

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:)	
CONCRETE PRODUCTS, INC.)	Chapter 11 Case
)	Number <u>288-00540</u>
Debtor)	
)	
BURCH WILLIAMS)	
)	
Movant)	
)	
v.)	
CONCRETE PRODUCTS, INC.)	
)	
Respondent)	

FILED
at 10 O'clock & 19 min AM
Date 4/26/89
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *PCB*

ORDER ON MOTION FOR RELIEF FROM STAY

Burch Williams has filed a second Motion for Relief from Stay in the above-captioned case, a hearing on which was held April 24, 1989 following entry of my Order denying his first Motion for Relief from Stay, which Order was filed on April 4, 1989.

In that Order I concluded that "the debtor-in-possession has substantial equity in its stock in Brunswick Foreign Trade Zone and that the proceeds from the sale of this

stock are essential to the reorganization of the debtor-in-possession and there is no showing of lack of adequate protection for the Movant." Based on that finding, the Motion for Relief was denied except to the extent that I permitted the Movant to give a formal notice of default to debtor-in-possession in the manner provided under the Shareholder's Agreement.

At the hearing on April 24th, there was testimony and documentary evidence which established that as of December 31, 1988, the balance sheet of the Brunswick Foreign Trade Zone showed a negative shareholder's equity. The Trade Zone is owned 55% by Concrete Products, Inc., the debtor-in-possession and 45% by Burch Williams. Burch Williams testified that he considered his stock to be nearly worthless. However, he declined to agree to sell his 45% for a nominal value. It is clear, however, that the shareholder's equity on the books of the corporation does not necessarily relate dollar for dollar to the true value of the assets of the Trade Zone but rather is based largely on acquisition cost. No appraisal or other expert testimony was offered as to the value of the land or the Trade Zone -license itself.

Moreover, on February 9, 1989, Burch Williams had offered Concrete Products, Inc., two options for the purchase of Concrete Products' 55% stock ownership, one of said options

representing a payment of \$250,000.00 in cash. While that offer was withdrawn by letter dated February 22nd and while subsequent liabilities have accrued, it is apparent that there is substantial remaining equity based on that offer.

Burch Williams testified that he believed if this Court entered an Order granting relief from stay to him so as to give him control of the Brunswick Foreign Trade Zone he would be in a position to negotiate a sale of additional stock to as yet unknown investors who would invest sufficient funds to pay the accruing obligations of the Trade Zone for a period of up to eighteen months. This eighteen month time frame would in turn permit the Trade Zone to engage in more aggressive marketing for customers in an effort to become a self sustaining profitable enterprise. Mr. Williams testified, however, that he had not made any formal proposal to the Board of Directors of the Trade Zone so as to permit the Trade Zone under joint control himself and Concrete Products, Inc., to engage in such an effort to raise capital. Mr. Williams acknowledged that there had been negotiations ongoing for sale of all or a portion of the Trade Zone real estate for sums which, if realized, would result in a positive shareholder's equity position. However, none of those negotiations have resulted in an offer to purchase.

Under the shareholder's agreement, a non-

defaulting party who makes advances for monthly mortgage payments and overhead on behalf of a defaulting party is granted a security interest in the Brunswick Foreign Trade Zone stock of the defaulting party. Mr. Williams has personally made advances as recently as January, 1989, of the monthly mortgage payments and certain overhead items.

11 U.S.C. Section 362(d) provides that after notice and a hearing, relief from stay may be granted "for cause, including the lack of adequate protection of an interest in property" or alternatively if the debtor "does not have equity in such property" and "such property is not necessary to an effective reorganization". I have previously ruled that the Debtor does have equity in this property and that it is essential to the Debtor's opportunity to reorganize successfully and I find that there was no evidence submitted on April 24th sufficient to reverse that finding and rule for Movant.

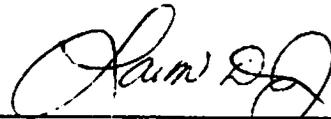
The other prong on which Movant may prevail is if he shows that there is "cause" for granting relief including lack of "adequate protection" of his interest in the property. I conclude that since the Movant is granted a security interest in the debtor-in-possession's stock in the Trade Zone to the extent of the advances he has previously made and since I have concluded there is equity in the property out of which that security

interest can be paid, I conclude that there is no lack of adequate protection and the Motion is denied. While I have no doubt that Mr. Williams feels his investment is at risk and while his personal guarantee of a portion of the debt to the mortgage company holding an interest in the real estate of the Trade Zone are certainly matters of great concern, he has the same ability to protect his interest with the stay in effect as he would have if the stay is lifted. That is, if there are potential investors who would come forward and invest in the Trade Zone, there is no reason why those same investors could not be induced to do so at the present time. The only possible reason why those investors may not have already been solicited and obtained lies in Mr. Williams' preference to undertake that effort only when he is in total control of the Trade Zone. If he voluntarily stands by and permits the foreclosure or fails to provide the Trade Zone with the opportunity of obtaining additional investors, any lack of adequate protection of his interest that may occur has occurred as a result of his own action and not because of the imposition of the stay.

While there was testimony that there has not been regular maintenance on some of the equipment located at the Trade Zone, there is no testimony that the overall value of the property is depreciating so as to require periodic cash payments or other relief under 11 U.S.C. Section 361. Mr. Williams is

obviously in an agonizingly difficult situation, but he cannot be permitted to obtain relief from stay on the grounds that he lacks adequate protection of his interest when the ground for his asserting lack of adequate protection is rooted in his own conscious decision not to take the steps available to him under the Shareholder's Agreement to make the advances and assert a lien in the Trade Zone stock.

Accordingly, the Motion is denied.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 26th day of April, 1989.