

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

SEMINOLE ENTERTAINMENT, INC.,
d/b/a RACHEL'S

Case No. 01-00521-6B1

Debtor.

MEMORANDUM OPINION

This case came on for final hearing on January 29, 2001 on the emergency motion by the City of Casselberry, Florida for (1) determination of applicability of 11 U.S.C. Section 362(b)(4) and (2) in the alternative, for relief from the automatic stay. The Court heard the testimony of Jack Schluckebier, City Manager, and heard argument of counsel for the debtor and for the City. In addition, the Court reviewed the record of public hearings before the City Commission, including transcripts of the hearings and exhibits admitted in evidence at the hearings. Based thereon, the Court makes the following findings of fact and conclusions of law:

The debtor is a Florida corporation doing business as "Rachel's." Rachel's is an adult entertainment establishment. The debtor's business is located in the City of Casselberry, Florida. The debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code on January 22, 2001.

The City of Casselberry is a Florida municipal corporation. The City is governed by the City Commission which consists of the Mayor and four other Commissioners all elected at large. The Commission delegated the administrative functions of city government to the City Manager.

Local laws affecting citizens of the City of Casselberry are found in the City Charter and in the City's Code of Ordinances. Article III, Chapter 14 of the Code of Ordinances pertains to Adult

Entertainment Establishments. Article III was last amended in June, 1999. The debtor operates its business under an Adult Entertainment License issued by the City under Article III.

The stated purpose of Article III is

to regulate sexually oriented businesses and adult entertainment establishments in order to promote and protect the public health, safety, good order, morals and general welfare of the citizens of the city, to establish reasonable and uniform regulations of adult entertainment establishments and sexually oriented businesses within the City.

Code of Ordinances (hereinafter "Code") § 14-67(a). In enacting Article III, the City Commission made numerous findings concerning the adverse secondary effects of sexually oriented businesses. Code § 14-67(b). The intent of the Article is "to protect and preserve the good order, health, peace, morals, safety, and welfare of the citizens of the City of Casselberry." Code § 14-67(c). The Article was "enacted under the constitutionally derived home rule power of the City of Casselberry in the interest of the good order, health, morals, peace, safety, and general welfare of the people of the City." Code § 14-67(d). The Article is to be "liberally construed to accomplish its purpose of reasonably regulating sexually oriented businesses and adult entertainment establishments in order to reduce or eliminate adverse secondary effects of such businesses and establishments." Code § 14-68(a).

The debtor's business has been the subject of numerous investigations by various law enforcement agencies and by the Internal Revenue Service. After reviewing the evidence obtained during the investigation and from other sources and after consulting with special counsel, the City Manager exercised his authority to issue a notice of revocation of the debtor's Adult Entertainment License in accordance with Code Section 14-92(c) in November, 2000.

The debtor challenged the revocation under procedures set forth in Code Section 14-93(a). The City Commission then held public hearings on December 14, 27 and 28, 2000 in accordance

with Code Section 14-93(b) to consider whether to uphold the revocation. The City Attorney was directed to prepare formal written Findings of Fact, Conclusions of Law, and an Order Revoking the License. The City Commission reconvened on January 22, 2000 to consider the proposed Findings, Conclusions and Order. Since the debtor had filed its Chapter 11 petition earlier that day, the City Commission voted to seek this Court's determination that it was not precluded from executing the Findings, Conclusions and Order due to the exception to the automatic stay contained in Section 362(b)(4) of the Bankruptcy Code for exercises by governmental bodies of their police and regulatory powers. The City also moved, in the alternative, for relief from the automatic stay for cause pursuant to Section 362(d)(1) of the Bankruptcy Code.

Section 362(a) of the Bankruptcy Code provides for an automatic stay upon the filing of a bankruptcy petition of, among other things, the commencement or continuation of actions against the debtor and of acts to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. 11 U.S.C. § 362(a)(1), (3). Subsection (b)(4) of section 362, however, provides for an exception to the broad impact of the stay for "the commencement or continuation of an action or proceeding by a governmental unit.. . to enforce such governmental unit's...police and regulatory power[.]"

The City argues that revocation of the debtor's Adult Entertainment License is a classic exercise of its police and regulatory powers. The City further argues that, once the bankruptcy court determines that the conduct contemplated by the City, in this case completion of the license revocation process, is an exercise of the City's police and regulatory powers, the Court need not inquire into the propriety of the City's exercise of those powers in order to determine whether or not the section (b)(4) exception applies. The debtor argues, on the other hand, that the City's actions, even if an exercise of its police and regulatory powers, were improper for a variety of

reasons, including individual motivations of City officials. Both the debtor and the City submitted legal memoranda in support of their respective positions.

The term “police or regulatory power” refers to the enforcement of state laws affecting health, welfare, morals and safety.” *In re National Cattle Congress, Inc.*, 179 B.R. 588 (Bankr. N.D. Iowa 1995); *see also, In re Lindsay*, 12 F. Supp. 625 (N.D. Iowa 1935), *People of the State of Illinois v. Electrical Utilities*, 41 B.R. 874, 876 (N.D. Ill. 1984), *David v. United States (In re Farmers & Ranchers Livestock Auction, Inc.)*, 46 B.R. 781 (Bankr. E.D. Ark. 1984).

The revocation of the debtor’s Adult Entertainment License is an exercise by the City of its police and regulatory powers and this determination is the end of the inquiry.

This Court is bound by decisions of the United States Court of Appeals for the Eleventh Circuit and of the United States Supreme Court. Both have spoken clearly on this issue. In *Brock v. Rusco Industries, Inc.*, 842 F.2d 270, 273 (11 Cir.), *cert. denied*, 488 U.S. 889, 109 S.Ct. 221, 102 L.Ed.2d 212 (1988), the Eleventh Circuit held that “[Section 362(b)] . . . recognizes that the government must be able to ‘enforce its laws uniformly without regard to the debtor’s position in bankruptcy’” (quoting *Donovan v. TMC Industries, Ltd.*, 20 B.R. 997, 1001 (N.D. Ga. 1982)). In *Board of Governors of the Federal Reserve System v. MCorp Financial, Inc.*, 502 U.S. 32, 112 S.Ct. 459, 116 L.Ed.2d 358 (1991), the United States Supreme Court rejected, in the following terms, the debtor’s argument that a Federal Reserve investigation was beyond its regulatory powers and therefore not excepted from the stay:

MC Corp contends that in order for § 362(b)(4) to obtain, a court must first determine whether the proposed exercise of police or regulatory power is legitimate and that, therefore, in this litigation the lower courts did have the authority to examine the legitimacy of the Board’s actions and to enjoin those actions. We disagree. MC Corp’s broad reading of the stay provisions would require bankruptcy courts to scrutinize the validity of every administrative or enforcement action brought against a bankrupt entity. Such a reading is problematic, both because it conflicts with the broad discretion Congress has

expressly granted many administrative entities and because it is inconsistent with the limited authority Congress has vested in bankruptcy courts. We therefore reject MCorp's reading of § 362(b)(4).

Id. at 40, 112 S.Ct. at 464.

The automatic stay of Section 362(a) of the Bankruptcy Code does not prevent the City of Casselberry from completing the process of revoking the debtor's Adult Entertainment License since the City's actions, as an exercise of its police and regulatory powers, are excepted from the scope of the stay by virtue of subsection (b)(4) of Section 362.

A separate order will issue simultaneously herewith in accordance with F.R.B.P. 9021.

DONE and ORDERED at Orlando, Florida this 30th day of January, 2001.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge