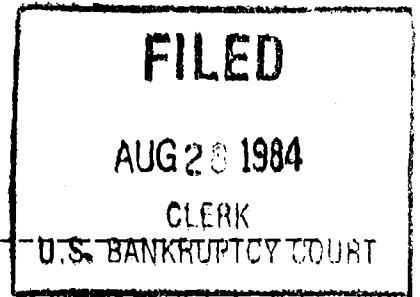


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

HOWARD W. ROSS
BETTY J. ROSS
d/b/a ROSS ENTERPRISES,

LF11-84-00601

Debtors.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER FOR HEARING

The Federal Land Bank of St. Paul, by Curran, Curran & Hollenbeck, S.C., having filed a Motion for Relief from Stay; and Debtors Howard and Betty Ross, by Cameron, Nix, Collins & Quillin, Ltd., having filed a response; and the matter having come on for a telephonic hearing; and both parties appearing by counsel; the Court, having considered the arguments and briefs of counsel and reviewed the complete record and file, FINDS THAT:

1. In February of 1983 a judgment of foreclosure was granted in favor of the Federal Land Bank of St. Paul (FLB) against Debtors Betty and Howard Ross. Federal Land Bank v. Ross, 82-CV- 363 (Vernon County, Wis., Circuit Court Feb. 21, 1983). The Debtors were represented by counsel in the foreclosure proceeding but raised no issue in said matter.

2. The Vernon County Circuit Court found that the total due to FLB on February 8, 1983, was \$161,589.17. The Debtors'

March 30, 1984, bankruptcy schedules listed the FLB as a "creditor holding security" with a claim (disputed by the Debtors) of \$184,600.00. FLB has filed a claim for \$189,410.24.

3. The Debtors' independent appraisal of the foreclosed real property shows a probable market value of \$155,000

4. The Debtors assert that there were irregularities in the original loan transaction with FLB.

5. "The debtors agree that normally a judgment should determine the merits of the action. . . . they believe that they have a claim in equity against the Federal Land Bank. . . . Consequently, the debtors ask the Court to allow them to present their case . . . on the merits of the underlying claim of the Federal Land Bank." Debtors' Brief (filed August 14, 1984).

6. A party objecting to a claim may invoke the equitable powers of a bankruptcy court to avoid the operation of the doctrine of res judicata when:

- (1) the prior judgment is the product of fraud, collusion or duress,
- (2) the prior court lacked jurisdiction, or
- (3) the judgment was founded on no real debt or on a legally unenforceable obligation and the objecting party was prevented from raising that defense in the prior action.

In re A-1 24 Hour Towing, Inc., 33 B.R. 281 (Bankr.D.Nev. 1983) (cases collected); see In re Farwell, 27 B.R. 241, 245-246

(Bankr.E.D.N.Y. 1982) (third ground available only when objecting party prevented from raising defense).

7. The Debtors have not argued that the first two grounds are present or that they were prevented from raising any defenses in the foreclosure proceeding.

8. It has been more than a year since FLB took its judgment, there is no evidence that the Debtors have applied to the Vernon County Circuit Court for relief from said judgment under Wis. Stats. sec. 806.07. Cf. 27 Am.Jur.2d Equity sec. 130 (1966) (Equity aids the vigilant and the diligent).

CONCLUSIONS OF LAW

1. The Debtors may not collaterally attack the Vernon County Circuit Court Judgment


2. The Debtors do not have an equity in the property foreclosed by FLB. 11 U.S.C. sec. 362(d)(2)(A).

ORDER

IT IS ORDERED THAT a hearing be held to determine whether the property foreclosed by the Federal Land Bank is necessary to an effective reorganization in the above captioned proceeding.

Dated: August 28, 1984.

BY THE COURT:


William H. Frawley
U. S. Bankruptcy Judge