UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF WISCONSIN

IN RE: IN BANKRUPTCY NO.:

KRISTOPHER AAGE SWENSON and DIANE MARIE SWENSON, 91-31834-7

Debtors.

IN ADVERSARY PROCEEDING NO.:

WILLIAM J. RAMEKER, TRUSTEE, 91-3232-7

Plaintiff,

v.

BANK ONE, BEAVER DAM,

Defendant.

IN ADVERSARY PROCEEDING NO.:

BANK ONE, BEAVER DAM, 91-3195-7

Plaintiff,

v.

KRISTOPHER AAGE SWENSON and DIANE MARIE SWENSON, MEMORANDUM DECISION

Defendants.

In 1978 Kristopher Aage Swenson purchased a home and executed a note and mortgage in favor of Merchants National Bank,[1] ("the Bank"). In December, 1984 Mr. Swenson married Diane M. Swenson, and both have from that time forward occupied the mortgaged property as their principal residence and homestead.

In the spring of 1988 Mr. Swenson sought to refinance the 1978

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[1]Mechants National Bank has subsequently merged with and become a part of Bank One, Beaver Dam, f/k/a Marine Bank West.

note and mortgage. The Bank asked that Mrs. Swenson also sign the new note and mortgage, but Mr. Swenson refused to have Mrs. Swenson sign the mortgage. In lieu of a mortgage signed by both spouses, the Bank demanded, and Mr. Swenson delivered, a marital property agreement dated April 16, 1988. After receiving the marital property agreement, the Bank on May 10, 1988 allowed Mr. Swenson alone to execute the new note and mortgage. Both the note and the mortgage identified Mr. Swenson as a married person, and the note named Diane M. Swenson as Mr. Swenson's spouse.

Mrs. Swenson acknowledged at trial that she was aware that the original note was being refinanced. Furthermore, on May 5, 1988 both Mr. and Mrs. Swenson acknowledged by their signatures the receipt of a "Notice of Right to Cancel for Security Interest in Consumer's Principal Dwelling." On May 10, 1988 both Mr. and Mrs. Swenson confirmed by their signatures that the transaction had not been rescinded. The Notice with the Swensons' receipt and confirmation was a part of the file the Bank maintained on this loan.

When refinanced the original note had had a balance due of $37,248.19. The principal amount of the new note was $41,600.00.[2] Mr. Swenson retained $1,791.49 of the loan proceeds, and the remainder was used to extinguish the original note and mortgage, payoff a second mortgage for legal fees, and pay accrued real

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[2]The old mortgage and the new mortgage each represented an indebtedness of $41,600.00. The notes secured by the mortgages were each variable interest rate notes, but the original note was for a 25 year term, while the new note was for a 30 year term.

estate taxes and closing costs. Payments under the new mortgage were reduced from approximately $419.00 to $357.41 per month.

On May 16, 1988 the new mortgage and a satisfaction or the old mortgage were duly recorded with the Jefferson County Register of Deeds. The Swensons made payments on the new mortgage through May, 1991.

On May 22, 1991 the debtors filed their petition under chapter 7 of the Bankruptcy Code, and William J. Rameker was appointed trustee. On August 20, 1991 the Bank filed a proof of a secured claim in the amount of $40,404.61; the debtors have filed no objection to the Bank's claim. The mortgaged property is worth $50,000.00.

Two adversary proceedings were commenced in the debtors' case. In Adversary Proceeding Number 91-3232-7 Mr. Rameker, as trustee, brought suit against the Bank, seeking to avoid the Bank's mortgage on the debtors' homestead pursuant to 11 USC §§ 544 and 550. In Adversary Proceeding Number 91-3195-7 the Bank brought suit against the debtors seeking a determination of the extent of the Bank's security interest in the property pursuant to 11 USC §§ 506(a) and (d), a determination that the unsecured portion of the mortgage debt, if any, is nondischargeable under 11 USC § 523(a)(2)(A) or (B), and equitable reformation of the mortgage pursuant to Wis Stat § 706.04. The debtors pled no affirmative defenses or counterclaims, but requested relief determining the mortgage to be void, and the indebtedness to the Bank dischargeable.

The two adversary proceedings were ordered joined for trial.

A pretrial order required that "[f]ive days prior to the trial each party shall file with the court and serve on opposing parties proposed detailed findings of fact and conclusions of law." While the trustee and the Bank duly filed their proposed findings and conclusions, the debtors failed to do so. On February 28, 1992 the trial was held. Counsel for the debtors presented no evidence or argument, stating only that the debtors' position was the same as that of the trustee. At the conclusion of the trial, the matters at issue were taken under advisement.

I.

The trustee contends that the Bank's mortgage on the debtors' homestead may be avoided pursuant to 11 USC §§ 544 and 550 because the mortgage was not executed by Mrs. Swenson, as required by Wis Stat § 706.02(1). The trustee's complaint does not specify the subsection(s) of Section 544 on which he is relying, but when asked at trial, the trustee responded that he could avoid the mortgage pursuant to either Section 544(a)(3) or Section 544(b).

Assuming for the moment that the trustee is correct in his assertion that Wis Stat § 706.02(1) required the signatures of both Mr. and Mrs. Swenson in order for the mortgage on the homestead to be valid,[3] it is not a foregone conclusion that the Bankruptcy Code grants the trustee the authority to avoid the mortgage. 11 USC § 544(a)(3) provides:

> (a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the

[3]Wis Stat § 706.02(1) is discussed at length in Part II of this decision.

> trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by-
> -
> (3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser at the time of the commencement of the cause, whether or not such a purchaser exists [and has perfected such transfer].

The trustee contends that "[a] mortgage to a third party (bona fide purchaser) from the debtors, executed by the husband and wife, would be prior to any interest of the Bank under its void mortgage and therefore the claim of the trustee under the provisions of §§ 544 and 550 must prevail." This contention is incorrect.

"The trustee's rights are determined by reference to state law with the important limitation that the trustee is deemed not to have such actual knowledge of prior transactions as would defeat his claim." Matter of R.C.R. Corp., 58 BR 291, 295 (Bankr WD Wis 1986). Wis Stat § 706.08(1)(a) codifies the common law bona fide purchaser doctrine, providing:

> Every conveyance (except patents issued by the United States or this state, or by the proper officers of either) which is not recorded as provided by law shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate or any portion thereof whose conveyance shall first be duly recorded.

In R.C.R. Corp., this court elaborated upon the meaning of the statute:

> To be a purchaser in good faith a party must be without notice of pre-existing rights. The "no notice" requirement of the statute means that a party must have neither actual knowledge nor constructive notice of the rights of other parties. Constructive notice arises when a party without actual knowledge fails to exercise reasonable care to investigate sources of information

> which would lead to actual knowledge of the conflicting rights of others. Although the actual knowledge requirement may not be interposed against a trustee under section 544, the doctrine of constructive notice may.

R.C.R. Corp., 58 BR at 295 (citations omitted). In R.C.R. Corp., a mortgage and security agreement had been executed by only one corporate officer. The debtor contended that because Wis Stat § 706.03(2) affirmatively requires corporate conveyances to be signed by at least two corporate officers, (unless an alternate procedure has been adopted and filed as provided by Wis Stat § 706.03(3)), the mortgage and security agreement were improperly recorded, and could not provide constructive notice to a bona fide purchaser.

The court rejected R.C.R.'s contention, relying on the savings clause provided in Wis Stat § 706.05(7):

> Every instrument which the register of deeds shall accept for record shall be deemed duly recorded despite its failure to conform to one or more of the requirements of this section, provided the instrument is properly indexed in a public index maintained in the office of such register of deeds and recorded at length at the place there shown.

On the basis of Section 706.05(7) the court was able to conclude that "even if the conveyances to the bank failed to bear all the signatures required by law, the instruments were still duly recorded and constituted constructive notice of the facts contained therein which a good faith purchaser is not at liberty to disregard." R.C.R. Corp., 58 BR at 296. The court dismissed the debtor's complaint, stating:

> A good faith purchaser examining the record of the mortgage and real estate security agreement here in dispute would unquestionably be under a duty to make inquiry as to whether the conveyances were actually authorized by RCR. Such inquiry would reveal that

> authority had in fact been granted. Thus RCR as debtor in possession has constructive notice of this fact and cannot avail itself of bona fide purchaser status under section 544(a)(3).

In the present case the recorded mortgage, although lacking Mrs. Swenson's signature, identified Mr. Swenson as "a married person." A bona fide purchaser examining the mortgage record would be under a duty to make inquiry as to whether the conveyance was actually authorized by Mr. Swenson's wife. Whether the inquiry was directed to Mr. or Mrs. Swenson, the response, if honest, would be that the conveyance was authorized.[4] One making inquiry of the Bank also would learn of Mrs. Swenson's authorization of the mortgage by her signatures on the Notice of Right to Cancel. Since inquiry of either party to the mortgage or Mrs. Swenson would have produced the information that the conveyance was authorized, the trustee has constructive notice of the authorization and he is precluded from maintaining bona fide purchaser status under Section 544(a)(3).[5]

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[4]Mrs. Swenson acknowledged at trial that she knew prior to May 10, 1988 that the mortgage was being refinanced. Her declination to rescind the transaction shows her authorization of the mortgage.

[5]See also K. Christiansen, F. Wm. Haberman, J. Haydon, D. Kinnamon, M. McGarity, M. Wilcox, I Marital Property Law in Wisconsin § 4.23c at 4-42 (ATS-CLE, 2d ed 1990) [hereafter cited as Marital Property Law in Wisconsin], stating that:

> Neither the [Wisconsin Marital Property] Act nor UMPA [Uniform Marital Property Act] indicates the result when spouses are required to act together and fail to do so. The failure to act together could be found merely to authorize an interspousal remedy and to have no effect on the third party. This result is unlikely, at least in cases involving conveyance of an interest in property where a third party should know that both spouses are required to act together, and thus the third party is not

The trustee also asserts that he is entitled to avoid the Bank's mortgage pursuant to 11 USC § 544(b). Section 544(b) provides:

> The trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

This subsection "gives the trustee the rights of actual unsecured creditors under applicable law to void transfers." HR Rep No 95-595, to accompany HR 8200, 95th Cong, 1st Sess (1977) p 370. Section 544(b) thus allows the trustee to pursue state and other federal law remedies that actual, unsecured creditors could have pursued against other claimants to the debtor's property had there been no bankruptcy proceeding. See Robert E. Ginsberg, 1 Bankruptcy: Text, Statutes, Rules § 9.02[a] at 671 (Prentice Hall Law & Business, 2d ed 1990).

When asked at trial the identity of the debtors' actual unsecured creditor whose rights the trustee sought to assert, the trustee named no one other than Mrs. Swenson. However, there was no evidence that Mrs. Swenson is an unsecured creditor of either herself (a logical impossibility) or her husband. There was no evidence presented which would permit the inference that any unsecured creditor existed on whose rights the trustee could rely. The trustee's Section 544(b) claim accordingly must fail.

> a bona fide purchaser. Whether a transaction is void or voidable, it is likely that only the nonjoining spouse can raise the issue.

II.

The Bank seeks, pursuant to 11 USC §§ 506(a) and (d),[6] a determination "as to the validity of [its] mortgage lien on the homestead of the debtors." The debtors failed to raise Wis Stat § 706.02(1)(f) in their answer as an affirmative defense or as a compulsory counterclaim, filed no motion for summary judgment, motion to dismiss, or objection to claim on the basis of Wis Stat § 706.02(1)(f), ignored this court's order to file findings of fact and conclusions of law, and chose at trial to rely on the trustee's arguments rather than presenting their own defense to the Bank's adversary complaint. These omissions notwithstanding, the debtors' answer requests relief determining the mortgage to be void, the joint pre-trial statement contains their recitation of Wis Stat §

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[6]These subsections provide:

> (a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.
>
> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless--
> 91) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or
> (2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

706.02(1)(f)'s two-signature requirement, and the trustee, on whose case the debtors relied, did argue at trial that Mrs. Swenson had the right to avoid the mortgage under Wis Stat § 706.02(1)(f).

It may well be argued that the debtors have waived Wis Stat § 706.02(1)(f) as an affirmative defense or compulsory counterclaim.[7] The Bank did not, however, raise waiver as an issue in this case, and in light of the confusion which was apparently spawned by the order joining the two proceedings for trial, I am hesitant to allow the debtors to be prejudiced by a refusal to consider the effect of Wis Stat § 706.02(1)(f) on the status of the mortgage held by the Bank.

Section 706.02(1)(f) provides:

> (1) Transactions under s. 706.01(1) shall not be valid unless evidenced by a conveyance which:
>
> (f) Is signed, or joined in by separate conveyance, by or on behalf of each spouse, if the conveyance alienates any interest of a married person in a homestead under s. 706.01(7) except conveyances between spouses, but on a purchase money mortgage pledging that property as security only the purchaser need sign the mortgage[.]

The Bank argues that "the rights granted by the marital property agreement negate and waive the spousal joinder requirement of Mrs. Swenson." This argument must be rejected. Citing Wis Stat § 706.02(1)(f), I Marital Property Law in Wisconsin § 4.23a at 4-39 states that "With regard to a homestead, both spouses must sign

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[7]See FRBP 7008(a), FRCP 8(c), Roe v Sears, Roebuck & Co., 132 F2d 829 (7th Cir 1943), and Wright and Miller, 5 Federal Practice and Procedure: Civil 2d § 1278 at 477 (West, 2d ed 1990); see also FRBP 7013, FRCP 13(a), Harbor Ins. Co. v Continental Bank Corp., 922 F2d 357, 360 (7th Cir 1990); Olympia Hotels Corp. v Johnson Wax Dev. Corp., 908 F2d 1363, 1367 (7th Cir 1990); Burlington Northern R. Co. v Strong, 907 F2d 707, 710-12 (7th Cir 1990).

a conveyance that alienates any interest of a spouse in the homestead, whether or not the homestead is classified as marital property." Neither the debtors' marital property agreement,[8] nor Wisconsin's Marital Property Act, provides an exception to application of Section 706.02(1)(f).

The Bank further argues that only Mr. Swenson's signature was required on the 1988 mortgage because it was merely a renewal of the 1978 purchase money mortgage, and thus fits within the purchase money exception of Section 706.02(1)(f). In In re Richardson, this court considered whether a refinancing agreement retained the prior loan's purchase money characteristics, stating:

> The refinancing agreements have thus been characterized as either renewals of the original note or as novations.[9] The degree to which the original obligation of the debtor has changed determines whether refinancing constitutes a renewal or a novation. Where a novation is found, the

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[8]The paragraph of the marital property agreement upon which the Bank relies provides:

> During their marriage, each party shall own his or her solely-owned property as defined herein free from all rights, claims, or property interest of the other, as though he or she were an unmarried person, with full power of management and control over the property. If asked by the other party, or by any grantee or donee of the other party, a party will join in any deed, mortgage, or other conveyance of such property by the other for the purpose of divesting any such rights, claims, or property interests, whether actual or apparent, or perfecting a clear record title to the property; however, the foregoing shall not apply to conveyances of homestead real estate.

[9]"'A novation by substitution of an obligation occurs where a creditor accepts from his debtor any form of new agreement in place of a prior contract or obligation between them, with the intent to cancel the former and to substitute the new one therefor.'" Navine v Peltier, 48 Wis 2d 588, 593, 180 NW2d 613 (1970), citing 66 CJS, Novation § 9 at 689.

> PMSI [purchase money security interest] is extinguished. Courts vary on how substantial the degree of change must be to establish that a novation has taken place.

In re Richardson, 47 BR 113, 117 (Bankr WD Wis 1985) (citations omitted). The opinion noted that some courts have made comparisons of interest rates and payment schedules, and have looked to see whether the balance of the first note has been paid with the proceeds of the new note in determining whether the refinancing agreement qualifies as a renewal or a novation. See also In re Gayhart, 33 BR 699, 699-700 (Bankr ND Ill 1983).

In the instant case, the new note was for an amount greater than the balance due on the original note, and the excess proceeds were used in part to pay off other debts. The term was extended from 25 to 30 years, and the monthly payments were reduced. These are substantial changes, indicating that the 1988 mortgage was not a renewal, but a novation. The other attributes overshadowed any remaining purchase money characteristics. Therefore, the purchase money exception of Section 706.02(1)(f) does not apply, and under the statute, the signatures of both Mr. and Mrs. Swenson were required on the 1988 mortgage.

The joinder requirements of Wis Stat § 706.02(1)(f) notwithstanding, the question arises as to whether the Swensons can be estopped from challenging the 1988 mortgage conveyance on the basis of the statute. In Reid v Cramer, 24 Wash App 742, 603 P2d 851 (App 1979), the husband, a general contractor, entered into an earnest money contract in which he agreed to buy a large tract of undeveloped land. He signed a promissory note as well, and

attempted to repudiate both the earnest money contract and the promissory note on the basis that his spouse had not joined in either transaction as required by Wash Rev Code § 26.16.030(4). This statute provided, in pertinent part, that "neither spouse shall purchase or contract to purchase community real property without the other spouse joining in the transaction of purchase or in the execution of the contract to purchase."

The court rejected the husband's contention, stating that "the community is estopped to deny liability due to the failure of one spouse to join in a transaction when one spouse permits the other to conduct the transaction, both have a general knowledge of the transactions and both are ready to accept the benefits which may come from it." Reid v Cramer, 603 P2d at 854.

As in Reid v Cramer, Mrs. Swenson in the present case knowingly permitted her husband to execute the 1988 mortgage. Her authorization is shown by her declination of the right to cancel. Both Mr. and Mrs. Swenson were ready to, and did, accept the benefits coming from the transaction--the original first and second mortgages were paid off, back real estate taxes and closing costs were paid, $1,791.49 was retained by Mr. Swenson, and mortgage payments decreased by approximately $61.59 per month. Consequently, the debtors are estopped from disaffirming the May 16, 1988 mortgage on the basis of Wis Stat § 706.02(1)(f).

The homestead is worth approximately $50,000.00, and the recorded mortgage exists in the amount of $41,600.00. The Bank's claim, in the amount of $40,404.61., is fully secured.

III.

In its complaint, the Bank requested "[t]hat discharge of any sum of the indebtedness found to be unsecured by this Court be denied." Because the Bank's claim is fully secured, there is no dischargeability issue to decide.

IV.

The Bank contends that it is entitled to equitable reformation of the mortgage pursuant to Wis Stat § 706.04. Section 706.04 provides, in relevant part:

> A transaction which does not satisfy one or more of the requirements of s. 706.02 may be enforceable in whole or in part under doctrines of equity, provided all of the elements of the transaction are clearly and satisfactorily proved and, in addition:
> (1) The deficiency of the conveyance may be supplied by reformation in equity[.]

The Wisconsin Supreme Court in Nelson v Albrechtson addressed the requirements of Wis Stat § 706.04, stating:

> We have said that sec. 706.04, Stats., contains two requirements that must be met in order for a real estate transaction not evidenced by a valid writing to be enforceable; (1) the elements of the contract must be clearly and satisfactorily proved, and (2) it must fall within one of the exception enumerated in that section. The elements that must be established to fulfill the first requirement correspond to the formal requisites of a valid conveyance under sec. 706.02.[10]

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[10]Wis Stat § 706.02 provides, in relevant part:

> (1) Transactions under s. 706.01(1) shall not be valid unless evidenced by a conveyance which:
> (a) Identifies the parties; and
> (b) Identifies the land; and
> (c) Identifies the interest conveyed, and any material term, condition, reservation, exception or contingency upon which the interest is to arise, continue or be extinguished, limited or encumbered; and
> (d) Is signed by or on behalf of each of the

Nelson v Albrechtson, 93 Wis 2d 552, 559-60, 287 NW2d 811 (1980) (citations omitted). See also Security Pacific National Bank v Ginkowski, 140 Wis 2d 332, 338, 410 NW2d 589 (App 1987).

The 1988 mortgage meets all of the applicable requirements of Section 706.02(1) other than the two signatures required by Section 706.02(1)(f). In Nelson, the court explained that:

> Although the lack of a grantor's signature is a formal defect which can be cured by application of sec. 706.04, Stats., the lack of a grantor's assent to the transaction, which the signature merely symbolizes, is not. In order for a real estate transaction to be enforceable under sec. 706.04, it must at least be proved that the grantor or grantors assented to it.

Nelson, 93 Wis 2d at 561.

Mrs. Swenson's assent to the 1988 mortgage is proved not only by her declining the right to cancel, but also by her acknowledgement that she knew the 1978 mortgage was being refinanced. There was no evidence presented that she did anything

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grantors; and

(e) Is signed by or on behalf of all parties, if a lease or contract to convey; and

(f) Is signed, or joined in by separate conveyance, by or on behalf of each spouse, if the conveyance alienates any interest of a married person in a homestead under s. 706.01(7) except conveyances between spouses, but on a purchase money mortgage pledging that property as security only the purchaser need sign the mortgage; and

(g) Is delivered. Except under s. 706.09, a conveyance delivered upon a parol limitation or condition shall be subject thereto only if the issue arises in an action or proceeding commenced within 5 years following the date of such conditional delivery; however, when death or survival of a grantor is made such a limiting or conditioning circumstance, the conveyance shall be subject thereto only if the issue arises in an action or proceeding commenced within such 5-year period and commenced prior to such death.

to prevent the refinancing. The lack of her signature is thus a formal defect which application of Section 706.04 cures. The Bank is entitled to equitable reformation under Section 706.04(1), and the debtors will be ordered to sign for recording a mortgage document identical in all respects to the mortgage recorded on May 16, 1988, the new mortgage to be effective as of May 16, 1988.[11]

It may be so ordered.

Dated April 3, 1992.

ROBERT D. MARTIN
UNITED STATES BANKRUPTCY JUDGE

[11]This case is distinguishable from Matter of Howe, 20 BR 938 (Bankr WD Wis 1982). In Howe this court determined, based upon Wis Stat § 706.02(1)(f), that the bank therein was not secured by a real estate security agreement on a couple's homestead that had been executed only by the debtor husband. There was, however, no evidence in Howe that the debtor's wife assented to the transaction:

> Mrs. Howe did not sign the real estate security agreement or any of the notes to the Bank. It does not appear from the stipulation of facts that Mrs. Howe was made a party to the notes or the real estate security agreement by any separate writing, and it is assumed that she was not.

Howe, 20 BR at 939-40. Unlike Mrs. Howe, Mrs. Swenson had knowledge of, and assented to, the mortgage at issue herein.

UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF WISCONSIN

IN RE: IN BANKRUPTCY NO.:

KRISTOPHER AAGE SWENSON and DIANE MARIE SWENSON, 91-31834-7

Debtors.

IN ADVERSARY PROCEEDING NO.:

WILLIAM J. RAMEKER, TRUSTEE, 91-3232-7

Plaintiff,

v.

BANK ONE, BEAVER DAM,

Defendant.

IN ADVERSARY PROCEEDING NO.:

BANK ONE, BEAVER DAM, 91-3195-7

Plaintiff,

v.

KRISTOPHER AAGE SWENSON and DIANE MARIE SWENSON, ORDER

Defendants.

The court having this day entered its Memorandum Decision in the above-entitled matter;

IT IS HEREBY DETERMINED that the claim of Bank One, Beaver Dam is fully secured, and;

IT IS HEREBY ORDERED that Kristopher and Diane Swenson shall sign for recording a mortgage document identical in all respects

to the mortgage recorded May 16, 1988, the new mortgage to be effective as of May 16, 1988; and

IT IS FURTHER ORDERED that the relief requested in Adversary Complaint No. 91-3232-7 is denied.

Dated April 3, 1992.

ROBERT D. MARTIN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANK PTCY COURT WESTERN D RICT OF WISCONSIN

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KRISTOPHER AAGE SWENSON and DIANE MARIE SWENSON, MEMORANDUM DECISION AND ORDER

Defendants.

Copies of this Memorandum Decision and Order were mailed to the following parties on April 6, 1992:

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