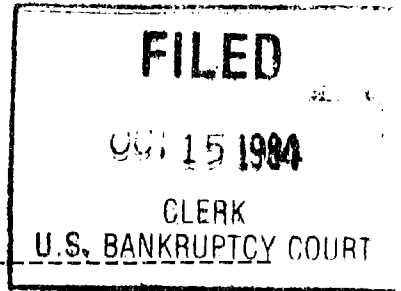


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

HOWARD HARVEY ROBBINS,
a/k/a H. H. "Bud Robbins,

WF11-83-00766

Debtor.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER DECLARING STANDING TO MOVE FOR CONVERSION

First National Bank of Skokie, Illinois, by Attorney Jerold E. Aubry, having made a motion to convert the above captioned Chapter 11 proceeding to Chapter 7 of the Bankruptcy Code; and a hearing having been held; and the Movant appearing by counsel; and Debtor Howard Harvey Robbins appearing by Attorney Mart W. Swenson; and the question of the Movant's standing being briefed by the parties; the Court, being fully advised in the premises, FINDS THAT:

1.

On August 29, 1980 creditor, First National Bank of Skokie extended a loan to the debtor in the amount of \$16,026.96 to permit them to satisfy a judgment creditor. The security for the repayment of said loan was an assignment of the debtor's beneficial interest in Aetna State Bank Trust No. 1064. On August 29, 1980 debtor executed a security agreement in favor of creditor in conveyance of said beneficial interest. The corpus of the trust as it pertained to this security was confined to a certain Unit 452 - D of the West Arlington Condominium Units, Chicago, Illinois.

On May 12, 1983 debtor filed a Petition for protection under Chapter 11 of the Bankruptcy Code,

11 USC Sec. 1101. The debtor listed the First National Bank of Skokie as a secured creditor. Creditor's security set forth in debtor's own petition was the subject Trust Interest.

In December of 1983, the First National Bank of Skokie filed a Motion to seek a trustee appointment and for Conversion of this action to Chapter Seven Liquidation.

This Motion was postponed and ultimately resulted in a Stipulation dated January 31, 1984, wherein the First National Bank of Skokie "withdrew it's Motion", and "waived it's right to pursue any deficiency judgment against debtor" in any State Foreclosure action, in consideration for conveyance of debtor's entire beneficial interest in the subject trust.

Upon transmitting this Stipulation and conveyance to the First National Bank of Skokie, it was discovered in Chicago, Illinois that the corpus of the subject Trust had been the subject of a foreclosure action in April of 1981, and conveyed by Sheriff's Deed on or about September 17, 1981 to a Minneapolis Bank, the mortgagee of the Trust Corpus.

Thus, at the time of filing the Bankruptcy Petition and at the time of the execution of the Stipulation in this Bankruptcy action, debtor in reality had no beneficial interest at all in the subject Trust. The security of the First Bank of Skokie did not exist and had not existed since on or about September 17, 1981.

Upon discovering this development creditor, once again, filed a Motion for Appointment of a Trustee and Conversion of this Action to a Chapter Seven (7) proceeding. Hearing on this Motion was held on August 27, 1984, before this court. At said hearing debtor's attorney objected to creditor's "Standing" as a creditor to file such a Motion. This court ordered briefs and postponed any action on creditor's motion pending resolution of the standing issue.

Creditor's Brief in Support of Motion (filed Sept. 28, 1984).

2. "There is no disagreement as to the basic facts as outlined by the First National Bank of Skokie (hereinafter "Bank") in its brief with two exceptions. The debtor is unaware

as to when the Bank discovered the fact that a foreclosure action did take place with respect to its collateral. Secondly, the statement that 'debtor in reality had no beneficial interest at all. . .' is a conclusion and not a fact." Debtor's Reply Brief 1 (filed Oct. 10, 1984).

3. Under 11 U.S.C. sec. 1112(b) a "party in interest" may request that a Chapter 11 proceeding be converted to Chapter 7 of the Bankruptcy Code. The issue before this Court is whether the Bank is a party in interest.

4. The Court will assume, without deciding, that the Court approved Stipulation between the Debtor and the Bank--if valid and binding--eliminates any interest of the Bank in these proceedings.

5. The Debtor argues that "[s]ince the Stipulation was entered into with Court approval, the Bank may not simply elect to set it aside [by] adding an issue on the subject in a brief on 'standing'." Debtor's Reply Brief 5 (filed October 10, 1984). See Curr v. Helene Trans. Corp., 287 So.2d 695, 697 (Fla.App. 1973) ("In order to obtain relief from a stipulation, a party must make a reasonable motion to withdraw stipulation supported by an affidavit showing . . . fraud, misrepresentation, or mistake of fact." (emphasis added)).

6. The arguments in the Bank's brief constitute a "reasonable" motion, Fed.R.Bankr.P. 9013, 11 U.S.C. sec. 102(1), and the agreed upon facts obviate any need for an affidavit.

7. Even if the Bank's motion was inadequate, the facts of this case would have prompted this Court of Equity to consider the validity of the stipulation sua sponte. See 27 Am.Jur.2d Equity sec. 136 (1966) (sua sponte nature of the clean hands doctrine discussed).

8. "It is generally held that relief may be afforded from a stipulation which has been entered into as the result of inadvertence, improvidence, or excusable neglect . . ." 73 Am.Jur.2d Stipulations sec. 14 (1974).

9. The Debtor would have this Court deny the relief the Bank requests because "[a]t the very least, the Bank should be deemed to have constructive knowledge of the foreclosure proceedings prior to entering into the Stipulation." Debtor's Reply Brief 6 (filed Oct. 10, 1984).

10. Forced to balance equities between an arguably negligent bank and an obviously exploitative debtor, this Court will grant relief to the former.

CONCLUSIONS OF LAW

1. The January 31, 1984, Stipulation between the parties at bar is invalid and not binding.

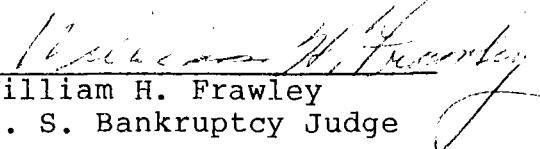
2. The Bank is a party of interest within the meaning of 11 U.S.C. sec. 1112(b).

ORDER

IT IS ORDERED THAT the First National Bank of Skokie,

Illinois, be, and the same hereby is, declared a "party in interest" with standing to move for conversion of the above captioned bankruptcy proceedings.

Dated: October 15, 1984.


William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Jerold E. Aubry
Attorney Mart W. Swenson