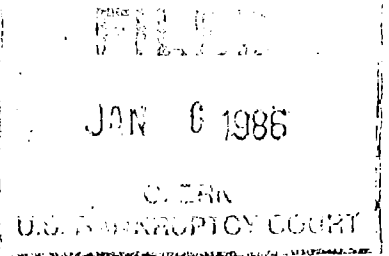


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

ALFRED J. ROPSKI
PHYLLIS L. ROPSKI

WF11-85-00571

Debtor.

MEMORANDUM OPINION AND ORDER

First Financial Savings and Loan Association of Stevens Point has moved for relief from the automatic stay imposed by 11 U.S.C. § 362. The essential purpose of this motion is to obtain an order that sec. 362 of the Bankruptcy Code does not apply to certain land contract vendors of the property owned by debtors on which First Financial holds a mortgage. Those land contract vendors have objected to First Financial's motion and have requested a court order extending the automatic stay to action by First Financial against them.

A hearing in this matter was held on October 16, 1985. The debtors appeared by Attorney John E. Danner, First Financial by Attorney Thomas F. Mallery and the land contract vendors by Attorney Marcia Bains-Grebner. The parties have subsequently submitted briefs on the issue before the court.

The property involved in this case is a resort. The land contract vendors originally purchased this property in 1977 with financing from First Financial. First Financial's mortgage arose from this transaction. With the approval of the lender, this

property was sold by the land contract vendors to debtors. The land contract vendors obtained a foreclosure judgment against debtors upon debtors' default in payments. Debtors filed their bankruptcy petition shortly before the sheriff's sale was to occur. Before the bankruptcy was initiated, First Financial commenced a foreclosure action against both the land contract vendors and debtors. First Financial and debtors have stipulated that First Financial could proceed against the land contract vendors, and that the debtors' interests would not be affected or adjudicated. The debtors are in possession of the property.

On August 7, 1985, the Circuit Court for Oneida County issued an order concluding that sec. 362 prohibited that court from proceeding further with First Financial's foreclosure action. The court further concluded that because of the present bankruptcy proceeding the vendors' right to redemption would be effectively denied. Based on these conclusions the court ordered that the foreclosure action not proceed until and unless the bankruptcy proceeding was terminated or relief from the automatic stay granted.

At the outset, it must be made clear that bankruptcy courts do not operate as appellate courts over state courts on bankruptcy issues. If this court were to render a decision on whether sec. 362 protections extend to the land contract vendors, it would unavoidably be reviewing the state court's decision. For whatever reason, the parties chose to litigate the applicability of sec. 362 in state court. They have made their forum

selection. Comity with state courts requires this court to abstain from the issue brought before it by the parties. If First Financial is dissatisfied with the state court order, it must look to the state courts rather than attempt to obtain a conflicting decision from this court.

Since First Financial and debtors have stipulated that any foreclosure action will not adjudicate or affect debtors' interest in the property, this court need not second-guess the state court's order. Any foreclosure that occurs will have no effect on the bankruptcy estate. Because of this fact, and the state court's prior determination, this court should refrain from considering whether sec. 362 applies to a foreclosure action against the land contract vendors.

This opinion should not be interpreted as an expression that this court will never determine the applicability of sec. 362 under factual circumstances such as exist here. The court's abstention from this issue is due to the delay in raising this issue, the state court's prior determination and the lack of any effect on the bankruptcy estate.

In the event that First Financial desires to advance its motion for relief from stay on the other grounds alleged in its petition it should contact the court to arrange a hearing date.

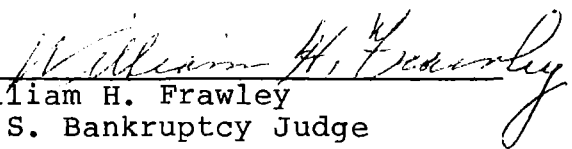
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT this court shall abstain from determining whether 11 U.S.C. § 362 applies to the land contract vendors.

Dated: January 6, 1986

BY THE COURT:


William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney John E. Danner
Attorney Thomas F. Mallery
Attorney Marcia Bains-Grebner