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FILED

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

MAR 17 1986

CLERK  
U.S. BANKRUPTCY COURT

In re: Case Number:  
CURT J. FORDE, d/b/a CURT FORDE LF7-84-02360  
CUSTOM FARMING,  
Debtor.

CURT J. FORDE, d/b/a CURT FORDE  
CUSTOM FARMING, Adversary Number:  
Plaintiff,  
v. 85-0113-11

MORAMERICA MORTGAGE COMPANY, d/b/a  
MORAMERICA FINANCIAL SERVICES,  
DWAYNE KELLEY AND KENNETH GRANSKE,  
d/b/a PRARIE FARM ENTERPRISES,  
Defendants.

OPINION AND ORDER

The debtor initiated this adversary proceeding against MorAmerica Mortgage Company alleging various acts of conversion and harassment. A trial was held on this matter on December 5, 1985. MorAmerica appeared at the trial through its agent Dwayne Kelley and by counsel. The debtor failed to appear either in person or by counsel. MorAmerica was ready to proceed with trial and moved the court for dismissal with prejudice and with costs. The court granted the motion and an order for dismissal with prejudice and awarding costs was entered on December 26, 1985.

MorAmerica submitted a bill of costs pursuant to the court order and the debtor objects to this bill of costs. The debtor appears pro se and MorAmerica by Richard C. Thompson. A hearing on this objection was held on February 25, 1986. The debtor's main objection is that he did not personally receive notice of the trial until after the trial had been held. Apparently the debtor was receiving mail at the address of his parents who were engaged in the process of moving. Inadvertently, the notice of trial was laid unopened on a shelf and the debtor did not become aware of it until after the date set for trial. The debtor argues that, based on these circumstances, it is not fair or equitable to allow costs.

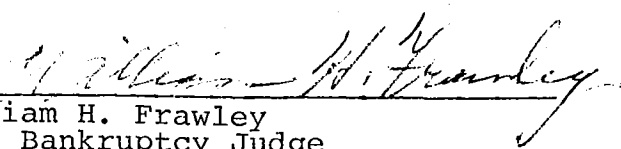
The court has authority to allow costs in this proceeding under Bankruptcy Rule 7054(b). It is the conclusion of the court that the bill of costs should be allowed. The debtor is the party who initiated this proceeding. MorAmerica incurred costs in defending this proceeding. The failure of the debtor to appear was due entirely to circumstances within the control of the debtor. It would not be fair to suffer MorAmerica to bear the costs of this action in which it is the prevailing party.

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

NOW, THEREFORE, IT IS ORDERED THAT the bill of costs submitted by MorAmerica Mortgage Company is allowed.

Dated: March 17, 1986.

BY THE COURT:

  
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William H. Frawley  
U.S. Bankruptcy Judge

cc: Attorney Richard C. Thompson; Mr. Curt J. Forde