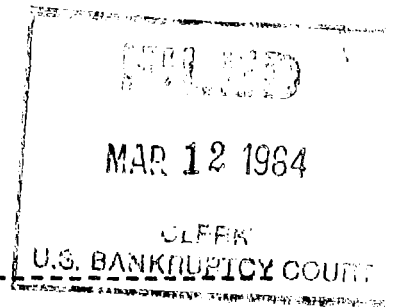


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

DONALD LAVERN KIMMONS  
MARGARET ANN KIMMONS

WF7-83-01630

Debtors.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND  
ORDER DETERMINING MORTGAGE LIEN NULL AND VOID

The Debtors, Donald Lavern Kimmons and Margaret Ann Kimmons, having moved the Court to void the mortgage lien of Wausau Paper Mills Co., Employees Credit Union of Brokaw (Brokaw) on the homestead of the debtors; and Brokaw having objected to the lifting of said lien; and the parties having appeared by counsel; and the trial having been duly held; and the Court having heard the evidence of the witnesses and considered the oral arguments of counsel and the briefs thereafter submitted; and upon all the file and proceedings herein, and being fully advised in the premises, FINDS:

1. That the debtors executed a note and real estate mortgage on their home on the 24th day of October, 1979, in the principal

amount of \$32,200 in favor of the Wisconsin Department of Veterans Affairs.

2. That thereafter, on the 12th day of October, 1981, the debtors executed a second real estate mortgage on said homestead in favor of Brokaw in the sum of \$16,832.14.

3. That as of January 18, 1983, there was due on said first mortgage the sum of \$30,706.95.

4. That each side had separate appraisals, and the appraisers were sworn in open court and cross-examined by the parties, with the debtors' appraiser valuing the property at \$28,500 and Brokaw's appraisal at \$31,500.

5. That the evidence further showed that of the sum of \$16,832.14 loaned on the second mortgage by Brokaw, the sum of \$8,920 was used for home improvements.

6. That Brokaw requests the Court to recognize the value and the sanctity of the purchase money improvement to the home and deny the debtors' request for avoidance of the lien to the extent of the \$8,920 home improvements.

7. That it is first necessary to find the valuation of the home as of this time, and the Court concludes that the value as of this date is the sum of \$30,000.

8. That no distinction has been made between liens and purchase money improvement liens in any of the cases reported

under the statute.

9. That the Code itself does not make any such distinction.

10. That the amount due on the first mortgage exceeds the value of said property.

11. That under Section 506 of the Code, the Brokaw lien cannot in toto, or as to the \$8,920, be sustained.

CONCLUSIONS OF LAW

1. That an order be entered granting the applicants' motion for avoiding said Brokaw lien.

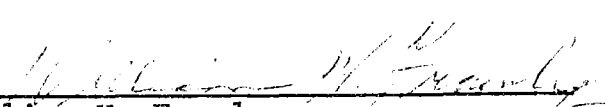
ORDER

IT IS ORDERED THAT the second mortgage lien to Brokaw on the debtors' home involved in these proceedings be, and the same hereby is, determined to be null and void.

IT IS FURTHER ORDERED THAT no costs be allowed to either of the parties.

Dated: March 12, 1984.

BY THE COURT:

  
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William H. Frawley  
Bankruptcy Judge