

FILED

UNITED STATES BANKRUPTCY COURT

APR 25 1986

WESTERN DISTRICT OF WISCONSIN

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

MERWYN HOLLDORF
CHERYLL HOLLDORF

EF11-84-00982

Debtors.

OPINION AND ORDER

First Financial Savings and Loan Association (FFSL), by Jeffrey Hertz, has brought this motion seeking relief from the 11 U.S.C. § 362 automatic stay. The debtors appear by Mart Swenson and contest the motion. A hearing was held on this matter on April 9, 1986, and an adjourned hearing was held on April 21, 1986.

The debtors own and operate a business operation called Country Greenery Nursery. The business consists primarily of a landscaping operation, a retail nursery, a lawn spraying operation, and a tree spading operation. The debtor, Merwyn Holldorf, primarily runs the business. The debtor, Cheryll Holldorf, teaches full time at a nearby school and helps in the business when she is able. The business has suffered from financial difficulties in the past. This is due, in part, to an illness suffered by Merwyn Holldorf. Merwyn Holldorf has since undergone therapy to overcome his illness, and now believes that his condition has improved.

The debtors owe FFSL approximately \$95,000. FFSL holds a mortgage on the property that is the subject of this motion for relief from stay as security for this debt. The property consists of about 4 to 5 acres of land and includes a house, barn (which is used as a shop), greenhouse, and two sheds. The property is well maintained and is in excellent condition. The property is also encumbered by a junior mortgage held by Production Credit Association (PCA). The debtors owe PCA approximately \$46,000. PCA also holds a security interest in the personal property of the debtors. The evidence does not indicate the value of the personal property securing the debt owed to PCA. The debtors' schedules indicate that the value of the other collateral that PCA has a security interest in is \$72,000.

Three appraisals were submitted with respect to the property that is the subject of this relief from stay motion. FFSL submitted appraisals of \$92,500 and of \$155,000. The debtors' appraiser found the value of the property to be \$170,000. All three appraisers were highly competent and qualified, and all three were familiar with the subject property. The debtors listed the value of the property in their schedules at \$150,000.

The debtors have offered to make monthly payments to FFSL of \$1,200 on a temporary basis as a sign of their good faith. FFSL contends that this amount is inadequate. FFSL also argues that the offer is unsupported by a showing that there is a financial ability to make such payments.

FFSL seeks relief from stay pursuant to § 362(d)(2):

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(2) with respect to a stay of an act against property under subsection (a) of this section, if--

(A) the debtor does not have equity in such property; and

(B) such property is not necessary to an effective reorganization.

FFSL has the burden of proving that the debtor does not have any equity in the property. 11 U.S.C. § 362(g). The amount of the debt owed to FFSL is approximately \$95,000. The median value of the appraisals on the property securing this debt is well in excess of the amount of the debt. The evidence as to the extent of encumbrance on this property by the junior mortgage of PCA is inconclusive. It is the conclusion of this court that FFSL has not succeeded in carrying its burden of proof with respect to the issue of the debtors' lack of equity in the property.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

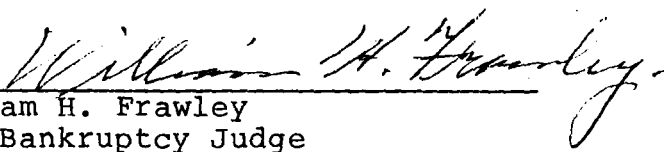
ORDER

NOW, THEREFORE, IT IS ORDERED THAT, First Financial Savings and Loan Association's motion seeking relief from stay is hereby denied.

IT IS FURTHER ORDERED THAT, the debtors shall make monthly payments of \$1,200 to First Financial Savings and Loan Association in accordance with debtors' offer, beginning May 1, 1986, and monthly thereafter until the further order of the court.

Dated: April 25, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney Mart W. Swenson
Attorney Jeffrey A. Hertz