

FILED

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

DEC 27 1985

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U.S. BANKRUPTCY COURT

In re:

Case Number:

DUANE D. BEIER  
ELVA D. BEIER

LF11-85-00260

Debtor.

OPINION AND ORDER DENYING MOTION FOR RELIEF FROM STAY

First Federal Savings and Loan Association of La Crosse has moved for relief from the automatic stay imposed by 11 U.S.C. § 362. Debtors have objected to First Federal's motion and have requested a hearing. At the December 19, 1985 hearing on this matter First Federal appeared by Attorney Ernest O. Hanson and debtors by Attorney Alex B. Cameron.

First Federal holds a mortgage on certain property owned by debtors. The property consists of a residential dwelling, a concrete-block garage or building and surrounding land. The Bank of Onalaska, Bank of Holmen and Harry R. Griswold possess junior mortgages on debtors' property. As of the date of hearing in this matter First Federal was due a total of \$61,280.19 and the other mortgage holders were due a total of \$35,192.33. This would place the total indebtedness against the property at \$96,472.52. First Federal has contended that debtors possess no equity in the property and therefore the automatic stay should be

lifted so that it can complete a foreclosure action it had initiated before debtors filed their bankruptcy petition.

Sec. 362(d)(2) of the Bankruptcy Code provides that on request of a party in interest and after notice and hearing the court shall grant relief from stay if the debtor does not have an equity in the property at issue, and if such property is not necessary to an effective reorganization. Both debtors and First Federal have submitted independent appraisals of debtors' property. First Federal's appraisal values the property at \$84,000, while debtors' appraisal values the property at \$113,000. Accepting First Federal's appraisal would leave the debtors without equity in the property. The converse is true as to debtors' appraisal.

The court need not assess the appraisals and choose one over the other since debtors have demonstrated that the property is necessary to an effective reorganization. Debtor Duane Beier testified that debtors were renting two apartments in their residence. The debtors, in their disclosure statement, estimate that they will receive \$500 a month in apartment rental. They also estimate that they will receive \$240 a month, after expenses, from the rental of service stalls in the concrete-block building on their property. At the hearing on this matter Duane Beier outlined his plans concerning the service stalls. He stated that the stalls were nearly complete and ready to be leased.

Debtors have demonstrated that this property is necessary to an effective reorganization. The monthly income from apartment and service stall rentals is anticipated to be at least one-third of debtors' monthly reorganization income. The term "effective reorganization" as used in sec. 362(d)(2) means that there must be a reasonable possibility of a successful reorganization or rehabilitation. In re Vieland, 41 B.R. 134, 142 (Bankr.N.D.Ohio 1984). The court concludes that there is a reasonable possibility of a successful reorganization by debtors. Since this property is necessary to an effective reorganization, First Federal's motion for relief from stay must be denied.

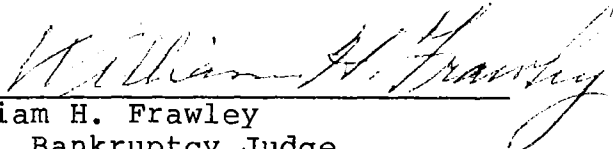
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT the motion of First Federal Savings and Loan Association of La Crosse for relief from stay is denied.

Dated: December 27, 1985.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney Ernest O. Hanson  
Attorney Alex B. Cameron