

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

In re Crossroads Hills, a Limited Partnership, Debtor
Bankruptcy Case No. 91-53705-11

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

August 5, 1992

L. R. Reinstra, for the debtor.
Thomas F. Mallery, for P.J. Investments.
Arthur L. Eberlein, trustee.

Thomas S. Utschig, United States Bankruptcy Judge.

**MEMORANDUM OPINION, FINDINGS OF FACT,
AND CONCLUSIONS OF LAW**

This matter comes before the Court on a motion by P.J. Investments, a Wisconsin general partnership, to compel the bankruptcy trustee to make payments pursuant to an order for adequate protection. The debtor and the trustee have objected to the motion. P.J. Investments, a Wisconsin general partnership, is represented by Thomas F. Mallery. The debtor is Crossroads Hills, a limited partnership, and it is represented by L. R. Reinstra. The trustee is Arthur L. Eberlein.

The order that forms the basis for P.J. Investment's motion was signed by this Court on March 2, 1992. In it, the Court ordered, inter alia, that adequate protection payments on the secured claim of Resolution Trust Corporation (RTC) be made in the form of interest on the filed claim at a rate of 12% per annum. The payments were to commence on February 1, 1992. The amount of the claim filed by RTC is \$405,022.55. RTC's claim stems from a mortgage originally granted to United Savings Bank, FSB, f/k/a United Federal Savings Bank (United). RTC was the receiver for United.

RTC filed a proof of claim with this Court on April 6, 1992, which included a default judgment roll and findings of fact, conclusions of law and order for judgment in a Minnesota district court case -- United Savings Bank, FSB v. Crossroads Enterprises, a Minnesota General Partnership, Crossroads Hills, a Minnesota Limited Partnership, John F. Bureau, Robert P. Toloos, and Douglas R. Seltz, No. C3-90-7571 (D. Minn. Nov. 6, 1991). That case involved an action by RTC to collect on a promissory note dated August 22, 1989, signed by Douglas Seltz as general partner of Crossroads Enterprises; and Douglas Seltz and Robert Toloos as general partners of Crossroads Hills. As security for the note, the defendants granted United a mortgage on certain real estate located in Marathon County, Wisconsin. The promissory note was in the amount of \$311,000 and was in default. The Minnesota court granted RTC's motion for summary judgment against defendant Toloos and

entered a default judgment against defendants Bureau and Seltz. The judgment against Toloos was in the amount of \$311,000; the judgment against Bureau and Seltz, jointly and severally, was in the amount of \$350,147.99.

RTC assigned the aforementioned promissory note and mortgage to P.J. Investments on March 12, 1992. It also assigned its state court judgments against defendants Bureau, Seltz and Toloos to P.J. Investments on that same date. On April 3, 1992, RTC filed an amended proof of claim with this Court in the amount of \$405,020.55. P.J. Investments filed a proof of claim in the amount of \$405,020.55 on May 7, 1992. RTC executed an "Assignment of Secured Claims" assigning its claim to P.J. Investments, on May 11, 1992. This Court entered an "Order of Substitution of Secured Claimant," substituting P.J. Investments for RTC, on June 2, 1992.

It is the validity and effect of this assignment which the debtor challenges in its objection to the motion of P.J. Investments. The debtor's arguments can be briefly summarized. First, the debtor asserts that the manner in which RTC and P.J. Investments filed their claims somehow bifurcated the claim between the one represented by the judgment and the one represented by the promissory note. Since the debt was reduced to judgment, the argument concludes, the debt based on the note was "legally nullified." Second, the debtor argues that the Court should use its equitable powers to reduce the amount of the claim of P.J. Investments to discourage what the debtor characterizes as an "inappropriate profit-making motive" and to prevent the realization of an "obscene profit." The debtor's third and final argument is based on a Minnesota election-of-remedies law. The debtor asserts that, since RTC elected to proceed against it in the Minnesota district court on the basis of the note, it is therefore barred from foreclosing on the mortgage. The claim of RTC, and that of P.J. Investments as assignee, is therefore allegedly unsecured. Since the claim of P.J. Investments is unsecured, the argument concludes, the debtor is not required to make the adequate protection payments specified in the Court's order of March 2, 1992.

The Court has considered all of the arguments posited by the debtor and concludes that they are not supportable. First, as to the challenge to the validity of the assignment of claim, the Court finds that the requirements of Bankruptcy Rule 3001(e)(2) have been satisfied. In its reply memorandum, P.J. Investments submitted four separate executed assignment forms -- documenting the assignment of the mortgage, the note, the judgment and the secured claim from RTC to P.J. Investments. P.J. Investments also submitted an "Order of Substitution of Secured Claimant" signed by this Court on June 2, 1992. The procedural requirements of Bankruptcy Rule 3001(e)(2) have therefore been complied with and the debtor's objections on that basis are not sustainable.

Second, the debtor's contention that the Court should use its equitable powers and reduce the amount of P.J. Investments' claim is not warranted. As noted by counsel for P.J. Investments, Seventh Circuit courts have consistently required a showing of fraud, breach of fiduciary duty or improper insider dealings as justification for a judicial reduction of a claim against a bankruptcy estate. See, e.g., Lorraine Castle Apartments Bldg. Corp. v. Machiewich (In re Lorraine Castle Apartments Bldg. Corp.), 149 F.2d 55, 57-58 (7th Cir.) cert. denied, 326 U.S. 728 (1945). The debtor has alleged none of the aforementioned elements in its objection to the motion of P.J. Investments. Debtor's second argument is therefore unconvincing.

Finally, as to the argument based on the Minnesota law of election of remedies,

P.J. Investments has correctly noted that this doctrine does not apply under the facts presented here under Wisconsin law. See A.I.C. Financial Corp. v. Commercial United, Incorp., 74 Wis. 2d 70, 245 N.W.2d 923 (1976); White Eagle Bldg. & Loan Assoc. v. Freyer, 231 Wis. 563, 286 N.W. 32 (1939). The property at issue here is located in Wisconsin and the original mortgage provided for the application of Wisconsin law in the event of a foreclosure action. This final argument of the debtor is thus equally unconvincing.

The motion to compel adequate protection payments filed by P.J. Investments is therefore granted. Accordingly, the adequate protection payments specified in the Court's order of March 2, 1992, for RTC are to be paid to P.J. Investments. This decision is also dispositive of another matter filed in this case -- the debtor's objection to the claim of P.J. Investments. On the basis of the aforementioned findings and conclusions, then, that objection is dismissed.

There is one other matter outstanding in this case. Counsel for P.J. Investments has filed a motion for sanctions against the debtor pursuant to Rule 11 of the Federal Rules of Civil Procedure. In its motion, P.J. Investments seeks the imposition of sanctions as well as its reasonable costs and attorney fees. The Court has considered this motion and has decided to deny it. In his brief filed with the Court, counsel for the debtor noted that P.J. Investments paid \$92,500 for a claim against the debtor's bankruptcy estate amounting to \$405,000. Given the extreme difference between these two amounts, combined with the -- albeit limited -- case law warranting judicial reduction of such claims under similar circumstances, the debtor's efforts to oppose the motion of P.J. Investments are understandable. The Court therefore finds that the debtor's objection to the motion was not without basis under existing law; nor was it done in bad faith or for purposes of harassment or to cause needless delay or expense. Accordingly, the motion for Rule 11 sanctions filed by P.J. Investments is denied.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.