Furthermore, the popularity of sales, the number of attendees and, from that, the resulting sale price is often a function of the extent and nature of the goods offered for sale. In other words, larger sales are more apt to generate more interest, more bidders and higher bids than smaller ones. Consequently, if the requested injunction wrongly issues, the subsequent sale the estate will be entitled to hold will, of necessity, be smaller than the one scheduled for tomorrow. This smaller sale could well be associated with smaller interest, smaller crowds, and smaller bids than the one currently scheduled to take place. While the court is not in a position to be able to quantify what type of bond the plaintiffs should post – one of a few thousand or tens of thousands of dollars – it is satisfied that the plaintiffs’ proposal to obtain an injunction with no bond whatsoever is insufficient.

The motion for temporary restraining order will be DENIED. An order doing so will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court