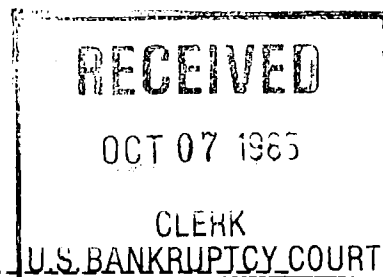


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



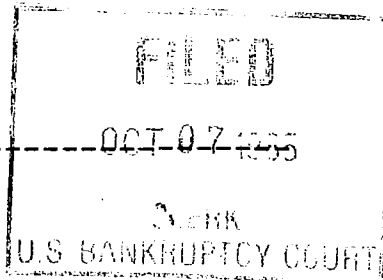
In re:

Case Number:

RICHARD LEE FOX
MARLYS KAY FOX,

EF7-82-00007

Debtors.



FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER DETERMINING AMOUNT OF UNSECURED CLAIMS OF
UNION BANK OF BLAIR AND ETRICK STATE BANK

The Union Bank of Blair and the Ettrick State Bank have filed claims as unsecured creditors in both estates which were objected to by the trustee; and a hearing on the objections having been held, with the following appearances: Attorney Frederic J. Berns for the debtors, Attorney Peter F. Herrell, Trustee, personally and by Attorney Lawrence J. Kaiser, and Attorney Allan Ohm for the Ettrick State Bank and the Union Bank of Blair; and the court having heard the witnesses in open court and the arguments of counsel, and being fully advised in the premises, FINDS THAT:

It is necessary, for an understanding of the issues presented, to first make a narrative history of the matter. The debtors filed a petition for a Chapter 7 liquidation on January 6, 1982, in the above entitled matter. The Union Bank of Blair filed a secured claim in said proceedings on the 29th day of April, 1982, for the sum of \$70,709.79. The Ettrick State

Bank on May 20, 1982, filed a claim for \$182,785.63 including interest through May 10, 1982.

Peter F. Herrell was duly appointed interim trustee in the matter. On the 21st day of June, 1982, the said banks filed an application for relief from stay, and the hearing was thereafter held on July 12, 1982, with a stipulation having been entered into between the parties. On June 30, 1982, the applicants and the trustee filed a stipulation for conveyance of real estate which provided, in pertinent part, as follows:

. . . 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.

Pursuant to the stipulation, on the 28th day of July, 1982, the trustee conveyed to each of the banks the real estate covered by their mortgages and referred to in the stipulation above quoted. The Ettrick Bank entered the value of the property on its books at the time of the taking of the real estate in the sum of \$150,000 (testimony of Randall Peterson, President, Ettrick State Bank 9/23/85). The Bank of Blair at the same time received the deed to their property and entered it on its books in the sum of \$57,000 - \$58,000 (testimony of Dennis Stephenson, Vice President and Cashier, Union Bank of Blair 9/23/85). Thereafter, each of said banks took possession of said real estate and made the payments to the trustee therefor. On October 15, 1984, the

Ettrick Bank sold the property for \$30,000. The Union Bank of Blair sold its real estate in December, 1983, for the total sum of \$60,000.

The trustee at the time of the conveyances of the real estate believed that it was a final disposition of the matter with no further claims to be made by either of said creditors or by said trustee. However, on February 16, 1984, the Union Bank of Blair applied to share as an unsecured creditor in said estate in the sum of \$14,200.49 and the Ettrick State Bank made a similar claim in the sum of \$97,900.89. Thereafter, the trustee objected to the unsecured claims and this court disallowed said claims. The case was appealed to the United States District Court for the Western District of Wisconsin, and on the 20th day of August, 1984, the District Court entered the following order:

IT IS ORDERED that the order of the Bankruptcy Court denying the application for funds filed by the Union Bank of Blair and the Ettrick State Bank is REVERSED, and the matter is returned to the Bankruptcy Court for a determination of the amounts of the unsecured claims which are to be allowed.

Thereafter, the trustee appealed the District Court's decision to the Seventh Circuit Court of Appeals which dismissed the appeal as not having been a final order.

On September 23, 1985, to comply with the District Court's order a hearing was held, with the president of the Ettrick State Bank testifying as to the taking of the property pursuant to the stipulation and entering it on the books at \$150,000, and selling it a little over two years later for \$30,000, and making an amended claim for deficiency or unsecured claim in the sum of

\$150,750.89 as of August 27, 1984. The vice-president and cashier of the Union Bank of Blair, Dennis Stephenson, testified as to the bank taking the property as above stated (and for which the court will use the figure of \$58,000) and thereafter selling the property as above stated almost a year and a half later for \$60,500. There was no evidence by realtors or expert opinions as to the value of the real estate of either of the banks either at the time of the deed of the property to the banks or at the time of the respective sales above stated. Likewise, there was no application by either bank for a valuation or determination of secured status pursuant to Section 506 of the Bankruptcy Code, and there was no determination by the court as to the value of the secured property and the amount unsecured.

In 3 Collier on Bankruptcy, 15th Edition, beginning on page 506-1 through page 506-62 there is a discussion of the application of Section 506 as to the valuation and the different guidelines and methods used to date since the passage of the Code. It appears to be the general practice to apply the evidence on a case by case basis as to the determination of the values by the court.

It appears to the court that the proper way to determine this matter on the evidence submitted and upon all the record and file herein is to determine that the date of the transfer of the property to each of the banks, namely July 28, 1982, is the date on which the valuation should be made as to the secured and unsecured amount of the claims of each said bank. Under the

unique circumstances of this case, the issue for the court is what value did the banks receive on July 28, 1982, when they obtained the property. The amount of their total claim less this amount is the amount of their unsecured claims. The value that the banks entered on their books at that time is obviously the banks' estimate of value at that time. This is the best estimate available to the court. A sale price obtained two years later is not a good estimate. Over a period of two years property values may vary significantly; the condition of property may change.

On that basis, the court concludes that the unsecured claim of the Ettrick State Bank is determined as follows: total claim \$176,587.04, less \$150,000 amount taken and given by the bank at the time of delivery of the deed, leaving an unsecured claim in the sum of \$26,587.04; and the claim of the Union Bank of Blair is determined as follows: total claim \$70,709.79, less \$58,000 amount taken and given by the bank at the time of delivery of the deed, leaving an unsecured claim in the sum of \$12,709.79.

CONCLUSIONS OF LAW

That an order be entered determining that the unsecured claim of the Union Bank of Blair is the sum of \$12,709.79 and the unsecured claim of the Ettrick State Bank is the sum of \$26,587.04.


ORDER

IT IS ORDERED THAT the unsecured claim of the Union Bank of Blair is the sum of \$12,709.79.

IT IS FURTHER ORDERED THAT the unsecured claim of the Ettrick State Bank is the sum of \$26,587.04.

Dated: October 7, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Frederic J. Berns
Attorney Peter F. Herrell
Attorney Lawrence J. Kaiser
Attorney Allan Ohm