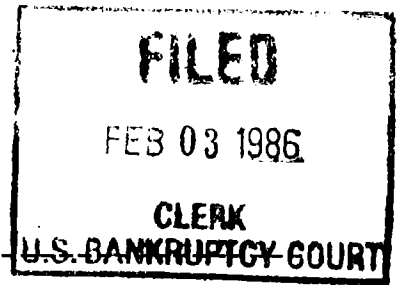


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

ROBERT L. WINN  
AUDREY Y. WINN

EF7-85-01013

Debtors.

OPINION AND ORDER

This matter comes to this court by way of the debtors' application for discharge of judgment and mortgage liens.

Richard W. Crownhart, claimant, has objected to the discharge of his mortgage lien. The debtors are represented by L. J. Webster. The claimant is represented by C. L. Gaylord. The matter was submitted by briefs and a hearing was held on January 23, 1986.

The debtors have made application for discharge of certain mortgage liens on their property. Specifically at issue is a mortgage dated May 13, 1982, and recorded May 20, 1982, in Volume 143 of Records, page 759, Pierce County Register of Deeds. Debtors' application and attached affidavit allege that this mortgage has been paid in full but no satisfaction is on record. This mortgage states, in pertinent part, that it is "to secure payment of Five Thousand Nine Hundred Ten and no/100 and other valuable consideration Dollars (\$5,910.00) evidenced by a note or notes bearing even date executed by Robert Winn and Audrey Winn." It is agreed by both parties that the note referred to as

"bearing even date" is one promissory note dated May 13, 1982.

This promissory obligation is basically in three parts:

- 1) An amount due of \$5,910.00.
- 2) Amounts that may become due to the Pierce County Bank and Trust Company (PCBT) by claimant as guarantor of three notes of Robert Winn.
- 3) Amounts that may be due PCBT by claimant as guarantor of three notes of Charles Laman.

Claimant was required to pay \$20,622.24 as guarantor of the notes of Charles Laman. It is the claimant's position that the mortgage secures this payment under the "and other valuable consideration" clause and by incorporation of the promissory obligation.

At the hearing on January 23, 1985, the debtors did not argue that this mortgage was paid in full; instead, it was alleged that the documents were too ambiguous to be enforceable. The debtors did not plead or allege that there was any fraud associated with the documents.

Initially the court notes that there is a great deal of difference between pleading that a mortgage is paid in full and arguing that the language of a mortgage is too ambiguous to be legally binding. Both parties have requested this court to determine if the documents in question can, by law, create a valid mortgage.

It is the opinion of this court that these documents are not insufficient as a matter of law. The documents sufficiently

refer to each other. The mortgage specifically states that it is "evidenced by a note bearing even date executed by Robert Winn and Audrey Winn." The mortgage was signed by the debtors and was also signed by the claimant. The mortgage was filed. The mortgage identifies the land. The promissory note that the parties agree was referred to in the mortgage states the three obligations that the promissory obligation is in consideration of, and states that "the undersigned are securing this promissory obligation with a mortgage to certain real estate."

The debtor does not allege that mortgages cannot secure future advances. The debtor might be, by implication, alleging that this particular mortgage does not secure future advances. However, the contemplation of future indebtedness is specifically referred to in the promissory obligation. The debtors seem to be arguing that the mortgage is ambiguous standing by itself. "Without referring to the promissory obligation, it is not possible to determine what, if any, other indebtedness may underlie the mortgage." Brief of debtors. However, the statutes governing the validity of such transactions contemplate the existence of such other writings. Wis. Stat. § 706.02. When reading the mortgage and promissory obligation together it is evident that the documents are not insufficient, as a matter of law, to create a valid mortgage.

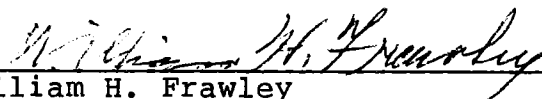
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

WHEREFORE, IT IS ORDERED THAT the application for discharge of the mortgage dated May 13, 1982, and recorded May 20, 1982, in Volume 143 of Records, page 759, Pierce County Register of Deeds, is hereby denied.

Dated: February 3, 1986.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney L. J. Webster  
Attorney C. L. Gaylord