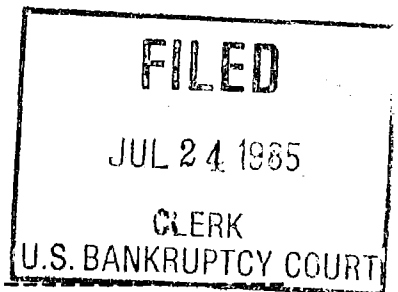


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

ROLLAND E. KEELEY

EF7-85-00017

Debtor.

ROLLAND E. KEELEY

Plaintiff,

Adversary Number:

v.

85-0132-7

FIRST NATIONAL BANK OF GLENWOOD,

Defendant.

OPINION AND ORDER DISMISSING COMPLAINT

The plaintiff in this adversary proceeding filed a Chapter 7 Bankruptcy Petition under the U. S. Bankruptcy Code, 11 U.S.C. § 101 et seq., on January 7, 1985. The defendant, First National Bank of Glenwood, filed a Proof of Claim against the plaintiff in the amount of \$37,251.81. Plaintiff seeks a determination by this court that defendant's claim is an unsecured claim rather than a secured claim as asserted by defendant.

Defendant's claim arises in part from a foreclosure judgment obtained in state court. On February 22, 1977, plaintiff entered into a real estate security agreement with defendant bank. A judgment of foreclosure based on the default of this agreement was granted by the St. Croix County Circuit Court. Plaintiff

argues that the real estate security agreement which he executed is not valid because the conveyance was not signed or joined in by Marcia Perry, the woman with whom he occupied the real estate. Such agreement is allegedly invalid under Wis. Stat. § 706.02 (1)(f). Defendant in response maintains that Wis. Stat. 706.02 (1)(f) on its face only applies to married couples, not to unmarried cohabitants such as plaintiff and Marcia Perry.

Wis. Stat. § 706.02(1)(f) provides:

Formal requisites. (1) Transactions under s. 706.01 (1) shall not be valid unless evidenced by a conveyance which:

(f) Is signed, or joined in by separate conveyance, by or on behalf of each spouse, if the conveyance alienates any interest of a married person in a homestead under s. 706.01(7) except conveyances between spouses, but on a purchase money mortgage pledging that property as security only the purchaser need sign the mortgage.

Sec. 706.02(1)(f) refers to a "married person" and "spouses."

Plaintiff, however, contends that he and Marcia Perry should receive the protection of sec. 706.02(1)(f) because they lived together as husband and wife. This argument is without merit since Wisconsin does not recognize common-law marriages.

Henderson v. State Farm Mutual Automobile Ins. Co., 59 Wis.2d 451, 208 N.W.2d 423, 425 (1973).

Plaintiff admits that he and Marcia Perry were not married. Based on this fact the court must conclude that sec. 706.02(1)(f) does not apply in this case. In enacting that statutory action the Wisconsin Legislature obviously chose only to address transactions involving married individuals. Any argument that

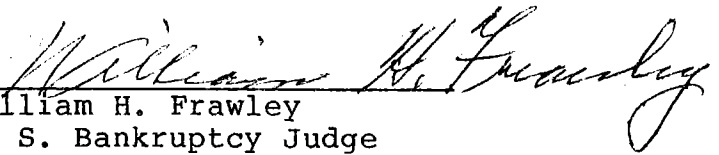
unmarried individuals in plaintiff's position should be covered by sec. 706.02(1)(f) can only be considered by the Legislature.

ORDER

IT IS ORDERED THAT plaintiff's complaint objecting to the proof of claim filed by defendant is dismissed.

Dated: July 24, 1985.

BY THE COURT:


William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Robert F. Wall
Attorney Terrence Spaeth