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Attorney for creditor WAMCO XXVIII, LTD.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re: Case No. 03-00674 (RJF) Chap. 7	)	ADV. PROC. NO. 03-90040
	)	
HIRAM LEONG FONG and ELLYN LO FONG,	)	Hearing date: July 14, 2004
Debtors.	)	Hearing time: 10:30 a.m.
	)	Judge: Hon. Robert J. Faris
WAMCO XXVIII, LTD., a Texas limited Partnership,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
HIRAM L. FONG aka HIRAM LEONG FONG, as an individual; et al,	)	
	)	
Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: WAMCO XXVIII, LTD'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Plaintiff WAMCO XXVIII, LTD.'S ("WAMCO") Motion for Relief From the Automatic Stay originally filed April 28, 2004, came on for hearing originally on May 21, 2004 at 10:00 a.m. and for further hearing on July 14, 2004 at 10:30 a.m., before the Honorable Robert J. Faris.

Defendants Hiram and Ellyn Fong, and the related Fong family trusts did not

appear. Defendant Finance Enterprises, Ltd. was represented by Sam Yee, Esq., the Chapter 7 Trustee was represented by Jerrold K. Guben, Esq., and WAMCO was represented by Hal Schofield, Esq.

The Court, upon consideration of the memoranda, the oral arguments made in Court, and the records and files herein, and for the reasons stated in open court,

HEREBY FINDS AS FOLLOWS:

1. That debtors Hiram L. Fong and Ellyn Lo Fong, and the defendants/trusts named in the adversary proceeding as the Hiram Leong Fong Revocable Trust Dated March 17, 1993, the Living Trust of Hiram Leong Fong and Ellyn Lo Fong dated October 14, 1988 and the Ellyn Lo Fong Revocable Trust dated March 24, 1993 (referred to collectively as the "Fong group"), are in default under a Reference Rate Related Note (the "Note") in the principal amount of $450,882.93 to and in favor of Wamco, as the assignee of the Bank of America, pursuant to that *Amended Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment and Granting Defendant Market City, Limited's Motion for Summary Judgment*, filed in the United States District Court, District of Hawaii in Civ. No. 02-00320 on March 3, 2003 (hereinafter the "District Court Order").

2. Based on the District Court Order, Wamco's original prepetition claim in this bankruptcy proceeding was $473,796.46, which includes the principal, interest and late fees due under the Note as of March 7, 2003, the date of the filing of the bankruptcy petition in this case. This figure does not include prepetition or postpetition attorney fees and costs.

3. Wamco's prepetition claim of $473,796.46 as referred to hereinabove has been

reduced by $109,200.00, the amount of the proceeds from the sale of the Market City, Limited shares of stock which the Trustee has paid to Wamco, for a total prepetition claim of $364,596.46, which amount does not include attorney fees.

4. For the purpose of securing the Note, the Fong group executed and delivered a Pledge of Stock and Security Agreement ("Pledge Agreement"), the original stock certificates and Irrevocable Assignments Separate from Certificate to and in favor of the Bank of America whereby the Fong group pledged 42 shares of common stock of Market City, Limited, as certificate #307, 265 shares of common stock of Finance Enterprises, Ltd., as certificate #284, and 264 shares of common stock of Finance Enterprises, Ltd, as certificate #286. The Finance Enterprises, Ltd shares are subject to certain restrictions on transfer as set forth in Article IV of the Articles of Incorporation of Finance Enterprises, Ltd. and noted on the stock certificates.

5. That the debtors and the Fong Group are now in default under the Note and Pledge Agreement, and accordingly Wamco is entitled to proceed to foreclose the interests in the Finance Enterprises, Ltd. shares pursuant to the terms of the Note and Pledge Agreement through sale or by taking title thereto, or by any means provided in the Pledge Agreement and Hawaii commercial law.

6. Good cause exists for this Court to grant Wamco's motion for relief from the automatic stay in that the judgment entered pursuant to the District Court Order against the Fong Group and the debtors constitutes a default under the Pledge Agreement thereby giving Wamco the right to pursue its remedies under the Pledge Agreement and Hawaii commercial law as set forth hereinbelow, and the debtors will suffer no prejudice as a result thereof.

7. Wamco's motion for relief from the automatic stay should also be granted as the debtors have no equity in the shares of stock referred to herein and said shares are not necessary for an effective reorganization.

8. That any disposition of the Finance Enterprises, Ltd. shall comply with Article IV, paragraph 4 of the Articles of Incorporation of Finance Enterprises, Ltd. (the "Transfer Restrictions")

9. Wamco may be a bidder at any sale of the shares of stock and may bid the amount of its prepetition claim as a credit bid.

10. The Court finds that there is no real risk of an intervening protected purchaser asserting rights in the Finance Enterprises, Ltd. shares.

11. Pursuant to the Note and Pledge Agreement Wamco is entitled to an award of its reasonable attorney fees and costs.

Based upon the above FINDINGS OF FACT, the Court hereby enters the following CONCLUSIONS OF LAW:

1. To the extent that any of the foregoing FINDINGS OF FACT constitute a CONCLUSION OF LAW, each such FINDING is incorporated herein by this reference.

2. That pursuant to 11 U.S.C. Sec. 362(d)(1) and 11 U.S.C. Sec. 362(d)(2)(A),(B) Wamco is entitled to have the automatic stay lifted to proceed with foreclosure as to the Finance Enterprises, Ltd. shares of stock.

3. Wamco **or** any other purchaser of the shares is not required to post an indemnity bond pursuant to HRS Sec. 490:8-405 (a)(2) to obtain replacement certificates and that said certificates shall be issued as set forth in the Order accompanying these findings and conclusions. Such replacement certificates shall be subject to the Transfer

Restrictions.

4. If Wamco or Finance Enterprises, Ltd. deems it necessary, the debtors shall be required to execute an assignment of their interests in the original Finance Enterprises, Ltd. shares to the issuing corporation, i.e., Finance Enterprises, Ltd.

5. Pursuant to HRS Sec. 490:8-401, Finance Enterprises, Ltd. shall register any transfer of the shares on its corporate stock books as set forth in the Order accompanying these findings and conclusions.

~~6. That for the purpose of determining whether Wamco is an oversecured creditor~~ pursuant to 11 U.S.C. Sec. 506(b) and entitled to its postpetition interest and attorney fees and costs, the value of the shares of stock shall be determined by the final selling price thereof. The final selling price shall be the greater of either the amount bid by Wamco or the purchase price of a sale to a third party. **A sale to a third party includes a sale directly from Wamco to a third party after Wamco has initially purchased the shares.** A third party shall include, without limitation, the shareholders of Finance Enterprises, Ltd., Finance Enterprises, Ltd., or any other individual or entity other than Wamco. Such value shall be determined at a confirmation hearing to be held before this Court.

DATED: Honolulu, Hawaii, SEP 22 2004, 2004.

UNITED STATES BANKRUPTCY JUDGE

Submitted by:

Dale H. (Hal) Schofield, HSBA #4972
Attorney for Wamco