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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

PAUL H. EHLERT
PAMM M. EHLERT

EF11-85-02517

Debtors.

OPINION AND ORDER

Royal Credit Union (RCU), by Michael C. Koehn, has moved this court for relief from the 11 U.S.C. § 362 automatic stay. The debtors appear pro se and object to the motion. A hearing was held in this matter on February 20, 1986. It is the conclusion of this court that the debtors have failed to carry their burden and that RCU is entitled to relief from stay.

The debtors own a small farming operation. The property which is the subject of this motion is the land used for the farming operation. This land consists of 160 acres, of which 100 are tillable, and includes a house, barn, chicken coop, and two machine sheds. The parties agree that the value of this property is \$55,000.

On October 21, 1984, RCU obtained a judgment of foreclosure in state court proceedings against the property for the sum of \$88,534.16. Pursuant to the judgment a sheriff's sale was scheduled for December 17, 1985. The debtors filed for relief under the Bankruptcy Code on December 16, 1985. RCU now asks for

relief from stay so that it can proceed with a foreclosure sale. RCU alleges that there is no equity in the property, that it has not been provided adequate protection, and that the property is not necessary for an effective reorganization because the debtors cannot "effectively" reorganize.

The facts revealed at the February 20, 1986, hearing indicate that the debtors have suffered financial setbacks in the last several years. At present, the debtors' major source of income is from a \$530 disability check that Mr. Ehlert receives monthly. Mr. Ehlert also expects to receive a lump sum payment for this disability of about \$8,000 in the near future. For the last few years the debtors have been growing artichokes as a cash crop. Unfortunately, due to circumstances beyond their control, the debtors have not been able to find a market for their crops. Prior to this the debtors raised beef cattle. This venture proved to be relatively unsuccessful as well. For the last three years the debtors' yearly farm income has been nominal at best. In 1982 their yearly income was significantly higher but still amounted to only about \$9,000. The debtors state an intention of implementing a corn-oats-hay rotation. They project that such a method of operation can produce a \$16,000 yearly income. The debtors did not pay real estate taxes on the subject property in 1982, 1983, or 1984. These delinquent taxes, not including the accruing tax penalties, amount to \$5,987.14. The 1985 real estate taxes have been assessed to be \$2,164.31. The debtors state an intention of paying this amount when it becomes due.

The debtors do not dispute the fact that they have no equity in the property. Their objection to the motion for relief from stay rests primarily on their belief that RCU is adequately protected under 11 U.S.C. § 362(d)(1). At the February 20, 1986, hearing, the debtors alleged that RCU was adequately protected in four ways:

- 1) The debtors have maintained and will continue to maintain complete insurance on the property.
- 2) The 1985 real estate tax will be paid when it becomes due.
- 3) The debtors have taken excellent care of the property in the past and will continue to do so in the future. The debtors have not used any destructive, toxic, or polluting farm chemicals on this land and have used only ecologically safe fertilizers so that the environment and groundwater will not become polluted. For these reasons the property value will not depreciate.
- 4) The debtors offer to make payments of adequate protection to RCU if the court feels that such payments need to be made.

Subsequent to the February 20, 1986, hearing, the debtors offered to make monthly payments of \$250 as further adequate protection. Apparently, these payments would be made to the Eau Claire County Treasurer to cover interest and penalties on past due taxes with the remainder to be applied against the delinquent taxes.

Initially, the court points out that the debtors bear the burden of proving that RCU is adequately protected. 11 U.S.C. § 362(g). It is not the duty of the court to order the debtor to make an offer of such payments. Instead, it is the duty of the debtors to offer to make RCU adequately protected. In re Clark Technical Associates, 9 B.R. 738, 741 (Bankr. D. Conn. 1981). The debtors waited until the last hour before they offered to make any payments of adequate protection. However, the court does not need to address the issue of whether the debtors have provided adequate protection; because, the debtors have not shown that they can effectively reorganize.

The burden of proving that an effective reorganization is possible is on the debtors. 11 U.S.C. § 362(g). "In order to succeed in resisting the relief sought by the plaintiff, the Debtor must offer some evidence that an effective reorganization is, in fact, a realistic possibility." In re Discount Wallpaper Center, 19 B.R. 221, 222 (Bankr. M.D. Fla. 1982). It is the obligation of the debtor to offer some evidence that an effective reorganization is achievable. In re Dublin Properties, 12 B.R. 77 (Bankr. E.D. Pa. 1981).

[w]here the debtor contends that relief from the stay should not be granted because the property which is sought to be foreclosed is necessary for an effective reorganization, the debtor must offer some evidence that an effective reorganization of the debtor is realistically possible.

Id. at 78.

The debtors have not offered any evidence at all as to how

they will be able to reorganize. Nor have the debtors offered any evidence that a viable reorganization is even a realistic possibility. The debtors' projection of a yearly income of \$16,000 is totally absent factual support.

If all the debtor can offer at this time is high hopes without any financial prospects on the horizon to warrant a conclusion that reorganization in the near future is likely, it cannot be said that the property is necessary to an "effective" reorganization.

In re Clark Technical Associates, 9 B.R. 738, 740 (Bankr. D. Conn. 1981). The debtors have not offered any evidence supporting the assertion that they can effectively reorganize. It is the conclusion of this court that the debtors failed to carry their burden of proving that an effective reorganization is a realistic possibility.

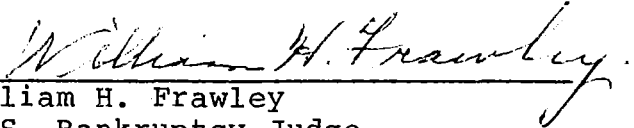
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the motion of Royal Credit Union seeking relief from the 11 U.S.C. § 362 automatic stay is hereby granted.

Dated: March 17, 1986.

BY THE COURT



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Michael C. Koehn
Paul H. Ehlert
Pamm M. Ehlert