

UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF WISCONSIN

FILED

IN RE:

IN BANKRUPTCY NO.:

SCARLET A. ARNOLD,

APR - 2 1991

MM13-90-02084

Debtor.

CLERK, U.S. BANKRUPTCY COURT
CASE NO.

STATEMENT OF REASONS:

On August 15, 1985 Scarlet A. Arnold, the debtor, and Sheri L. Disrud (Disrud) executed a land contract pursuant to which the debtor, as the land contract vendee, was required to obtain insurance in an amount equal to the balance owed under the land contract. The debtor procured such a policy from Germantown Mutual Insurance Company ("Germantown"). Disrud was named as "mortgagee 1" on the policy. The debtor failed to make the payments required under the contract, and on June 7, 1990 Disrud obtained in Rock County Circuit Court a judgment of strict foreclosure of the land contract. On June 29, 1990 the redemption period expired, and on July 5, 1990 an order confirming the judgment was entered.

The debtor failed to surrender possession of the property, and on July 12, 1990 the state court issued a "writ of assistance." On July 16, 1990 the Rock County Sheriff's Department posted the writ on the dwelling located on the subject property. At approximately 11:30 p.m. on the same date, the dwelling was extensively damaged by fire.

On July 26, 1990 the debtor filed a chapter 13 petition. On October 1, 1990 Germantown issued a check in the amount of \$40,000.00 made jointly payable to the debtor and to Disrud. The debtor refused to endorse the check to Disrud. On November 26, Disrud was granted relief from the automatic stay to permit her to take possession of the subject property.

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On or about December 18, 1990 Disrud filed a complaint (Rock County Circuit Court Case no 90-CV-578) against the debtor and Germantown, seeking a declaratory judgment that she, rather than the debtor, is entitled to the insurance proceeds. The debtor filed an answer in that proceeding. A hearing in the case is currently scheduled for Thursday, April 4, 1991.

On February 6, 1991 the order confirming the debtor's plan was signed. On that same date, this court received Disrud's motion for relief from the stay to proceed with her Rock County Circuit Court declaratory judgment action. After a March 4, 1991 hearing, the court took the matter under advisement. Disrud contends that she is entitled to relief from the stay pursuant to 11 USC § 362(d)(1), "for cause," because the debtor allegedly "has no interest, legal or equitable, in the proceeds of said insurance policy and such proceeds do not constitute property of the estate within the meaning of 11 U.S.C. § 541 and 11 U.S.C. § 362."

Disrud's motion for relief from the stay must be granted pursuant to 11 USC § 362(d)(1), for cause. To begin with, "[s]tate law determines whether property is an asset of the debtor." In re Brass Kettle Restaurant, Inc., 790 F2d 574, 575 (7th Cir 1986). Determination of whether the debtor or Disrud is entitled to the insurance proceeds involves an unclear issue of state law, namely, the impact of Wis Stat § 631.07(4) upon traditional principles of insurance law.

Other relevant considerations include "the convenience of the forum, the avoidance of piecemeal litigation, the adequacy of the state court proceeding, the presence of federal-law issues, and the extent of progress in the state and federal proceedings." Illinois

Bell Telephone Co. v Illinois Commerce Commission, 740 F2d 566, 569 (7th Cir 1984) (citations omitted). Rock County Circuit Court is a more geographically convenient forum for the parties, one of whom resides in Rockford, Illinois and the other of whom resides in Beloit, Wisconsin. Furthermore, allowing the state court to determine the matter would avoid the piecemeal litigation which might result in the event that this court, making its own determination of state law, were to grant relief to Disrud to pursue her claim to the proceeds in state court.

Moreover, fairness to the parties would not be compromised if the state court were to resolve the matter. Federal-law issues are absent from the dispute. The matter will be determined more expeditiously in state court, where a hearing in Disrud's declaratory judgment action is currently scheduled for April 4, 1991.

Allowing the state court to determine the action will foster the interests of judicial administration, comprehensive disposition of litigation, and conservation of judicial resources. See James W. Moore, 1A Part 2 Moore's Federal Practice ¶ 0.203[4] at 2147 (Bender, 2d ed 1985).

For the foregoing reasons, Disrud's motion for relief from the stay pursuant to 11 USC § 362(d)(1) must be granted for cause.

Dated April 2, 1991.



ROBERT D. MARTIN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF WISCONSIN

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ORDER:

CLERK, U.S.
BANKRUPTCY COURT
CASE NO.

The court having this day entered its Statement of Reasons in the above-entitled matter,

IT IS HEREBY ORDERED that the motion of Sheri L. Disrud for relief from the automatic stay to proceed with Rock County Circuit Court Case no. 90-CV-578 is granted pursuant to 11 USC § 362(d)(1).

Dated April 2, 1991.



ROBERT D. MARTIN
UNITED STATES BANKRUPTCY JUDGE

IN RE:

IN BANKRUPTCY NO.:

SCARLET A. ARNOLD,

MM13-90-02084

Debtor.

STATEMENT OF REASONS AND ORDER:

Copies of this Statement of Reasons and Order were mailed to the following on April 3, 1991:

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