

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
ROOM 211  
FEDERAL BUILDING AND U.S. POST OFFICE  
225 SOUTH PIERRE STREET  
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT  
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560  
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September 3, 2003

Robert M. Nash, Esq.  
Counsel Midland Mortgage Company  
Post Office Box 1552  
Rapid City, South Dakota 57709

Ms. Suzanne M. DeMore  
The French Door  
1821 South Minnesota Avenue  
Sioux Falls, South Dakota 57105

Subject: *In re Michael D. and JoEllen S. Purdy,*  
Chapter 7; Bankr. No. 03-40883

Dear Mr. Nash and Ms. DeMore:

The matter before the Court is the Motion for Relief From the Automatic Stay and Motion to Compel Abandonment filed by Midland Mortgage Company and the objection to the Motion filed by Suzanne M. DeMore for The French Door. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying Order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014.<sup>1</sup> As discussed below, the Motion will be granted.

*Summary.* Michael D. and JoEllen S. Purdy ("Debtors") filed a Chapter 7 petition in bankruptcy on July 18, 2003. In their schedule of assets, Debtors stated they owned a home in Sioux Falls. Debtors valued the home at \$140,000, and they stated two creditors held mortgages against the property: First Premier Bank with a mortgage of \$34,700 from March 1, 2002, and Midland Mortgage Company with a mortgage of \$129,912.71 from October 1, 2002. Based on Debtors' valuation of the home, there was no equity in the home above these secured claims. Debtors did not declare any homestead exemption in the property and in their Statement of Intention, they indicated that they intended to surrender the house to the two mortgage holders.

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<sup>1</sup> Since no facts were in dispute, an evidentiary hearing was not required.

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On August 4, 2003, Midland Mortgage Company filed a motion asking that it be permitted to realize on its mortgage outside the bankruptcy process and also that the Chapter 7 case trustee be compelled to abandon the house from the bankruptcy estate. Neither the case trustee nor Debtors objected to the Motion, most likely because there was no equity above the mortgages that could be liquidated with the proceeds used to pay unsecured creditors. The French Door, which Debtors listed as an unsecured creditor holding a claim for \$8,000 for a nonsufficient funds check, objected to Midland's Mortgage based on the nature of its claim.

*Discussion.* Under § 362(d) of the Bankruptcy Code, a creditor may seek relief from the automatic stay. When this relief is granted, it permits the creditor to utilize any security agreements on collateral and appropriate nonbankruptcy law to recover on its debt. As dictated by § 363(d), this relief is granted for cause, including a lack of adequate protection for the creditor's interest in any collateral or when the debtor does not have equity in the subject property and the property is not needed to help the debtor reorganize his debts.

Under § 554, a creditor may ask that the case trustee be compelled to abandon certain property, usually the creditor's collateral, from the bankruptcy estate. If this request is granted, the subject property is removed from the controls of the Bankruptcy Court and the case trustee. The request may be granted if the subject property is burdensome to the estate or if is of inconsequential value and benefit to the bankruptcy estate. 11 U.S.C. § 554(a).

In this case, Midland Mortgage Company has asked the Court both to give it relief from the automatic stay and to compel the case trustee to abandon the subject house from the bankruptcy estate. The present record before the Court shows that there is no equity in the house. In other words, the two mortgages on the house are greater than the value of the house. Further, no one is making the regular mortgage payments and there is no evidence that Debtors or the case trustee are maintaining insurance on the house. That means that Midland Mortgage Company's secured interest in the house is not being adequately protected. Since there is no equity in the house, it also means that the case trustee is unable to sell the house, pay the two secured creditors on their mortgages, and have any funds leftover to pay unsecured creditors a portion of their claims. Thus, the house has no value to the bankruptcy estate.

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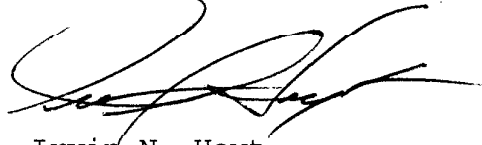
Based on these findings, it is clear that Midland Mortgage Company is entitled to relief from the automatic stay and that the trustee should abandon the property from the bankruptcy estate. An appropriate order will be entered.

If The French Door feels that its claim was the product of fraud, it may seek to have its claim excepted from Debtors' general discharge of debts. The deadline for seeking that relief is October 14, 2003. A nondischargeability action is a fairly complicated procedure. Consequently, The French Door is urged to retain a bankruptcy attorney for guidance if that action is contemplated. However, even if The French Door's debt arose from fraud, it does not impact the relief from stay and abandonment of the Sioux Falls house sought by Midland Mortgage Company.

Finally, if The French Door holds a judgment against Debtors, that judgment, if it attached to any equity in the house, will be dealt with by the state court when Midland Mortgage Company forecloses on its mortgage. The possible existence of such a judgment, however, also does not impact the relief from stay and abandonment of the Sioux Falls house sought by Midland Mortgage Company.

An appropriate order will be entered.

Sincerely,




Irvin N. Hoyt  
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve parties in interest)

I hereby certify that a copy of this document was electronically transmitted, mailed, hand delivered or faxed this date to the parties on the attached service list.

SEP 04 2003

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court, District of South Dakota  
By 

NOTICE OF ENTRY  
Under F.R.Bankr.P. 9022(a)  
Entered

SEP 04 2003

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court  
District of South Dakota

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