

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In the Matter of

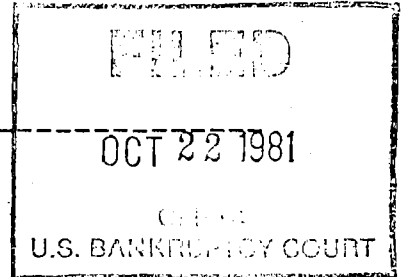
IN BANKRUPTCY

DALE ELLERY LEE
JEAN ELIZABETH LEE

No. WF11-81-01473

Debtors.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER



At Eau Claire, in said district, this 22nd day of
October, 1981.

Henry J. Orienti and Thelma Orienti by their attorneys,
Callaghan and Arnold, filed a motion with the Court for a
declaratory ruling that the automatic stay under Section 362
of the Bankruptcy Code does not apply to said applicants or
restrain them from obtaining possession of certain land by a
judgment of strict foreclosure; and the debtors having filed
a request for hearing on said motion; and The Wood County
National Bank of Wisconsin Rapids having requested a hearing
on the application of the Orientis for relief from stay; and
said bank also having filed a motion to deny the Orienti's
motion for a declaratory ruling; and all of said matters having
come on for hearing before the Court on October 15, 1981; and
the Court having heard the testimony of the parties, the argu-
ment of counsel, and having considered the briefs of the
respective attorneys, and being fully advised in the premises,
FINDS: ..

1. That the debtors, Dale Ellery Lee and Jean Elizabeth
Lee, filed a voluntary petition for relief under Chapter 11 of
the Bankruptcy Code on August 25, 1981, and an order for relief
was duly granted on said date.

2. That on August 4, 1981, the Circuit Court for
Marquette County, Wisconsin, entered a judgment for strict

foreclosure of a land contract in favor of the said Henry J. Orienti and Thelma Orienti and providing for a period of equity of redemption to expire on September 5, 1981.

3. That the contract between the Lees and Orientis was dated November 12, 1975, and on July 8, 1976, Dale Lee entered into a land contract with Montello Farm Associates, a limited partnership, for the sale of said premises and property for \$265,000.00, which was \$65,000.00 more than the contract between the Lees and the Orientis.

4. That the said debtors assigned their interest in the land contract with the Orientis and with Montello Farm Associates to The Wood County National Bank of Wisconsin Rapids on March 19, 1981, and that each of said assignments provides that the interest described in the land contract is for collateral purposes only and is not a sale of said premises to said bank.

5. That the interest of said debtors is that of a property interest to which the automatic stay of Section 362, Bankruptcy Code, is applicable, and the filing of the petition for relief and the granting of relief on August 25, 1981, in this Court duly stayed the judgment of foreclosure from ripening into a full ownership to the said Orientis of the property described therein.

6. That the amount due the Orientis on said contract of November 12, 1975, is the sum of approximately \$65,000.00 with interest and costs determined in said foreclosure action.

7. That the Orientis are amply secured for the balance due on their contract.

8. That the application of the Orientis for relief from the stay filed on September 18, 1981, in the event that the Court should find that the automatic stay is in effect as to them, does not meet the requirements of the statute for the lifting in that there is adequate security for the debt; the

land was not sold on land contract but merely assigned as collateral; the debtors have an equity of approximately \$200,000.00 in the property, and no showing has been made that the property is not necessary to an effective re-organization under the Chapter 11 proceedings.

9. That on October 15, 1981, the Court adjourned to the further order of the Court the hearing relative to the lifting of the stay, the hearing on the request by The Wood County National Bank of Wisconsin Rapids as well as the motion of said bank, and stated from the bench that it would rule on the motion for a declaratory ruling or the automatic stay first. That it now appears that all of said items and motions related to said hearing can be decided at this time.

CONCLUSIONS OF LAW

That an order be entered determining that the automatic stay applies to the land contract of Henry J. Orienti and Thelma Orienti; that the alternative application for relief from stay is not substantiated and should be denied, and that the motion of The Wood County National Bank of Wisconsin Rapids be denied.

O R D E R

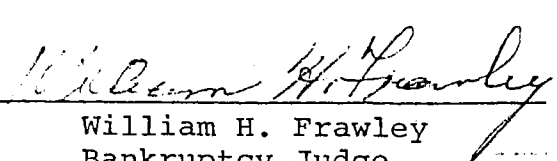
NOW, THEREFORE, IT IS ORDERED:

1. That the automatic stay arising out of the filing of the Chapter 11 proceedings on August 25, 1981, stays the foreclosure proceedings of the applicants, Henry J. Orienti and Thelma Orienti, and the enforcement of their judgment for foreclosure.

2. That the application for relief from stay by the Orientis in the alternative is denied.

3. That the motion of The Wood County National Bank of Wisconsin Rapids for denial of motion is dismissed.

BY THE COURT:



William H. Frawley
Bankruptcy Judge