

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

FILED

MAY 27 1984

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

RICHARD LEE FOX
MARLYCE KAY FOX,

EF7-82-00007

Debtors.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER DENYING APPLICATIONS

The Union Bank of Blair and the Ettrick State Bank, by Attorney Allan Ohm of Mattka, Robertson & Ohm, having filed Applications for Funds; and Trustee Peter F. Herrell, on his own behalf, having filed Objections to Allowing Claim; and the matters coming on for a hearing; and the Applicants appearing by counsel; and the Trustee appearing on his own behalf; the Court, having heard the evidence, considered the briefs, reviewed the entire record and file, and being fully advised in the premises, FINDS THAT:

1. Applicants Union Bank of Blair and Ettrick State Bank filed timely Proof of Claim forms in this proceeding.
2. Said forms indicated that Applicants' claims were secured by mortgages on real property owned by the Debtors.
3. On June 21, 1982, Applicants filed a joint Request for Conditioning or Terminating Stay asking for relief under 11 U.S.C. sec. 362(d).
4. On June 30, 1982, the Trustee filed a Request for Hearing (on Applicants' Request) and Application to Avoid Mortgages.
5. At the hearing held to consider the Applicants' Request and the

Trustee's Application the parties announced that they had reached a stipulated agreement.

6. On July 30, 1982, the Applicants and the Trustee filed a Stipulation for Conveyance of Real Estate which provided, in pertinent part:

. . . upon payment of the sum of Five Hundred (\$500) Dollars for each of the four (4) separate parcels as described on Exhibit 1 attached hereto the Trustee will convey to the respective secured creditor all interest of the estate in said real estate, will waive any and all redemption period to which the estate might be entitled and will execute the appropriate Trustee's deed or other conveyance necessary to facilitate the transfer.

7. The four parcels of real estate described in Exhibit 1 were the collateral for the Applicants mortgages.

8. On February 7, 1984, this Court served notice of filing final account of Trustee on the Debtors' creditors.

9. On February 16, 1984, Applicants filed Applications for Funds to share in the distribution of the bankruptcy estate to the extent of their deficiency.

10. On February 22, 1984, the Trustee filed Objections to said Applications.

DISCUSSION

11. After the Trustee objected to the Applicants' Request for Conditioning or Terminating Stay, the Applicants--without notice to Debtors or creditors--elected to forgo state court foreclosure proceedings.

12. The Stipulation between the Applicants and the Trustee called for the direct transfer of the bankruptcy estate's interest in the secured property to the Applicants and for a waiver of any right to redeem.

13. To have achieved similar results in a Wisconsin foreclosure action,

the Applicants would have relinquished any claim for a deficiency recovery. See Wis. Stat. 846.101 (Foreclosure without deficiency statute provides for reduced redemption period); cf. In re Berge, 33 B.R. 642, 649 (Bankr. W.D.Wis. 1983) ("In the strict foreclosure, there is no bid at sale, only the release from obligations under the land contract."), appeal filed, 83-C-994-C (W.D.Wis.).

14. Accordingly, this Court finds that the transfer of the secured property to the Applicants was in full satisfaction of their claims.

CONCLUSION OF LAW

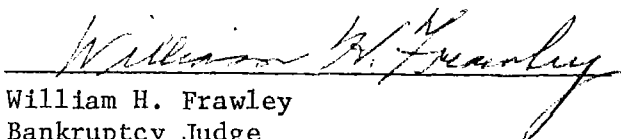
The applications of Union Bank of Blair and the Ettrick State Bank to share in the distribution of the bankruptcy estate of this proceeding should be denied.

ORDER

IT IS ORDERED THAT the Application for Funds filed in this proceeding by the Union Bank of Blair and the Application for Funds filed in this proceeding by the Ettrick State Bank be, and the same hereby are, DENIED without costs.

Dated: May 7, 1984.

BY THE COURT:


William H. Frawley
Bankruptcy Judge