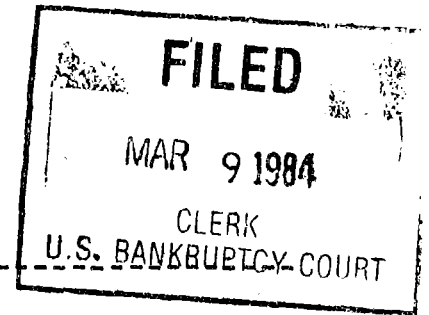


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

GERALD E. CLOYD
ARLENE M. CLOYD

WF7-83-00579

Debtors.

FINDINGS OF FACT, CONCLUSIONS OF LAW

AND

ORDER LIFTING STAY

The State of Wisconsin, Department of Veterans Affairs, having filed an application to lift the automatic stay in the above entitled matter; and the debtors having answered denying the grounds of lifting said stay; and a telephone conference having been held; and the respective counsel having stated their positions relative to the application; and the Court having considered said pleadings and statement; and briefs having been filed by the respective parties; and an appraisal having been filed by the applicant as requested; and the debtors having filed a photostatic copy of a tax statement showing equalized value of the property; and the Court having considered all the record, file and briefs

of the respective parties, and being fully advised in the premises,
FINDS:

1. That the debtors filed a petition for relief on the 14th day of April, 1983.

2. That the first meeting of creditors was held on May 11, 1983.

3. That on January 25, 1978, the debtors executed and delivered to the State of Wisconsin, Department of Veterans Affairs, a certain note and purchase money mortgage which was thereafter duly recorded as stated in the pleadings.

4. That the debtors have failed to comply with the terms of said note and mortgage as to payments.

5. That a foreclosure action was commenced on March 14, 1983, and a lis pendens was filed with the Register of Deeds on March 14, 1983.

6. That said property is the homestead of the debtors.

7. That applicant claims the debtors have no equity in the property; and that applicants claim an equity of about \$5,500.

8. That Edward F. Zappen is the duly appointed Trustee in bankruptcy in this proceedings.

9. That at the time of filing the memorandum for the debtors, their attorney advised in a letter to the Court, in part, as follows:

With regard to my clients the Cloyds' position toward the petition by the State for relief from stay to foreclose its first mortgage, I would make it plain that the Cloyds have not made and will not make any payments on the mortgage, and that they intend to ride their equity in their home as far as it will take them. They rely entirely on their equity of about \$5500.00 as full protection of the State's mortgage.

10. That the appraisal furnished by the applicant shows a value of the property as of January 4, 1984, in the sum of \$13,000.

11. That the 1982 tax statement attached to the debtors' memorandum shows an assessed value of \$17,500 and a fair market value of \$18,701, the assessed ratio being 0.9358.

12. That said property was also subject to a second mortgage to the Wood County National Bank; and that the Court entered an order on June 10, 1983, authorizing the lifting of the stay to permit the foreclosure of said second mortgage.

13. That applicant contends that to determine the question of equity, both mortgages and any unpaid taxes should be considered, while the debtors contend that in this application only the first mortgage and any unpaid taxes should be considered as to the question of equity.

14. That the amount due as of January 11, 1984, to the applicant on its mortgage is the sum of \$13,229.41.

15. That the amount due to the Wood County National Bank as

of January 12, 1984, was the sum of \$6,558.55.

16. That the total amount of the mortgage liens on said property was the sum of \$19,787.96.

17. That, based upon the total amount of the liens and the two appraisals, there is no equity in said property of the debtors.

18. That there are two lines of authority in determining any equity in property under the Bankruptcy Code in this particular action involved herein, and that this Court believes that the better rule of combining the total indebtedness against the value is expressed in the case of In re Faires, 34 B.R. 549, 552 (Bankr. W.D. Wash. 1983) in which it is stated:

While the term "equity" in § 362(d)(2)(A) is not free from ambiguity as to its application to the facts at bar, the Court is convinced that the better view is that "equity" means the difference between the value of the property and all encumbrances against it.

CONCLUSIONS OF LAW

That an order be entered lifting the stay to allow the applicant to continue the foreclosure action now pending between the parties in the Circuit Court of Wood County, Wisconsin.

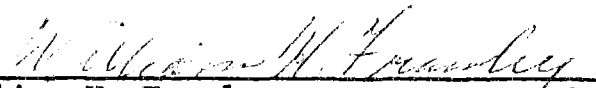
ORDER

IT IS ORDERED that the automatic stay in the above entitled

matter be and the same is hereby lifted to permit the applicant to foreclose the real estate mortgage described in said application, and that no costs are allowed to either of the parties.

Dated: March 9, 1984.

BY THE COURT:


William H. Frawley
William H. Frawley
Bankruptcy Judge