

**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**

**FAX (605) 224-9020**

July 10, 1989

Curt Ewinger, Esq.  
Post Office Box 96  
Aberdeen, South Dakota 57402

Carlyle Richards, Esq.  
222 Midwest Capitol Building  
Aberdeen, South Dakota 57401

Re: Philip and Rose Wolff  
Chapter 12 89-10011

Dear Counsel:

By stipulation, Curt Ewinger, counsel for Wolffs, and Carlyle Richards, counsel for Eureka State Bank, have asked this Court to decide whether the Bank is collaterally estopped from challenging the valuation of its collateral in Wolff's Chapter 12 plan.

The facts are undisputed. Bank filed a foreclosure action against Wolffs in state court and submitted an affidavit from a Bank officer, who stated the value of the Bank's collateral was \$100,000.00. In granting partial summary judgment for the Bank, the state court judge also valued Bank's collateral at \$100,000.00. Prior to the Sheriff's sale, Wolffs sought protection under Chapter 12 of the Bankruptcy Code. Wolffs filed their Chapter 12 plan, which set the Bank's secured claim at \$100,000.00. Bank now objects, claiming that their secured claim should be set in excess of \$130,000.00. Wolffs submit that the Bank is collaterally estopped from seeking the higher valuation.

Under *In re Gonsor*, 95 B.R. 123 (Bkrtcy. D.S.D. 1988), relitigation of a factual issue may be precluded if: (1) the issues in both proceedings were identical, (2) the issue in the prior proceeding was actually litigated and actually decided, (3) there was a full and fair opportunity for litigation in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits. The Court finds that the factors set forth in Gonsor have been met in this case. The primary question before the state court judge in the foreclosure action was the value of the Bank's collateral. After hearing all of the evidence, the state court judge entered a

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partial summary judgment, setting the value of the collateral at \$100,000.00. Bank has not submitted any evidence of a substantial change in the value of the collateral subsequent to the entry of the state court judgment; this Court need not go behind the face of that judgment to redetermine the value of the collateral. As this issue has been previously decided by another court. with competent jurisdiction, and absent any evidence of a substantial change in the value of the collateral, such determination is binding upon this Court. Montana v. United States, 440 U.S. 147, 99 S.Ct. 97, 59 L.Ed.2d 210 (1979). Eureka State Bank's objection is therefore overruled.

The Court notes that this issue revolves around undisputed facts. This decision represents the Court's conclusions of law in this proceeding. This matter constitutes a core proceeding under 28 U.S.C. 157(b). The Court will enter an order overruling Eureka State Bank's objection.

Very truly yours,

Irvin N. Hoyt  
Chief Bankruptcy Judge

INH/sh  
CC: Bankruptcy Clerk

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

IN RE: ) CASE NO.89-10011  
)  
PHILIP GEORGE WOLFF and ) CHAPTER 12  
ROSE WOLFF )  
)  
Debtors. ) ORDER OVERRULING  
) EUREKA STATE BANK'S  
) OBJECTION TO THE  
) PROPOSED CHAPTER 12 PLAN

Pursuant to the letter opinion filed in this matter and executed this same date,

IT IS HEREBY ORDERED that the objection of the Eureka State Bank to the valuation of their collateral as provided in debtors' Chapter 12 plan is hereby overruled.

Dated this 10th day of July, 1989.

BY THE COURT:

Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By: \_\_\_\_\_  
Deputy

(SEAL)