

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

JOSEPH E. RODWELL,

BKY 4-91-6074

Debtor.

JOSEPH E. RODWELL,

Plaintiff,

ADV 4-93-260

v.

THE NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY,

Defendant.

MEMORANDUM ORDER DENYING
MOTION FOR TEMPORARY
INJUNCTION

At Minneapolis, Minnesota, .

The motion of the plaintiff in the above-entitled adversary proceeding for temporary injunction and other relief came for hearing before the undersigned bankruptcy judge pursuant to notice on August 30, 1993. James H. Levy, Esq. appeared on behalf of the plaintiff; Gordon Conn, Esq. and Charles Webber, Esq., appeared on behalf of the defendant.

Upon all the files, records, and proceedings herein, and the pleadings and affidavits filed in connection therewith and having heard argument of counsel, the court has determined to deny the motion for the reasons briefly stated in this Memorandum Order.

1. Plaintiff has not established a likelihood of success on the merits. The three reasons proffered by Plaintiff as to why a temporary injunction should be granted are not established:

a) Termination may be a violation of the automatic stay, but cause exists for relief from stay to allow such termination. The contract clearly and explicitly permits termination without cause.

b) Section 525(a) by its explicit terms applies only to employees. Plaintiff is an independent contractor, not an employee. The case of *McNeely v. Hutchinson Financial Corporation*, 82 B.R. 628 (S.D. Ga. 1987) does not appear to be correctly decided.

c) Estoppel is not available as a defense to termination.

2. Moreover, public policy favors enforcement of contractual rights under these circumstances and the balancing of harm does not weigh distinctly in plaintiff's favor.

ACCORDINGLY, IT IS ORDERED THAT the motion is DENIED.

Nancy C. Dreher
United States Bankruptcy Judge

