

FILED

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

DEC 12 1984

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

JOSEPH E. WARD
LOIS A. WARD

EF11-83-01379

Debtors.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER DENYING MOTION FOR PAYMENT OF RENTAL PROCEEDS

Production Credit Association of River Falls (PCA), by Attorney Peter F. Herrell, having filed a Motion for Order to Pay Rental Proceeds; and a hearing having been held; and PCA appearing by counsel; and Debtors Joseph E. and Lois A. Ward appearing by Attorney Bruce Evan Zito; and the matter being submitted on briefs; the Court, being fully advised in the premises, FINDS THAT:

1. On April 7, 1978, Debtors Lois A. and Joseph E. Ward gave Production Credit Association of River Falls (PCA) a mortgage on certain real property. The mortgage provides, in part (emphasis added):

Mortgagor, upon request of PCA, shall assign to PCA as additional security for the mortgagor debt, Mortgagor's interest in any and all leases and Mortgagor's interest in all agreements, contracts, licenses and permits affecting the Mortgaged Property (including but not limited to those concerning oil or mineral rights), such assignments to be made by instruments in forms satisfactory to PCA. No such assignments shall be construed as a consent by PCA to

any lease, agreement, contract, license or permit so assigned, nor shall such assignment impose upon PCA any obligation with respect thereto.

Upon the commencement or during the pendency of any action to foreclose this Mortgage or of any other type of action relating to the Mortgaged Property or the rents, issues and profits conveyed by or pledged by this Mortgage, the court in which said action is brought may, without notice, appoint a receiver of the mortgaged premises and may empower said receiver to take possession of the premises and to collect all rents, issues and profits of the premises during the pendency of this action.

2. On October 8, 1982, PCA obtained a Judgment of Foreclosure against the mortgaged real estate.

3. On August 29, 1983, the Debtors filed for relief under Chapter 11 of the Bankruptcy Code.

4. On November 21, 1983, this Court ordered that "all rental proceeds from the real estate mortgage to PCA shall be segregated by the debtors pursuant to Sec. 363 of the Bankruptcy Code and no funds disbursed pending further order of the Court."

5. On April 20, 1984, PCA was granted relief from the 11 U.S.C. sec. 362 automatic stay "so that PCA's foreclosure now pending in Buffalo County, Wisconsin, Circuit Court, may be completed."

6. On July 13, 1984, the Buffalo County Circuit Court confirmed the foreclosure sale of the Debtors' real property and PCA was found to have a deficiency of \$76,254.28. No deficiency judgment was granted.

7. On September 4, 1984, PCA filed a Motion for an order to pay rental proceeds.

8. On September 27, 1984, this Court ordered that corn, received by the Debtors from a sharecropper, be liquidated and placed in escrow at interest.

9. PCA's mortgage gives it no interest in rents received on account of the mortgaged property. Paragraph 1 supra.

10. Even if the mortgage contained a pledge of rents, PCA's entitlement to rents could only have been perfected by possession or the appointment of a receiver.¹ Wuorinen v. City Federal S & L Assn., 52 Wis.2d 722, 727-728, 191 N.W.2d 27, 30 (Sup. 1971).

11. And even if PCA is entitled to a priority claim under 11 U.S.C. secs. 507(a)(1) & (b) (administrative expense arising from automatic stay), PCA has no interest in any particular property of the estate. See 11 U.S.C. sec. 1129(a)(9)(A) (sec. 507(a)(1) claims to be paid in cash on the effective date of the plan).

12. Finally, even if PCA had an interest in rents, there is no provision in the Bankruptcy Code for this Court to order that the rents be paid to PCA. Cf. 11 U.S.C. sec. 362(d) (automatic

¹ While bankruptcy may delay the appointment of a receiver, a bankruptcy court may avoid the potential loss by sequestering rents. See Butner v. U. S., 440 U.S. 48, 56-57, 99 S.Ct. 914, 50 L.Ed.2d 136 (1979) (under Chapter XI of the Bankruptcy Act of 1898). In this case, rents were segregated to protect any interest PCA would obtain by virtue of the appointment of a receiver in the state court action; however, no receiver was appointed.

stay may be lifted) & 1129(a)(7)-(9) (plan of reorganization provides for satisfaction of claims).

CONCLUSION OF LAW

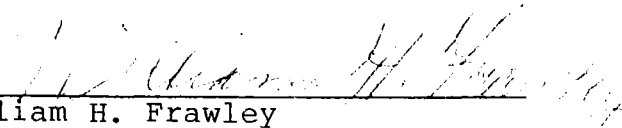
The Motion of PCA for an order to pay rental proceeds should be denied.

ORDER

IT IS ORDERED THAT the Production Credit Association of River Falls (PCA) motion for the application of the proceeds of the sale of stored corn to the debt of PCA be, and the same hereby is, DENIED, without costs.

Dated: December 12, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge