United States Bankruptcy Court
Western District of Wisconsin

Cite as: [Unpublished]

In re Dale Rynearson and Bonnie Rynearson, Debtors
Bankruptcy Case No. 91-21850-7

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

April 6, 1992

Richard B. Jacobson, for the debtors.
Christa A. Reisterer, for the United States, Farmers Home Administration.

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 of the debtors for valuation of the lien of the United States, Farmers Home Administration (FmHA). The FmHA has objected to the debtors' motion. The debtors are Dale and Bonnie Rynearson and they are represented by Richard B. Jacobson. The FmHA is represented by Christa A. Reisterer.

The property at issue here was purchased by the debtors from Joy McFarlin under a land contract. The property is the debtors' homestead and is located at 3587 57th St., Lyndon Station, Wisconsin. The balance due under the land contract as of the date the motion was filed was approximately $3,000. The property is subject to a secured mortgage in favor of the FmHA; the balance due on the mortgage is approximately $200,000. In their motion, the debtors assert that the maximum value of the property is $27,000, but given their claim that it is in need of substantial repair, they further assert that its top value to a foreclosing creditor would be $24,000. After then subtracting the $3,000 owed on the land contract, the debtors conclude that the value of the FmHA's lien does not exceed $21,000.

As the basis for its objection to the debtors' motion, the FmHA noted that the tax assessor had established a fair market value of $37,000 for the property.

The debtors' motion was filed on July 25, 1991, and the FmHA's objection on August 9, 1991. At a telephone conference on August 20, 1991, the Court adjourned the matter to December 17, 1991. The adjournment was based on the fact that the U.S. Supreme Court had accepted certiorari in Dewsnup v. Timm, 908 F.2d 588 (10th Cir. 1990), a case involving "strip down" in Chapter 7 pursuant to 11 U.S.C. § 506(d). The matter was later continued until March 3, 1991, since the Supreme Court had not yet issued its decision in Dewsnup.

On January 15, 1992, the Supreme Court issued its decision and affirmed the Tenth Circuit, holding that § 506(d) did not allow the debtor therein to "strip down" a creditor's lien to the judicially determined value of the collateral. See Dewsnup v. Timm, 116 L. Ed. 2d 903 (1992). It is the applicability of the Dewsnup holding to the present facts upon which the parties disagree.

The debtors first assert that the Dewsnup decision should be narrowly construed and strictly limited to its facts. In support of this they cite the Dewsnup decision itself -- "[w]e therefore focus upon the case before us and allow other facts to await their legal resolution on another day." Dewsnup v. Timm, 116 L. Ed. 2d 903, 911 (1992).

Next, the debtors allege that the Dewsnup holding does not apply to the facts of their case. Briefly stated, they posit two principal reasons for support of this argument. First, the debtors point out that the property at issue in Dewsnup was deemed abandoned, while their property has not been abandoned. Second, the debtors argue that the "[c]laim of FmHA has not, at least technically, been allowed." The debtors base this conclusion on the fact that the FmHA claim was never filed. They then note that the Supreme Court in Dewsnup "[r]ead § 506(d) to void 'only liens corresponding to claims that have not been allowed and secured.' Dewsnup, slip op. at 5." After noting that the claim of FmHA is not allowed, but it is secured, debtors conclude that Dewsnup does not therefore apply here. Thus, the argument concludes, they should be allowed to value the property under § 506(d) and pay off the FmHA at the value of their lien.

The Court has examined the debtors' arguments and finds them to be without merit. Although the Supreme Court in Dewsnup did call for a narrow application of the holding therein, debtors have failed in their attempts to distinguish the facts of that case from those present here.

First, after distinguishing Dewsnup on the basis that the property here has not been abandoned, the debtors argue that they should be allowed to do exactly that which Dewsnup unequivocally forbade - - to effectively "strip down" the FmHA's lien to the value (as determined by the Court) of the property. As noted by the FmHA, the practical effect of debtors' argument is the same as the issue before the Supreme Court in Dewsnup. The FmHA further cites language from Dewsnup which clearly prohibits that which the debtors seek, through creative argument, to accomplish here.

> We think, however, that the creditor's lien stays with the real property until the foreclosure. That is what was bargained for by the mortgagor and the mortgagee. The voidness language sensibly applies only to the security aspect of the lien and then only to the real deficiency in the security . . . It is true that [the lienholder's] participation in the bankruptcy results in his having the benefit of an allowed unsecured claim as well as his allowed secured claim, but that does not strike us as proper recompense for what petitioner proposes by way of the elimination of the remainder of the lien.

Dewsnup v. Timm, 116 L. Ed. 2d at 911.

Second, the debtors' attempt to distinguish Dewsnup on the basis that the FmHA's claim is not an allowed claim is equally without merit. As noted by the FmHA, a secured claim need only be filed when a party has requested a determination and allowance or disallowance under 11 U.S.C. § 502. See Advisory Committee Note, Bankr. R. 3002 (West 1992). There is no evidence before the Court that any § 502 Motion was made as to the claim at issue. FmHA's claim, therefore, has never been judicially disallowed. In addition, this case is a no-asset case and a proof of claim is

therefore not required. Proof of claims enable a Chapter 7 creditor to share in any ultimate distribution, but here no such distribution is anticipated.

Even if the FmHA's claim could be categorized as disallowed on the basis that it was never filed, § 506(d) specifically prohibits voiding liens which were not allowed for that reason. That provision provides:

> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void unless--
>
> (1) . . .
>
> (2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

11 U.S.C. § 506(d) (West 1992) (emphasis added). The debtors' argument as to the claim of FmHA being a disallowed claim is therefore baseless.

The Court thus finds both grounds upon which the debtors seek to bar the application of the Dewsnup holding to this case to be without merit. Dewsnup's prohibition of "stripping down" a creditor's lien on real property to the judicially determined value of the property is clearly applicable here. Accordingly, the debtors' motion for valuation of the FmHA's lien at $21,000 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.