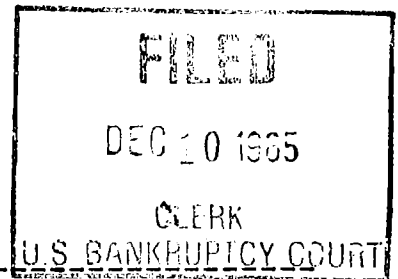


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

MERLE EUGENE LARSON
GWENDY LYNN LARSON
d/b/a Echo Hill Farm,

EF7-85-01200

Debtors.

OPINION AND ORDER DENYING DEBTORS' HOMESTEAD EXEMPTION CLAIM

Debtors Merle E. and Gwendy L. Larson have claimed a \$20,000 homestead exemption pursuant to Wis. Stats. § 815.20. This claim is opposed by creditors Stanley and Betty Larson and the First Wisconsin Bank of Grantsburg.

A telephone conference concerning the claimed homestead exemption was held on September 23, 1985. Debtors appeared by Attorney Kathleen M. Lindgren and the First Wisconsin Bank of Grantsburg by Attorney Jeffrey W. Guettinger. Stanley and Betty Larson were represented by Attorney Steven J. Swanson. The parties have subsequently submitted briefs on this matter with the court.

In 1976, debtor Merle Larson and his father Stanley entered into a farming partnership. The elder Larsons, Stanley and Betty, actually owned the farm real estate. Debtors built the house which is claimed as exempt on this farm real estate between 1976 and 1981. Prior to construction of the home several mortgages existed against the farm real estate including one held

by the First Wisconsin Bank of Grantsburg. For purposes of this decision it is not necessary to outline the extensive partnership and debt history of this farming operation. It is sufficient to state that if the house is subject to the mortgages against the farm real estate which existed at the time it was constructed, debtors' homestead claim must be denied. The elder Larsons and the bank assert that the house became a fixture which is subject to outstanding mortgages.

As a general rule, a building annexed to land subsequent to the granting of a mortgage is subject to that mortgage. 35 Am. Jur.2d Fixtures § 83 (1967). Another generally prevailing rule is that fixtures are covered by a mortgage on the realty even if they were annexed after the mortgage was granted. 35 Am. Jur.2d Fixtures § 51 (1967).

Wisconsin courts have established a three-pronged test for determining whether an article of personal property becomes a fixture. Wisconsin Dept. of Revenue v. A. O. Smith Harvestore Products, Inc., 72 Wis.2d 60, 240 N.W.2d 357 (1974). This test entails a consideration of: "1) Actual physical annexation to the real estate; 2) application or adaptation to the use or purpose to which the realty is devoted; and 3) an intention on the part of the person making the annexation to make a permanent accession to the freehold." Id. at 240 N.W.2d 360. In the present case there is no question that the house has been physically annexed to the farm real estate. It is attached to a concrete foundation set in the property. Since a farm operation necessar-

ily requires accomodations for the people involved, the house must be viewed as adapated to the use for which the realty is devoted. In considering the final factor of intent, the court in A. O. Smith stated that the relevant intent is the objective and presumed intent of a hypothetical ordinary, reasonable person. Id. at 361. A reasonable person would not build a home on land that he and his family had farmed for years with anything but an intent to make it an accession to the farm real estate. Necessary intent is borne out not only by the fact that debtors had farmed this land for years, and evidently hoped to farm it for many more, but also by the significant costs and logistical problems of moving an entire home. Under the test set forth in A. O. Smith this home became a fixture of the farm real estate.

In McCorkle v. Robbins, 222 Wis. 12, 267 N.W. 295 (1936), the Wisconsin Supreme Court held that certain soft drink machines were fixtures and therefore security for the mortgage on the realty, even though the machines were not annexed to the building until after the mortgage was executed. Debtors' arguments as to equity cannot override the established law as to fixtures and buildings. As the court held in McCorkle, this court holds that the house built by debtors is a fixture subject to the outstanding mortgages on the farm real estate. Consequently, debtors have no homestead interest to exempt.

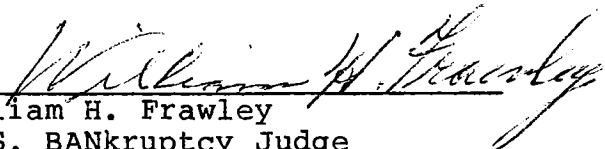
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT debtors' homestead exemption claim is denied.

Dated: December 10, 1985.

BY THE COURT:



William H. Frawley
U. S. BANKruptcy Judge

cc: Attorney Kathleen M. Lindgren
Attorney Jeffrey W. Guettinger
Attorney Steven J. Swanson