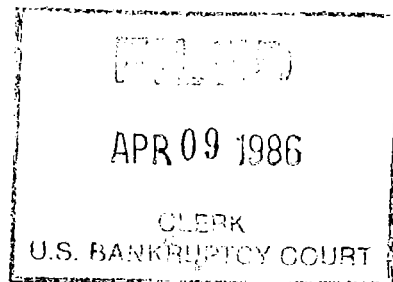


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

FRANCIS A. RONDEAU
MARIE RONDEAU

Case Number:

WF11-82-00736

Debtors.

FRANCIS A. RONDEAU, a/k/a
FRANCIS RONDEAU, a/k/a
F. A. RONDEAU

Plaintiff,

Adversary Number:

v.

85-0323-11

FIRST AMERICAN NATIONAL BANK,

Defendant.

OPINION AND ORDER

The debtors, by Gary McCartan, have filed this adversary proceeding to obtain money damages for financial injuries sustained by the debtors as a result of certain acts and omissions of the defendant, First American National Bank, in connection with a guarantee agreement. The debtors have also filed a demand on the defendants for the production of documents. The defendant, by Stewart Etten and Arthur Eberlein, has moved to dismiss count four of the debtors' complaint. The defendant has also objected to the debtors' demand for the production of documents. A hearing was held on these matters on April 3, 1985.

The debtors executed a guarantee of collection on February 1, 1982. By this instrument the debtors guaranteed the obligations of "Schuld and its subsidiaries" to the defendant on certain loans made by the defendant to Schuld. Schuld has suffered financial difficulties and will not be able to pay off its loan obligations to the defendant. The defendant seeks to recover this obligation from the debtors by way of the guarantee agreement.

The debtors now allege that the defendant has engaged in various conduct and activities that have caused the debtor financial injury. The debtors' fourth cause of action states:

FOURTH CAUSE OF ACTION

The acts and/or omissions of FANB [defendant] in the course of its dealings with Schuld and Rondeau [debtor] constituted a breach of the fiduciary duty between FANB and Schuld and FANB and Rondeau which resulted in severe damages to Schuld and ultimately to Rondeau.

The defendant has moved the court to dismiss this fourth cause of action on the basis that it fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The defendant argues that it does not owe a fiduciary duty to the debtors. The defendant further argues that to the extent it owes any duty at all to the debtors it is through the guarantee agreement and purely contractual in nature and not a fiduciary obligation. The court disagrees. If an entity undertakes to liquidate the assets of another entity, it is under an obligation to obtain a fair value for the assets.

If such an entity either knowingly or negligently fails to obtain a fair value for the assets, it has breached a fiduciary duty to both the second entity and the guarantors of the second entity. The defendant's motion to dismiss the fourth count of the debtors' amended complaint should be denied.

At or before the April 3, 1986, hearing the parties came to an agreement with respect to all of the items listed in the debtors' demand for production of documents except four. Specifically, these items are still in dispute:

16. All documents regarding any participation agreements that FANB may have had with other financial institutions that affect or relate to Schuld or any entity related to Schuld.

18. All documents reflecting the FANB's legal lending limits for the period from January 1, 1980 through the date of this Demand.

22. Copies of any and all documents evidencing loan transactions between FANB and current or past members of FANB's Board of Directors from January 1, 1975 up to the date of this Demand.

23. Copies of any and all documents evidencing loan transactions between FANB and current or past members of the Board of Directors of Central Wisconsin Bankshares, Inc., the holding company of FANB, from January 1, 1975 up to the date of this Demand.

With respect to item #16 it is the conclusion of the court that these documents do not need to be produced by the defendant. The debtors have not cited any authority supporting the proposition that they may compel production of these documents. Further, the debtors have no basis to believe that the informa-

tion contained in these documents is relevant to their causes of action.

Similarly, it is the conclusion of the court that the defendants do not have to disclose the documents demanded in item #18. There is no basis to infer that these documents contain relevant information. The debtors argue that if they can find evidence that the defendant has violated the legal lending limits imposed on banks then they can introduce this at trial as evidence of illegal activity. However, there is simply not any reason to believe that the defendant has engaged in illegal activity. The debtors cannot go on a fishing expedition through all of the documents of the defendant with unfounded hopes of discovering evidence of lending violations.

Items #22 and #23 were heard together at the April 3, 1986, hearing. It is the conclusion of the court that the defendant does not need to produce the documents in these items. Both parties offered compromise proposals with respect to these items, but an agreement was not reached and the issue is still in dispute. Again, there is no reason to believe that these documents are relevant.

The discovery demands of the debtor are overly broad and excessively general. The scope of discovery is not without its limits. Generally a court should allow liberal discovery. However, the court should not allow excessive discovery because of the potential for abuse. Parties have been known to demand discovery into all aspects of an adversary's business for the

purpose of harassment and to gain leverage in settlement negotiations. The debtors have already been granted extensive discovery. Their request for these additional items is excessive.

The documents of a lending institution are inherently of a very private nature. People who enter into loan transactions have an expectation that their personal financial transactions will remain relatively confidential. The court recognizes the existence of these privacy interests. The court will not sanction a full-scale investigation into these privacy interests absent a basis to believe that such an examination might lead to relevant evidence.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

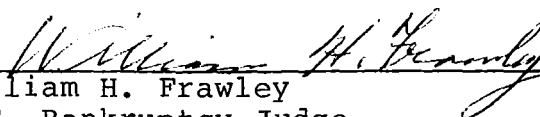
ORDER

NOW, THEREFORE, IT IS ORDERED THAT, the defendant's motion to dismiss the debtors' fourth cause of action is denied.

IT IS FURTHER ORDERED THAT, the defendant's objection to the debtors' demand for documents with respect to items 16, 18, 20, and 22 is hereby sustained.

Dated: April 9, 1986.

BY THE COURT:


William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney Gary McCartan
Attorney Arthur L. Eberlein
Attorney Stewart Etten