

Filed
January 31, 1990
William F. Clayton
Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

VJR

EUREKA STATE BANK,

Appellant,

vs.

PHILIP GEORGE WOLFF and
ROSE WOLFF

Appellees.

CIV. 89-1032
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O R D E R

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MEMORANDUM ORDER

This appeal follows the Bankruptcy Court's order of July 7, 1989, overruling appellant Eureka State Bank's (Bank) objection to the Chapter 12 Plan proposed by debtors/appellees Philip and Rose Wolff (Wolffs). Bank objected to the valuation of its collateral and security advanced by Wolffs. The Bankruptcy Court reviewed the undisputed facts and concluded that the doctrine of collateral estoppel precludes Bank from relitigating the value of the secured real estate. This Court granted Bank leave to appeal pursuant to Bankruptcy Rule 8001(b) and has jurisdiction to hear this appeal under 28 U.S.C. § 158(a).

FACTS AND PROCEDURE

Although the facts surrounding this controversy were previously set forth in the Bankruptcy Court's opinion letter filed July 12, 1989, a number of those facts merit repetition. On June 1, 1988, Bank commenced an action in the Fifth Judicial Circuit Court, for the State of South Dakota, to foreclose its real estate mortgage securing a promissory note given it by Wolffs in the

amount of \$120,463.50. Bank subsequently moved for partial summary judgment, such motion accompanied by the affidavit of Richard A. Larson, Executive Vice President of Eureka State Bank. In his affidavit, Larson opined that the "fair and reasonable market value of the real estate and improvements securing Plaintiff's promissory note" was \$100,000.00. The Wolffs, proceeding pro se, did not object to this valuation. On September 21, 1988, the Honorable Eugene E. Dobberpuhl granted Bank's motion for partial summary judgment and therein determined that "the fair and reasonable value of said real estate securing Plaintiff's lien" was, in fact, \$100,000.00.¹

To suspend an upcoming sheriff's sale on January 13, 1989, Wolffs filed a Chapter 12 petition on January 10, 1989, and obtained an order for relief from sale. The Wolffs later submitted

¹Specifically, Judge Dobberpuhl's order granting partial summary judgment provided in ¶ 4:

4. That if the proceeds of said sale be insufficient to pay the amount so adjudged to be due to the Plaintiff [\$127,077.08] with interest and costs and expenses as herein decreed, the said Sheriff shall specify the amount of such deficiency in his report of sale, and Plaintiff shall be entitled to a deficiency judgment as against Defendants, Philip G. Wolff and Rose Wolff, for such sum, provided, however, that such deficiency judgment shall in no case exceed the difference between the amount of Plaintiff's judgment plus interests and costs and the fair and reasonable value of said real estate securing Plaintiff's lien which is determined by the Court to be \$100,000.00.

Judge Dobberpuhl's determination of the fair market value of the real estate follows the strictures of SDCL §§ 21-47-15 and 21-47-16 (1960) (amended in 1989), in effect at the time of the entry of the order. These statutes require the mortgagee to prove to the court the fair and reasonable value of the mortgaged premises if the mortgagee indicates that it will bid less than the full amount of the judgment debt. The mortgagee then must bid at least this amount at sale.

their reorganization plan which allowed a secured claim to Bank in the amount of \$100,000.00, relying on the value of the mortgaged real estate as determined by Judge Dobberpuhl. Bank objected to this amount, offering to show that a subsequent formal appraisal valued the subject real estate at \$134,454.00.

Pursuant to a stipulation between the parties, simultaneous briefs were filed with the Bankruptcy Court on the issue whether the state court judgment collaterally estops Bank from claiming a higher value on the mortgaged real estate for purposes of determining its secured claim in the Wolffs' bankruptcy reorganization. The Bankruptcy Court, relying on In re Gonsor, 95 B.R. 123 (Bkrtcy. D.S.D. 1988), concluded that Bank was precluded from relitigating the value of its collateral, stating that:

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. (Citations omitted.)

Having reviewed the file and considered the arguments and authority in support, it is the conclusion of this Court that the decision of the Bankruptcy Court should be, and is, Affirmed.

DISCUSSION

The United States Supreme Court, in Montana v. United States, 440 U.S. 147, 153 (1979), observed that "[u]nder collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving

a party to the prior litigation." Collateral estoppel bars re-litigation of an issue decided in a prior lawsuit if the following limitations are satisfied:

1. The issue is identical to one presented in the prior adjudication;
2. The prior adjudication resulted in a final judgment on the merits;
3. The estopped party was a party or in privity with a party in the prior adjudication; and
4. The estopped party had a full and fair opportunity to litigate the issue in the prior suit.

United States v. Rosenberger, 872 F.2d 240, 242 (8th Cir. 1989);
Swapshire v. Baer, 865 F.2d 948, 951 (8th Cir. 1989).

There is little question that these criteria have been met. First, determining the amount of Bank's secured claim, i.e., the fair and reasonable value of the mortgaged real estate, at a valuation hearing, pursuant to 11 U.S.C. § 1225(a)(5)(B)(ii), is an inquiry identical to that conducted by the circuit court under SDCL § 21-47-16. Although Bank correctly observes that the purposes behind the two inquiries are different,² the fact remains

²Bank argues that SDCL § 21-47-16 is intended to "insure the mortgagor against any bid below market value." Appellant's Brief, p. 9. This valuation purpose is, in the opinion of Bank, "vastly different" from that found in a Chapter 12 proceeding. Id. Bank avers that the value contemplated by § 1225(a)(5)(B)(ii) is designed to determine the amount of a secured creditor's claim.

This dichotomy also brings to light the differing motivations of a mortgagee/secured creditor winding its way through the two proceedings. In the state foreclosure action, the mortgagee seeks to de-value the real estate so as to bid the mortgaged property and acquire a deficiency judgment against the mortgagor. Conversely, this same mortgagee asserts an inflated value for its collateral when it wears the hat of a secured creditor in bankruptcy; attempting to increase the allowed amount of its claim. It is this about face that persuades this Court to rule in favor of the Wolffs.

that in each instance the court is charged with finding the fair market value of the disputed property. Moreover, this Court is persuaded that the Bankruptcy Court, having reviewed the briefs submitted to it on the collateral estoppel issue, accepted the debtors' assertions that "[t]he facts that gave rise to the valuation in the state court foreclosure proceeding are still the same facts that are present today." Debtors' Brief Pursuant to Stipulation, p. 9. Consequently, the valuation established in the foreclosure action had not substantially changed by the effective date of the plan. 11 U.S.C. § 1225(a)(5)(B)(ii). Thus the common issue in the state foreclosure action and the bankruptcy proceeding is the valuation of the secured real estate.

The second factor, whether a final judgment on the merits was rendered in the state court, can also be resolved in Wolffs' favor. Judge Dopperpuhl's order granting partial summary judgment to Bank was specifically decreed "a final adjudication of the issues raised by Plaintiff's Complaint and Defendants' Answer pursuant to SDCL 15-6-54(b)."

As Bank was the plaintiff in the state foreclosure suit, the third prong is satisfied by default. Bank was obviously a party to the state proceeding and vigorously asserted its rights at that time.

Finally, the Court directs its inquiry to whether Bank had an opportunity in state court to fully and fairly litigate the question of valuation. When, as was the case here, one party's proffered valuation is unchallenged and then accepted by the court, it is untenable to entertain that party's contention that the

valuation was not adequately presented to the court. Quite simply, Bank is arguing that it got by too easily.

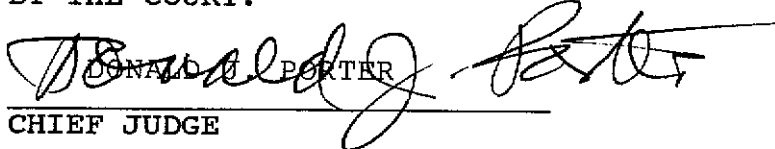
The Court also is cognizant of the fact that debtors appeared pro se in state court, a fact of which Bank was undoubtedly aware. Bank now takes the illogical position that because Wolffs improperly responded to its motion for partial summary judgment, the issue was not actually litigated and actually decided by the circuit court. Suffice it to say that this argument is exclusively that of the debtors and is distinguishable from the authorities cited by Bank.

In concluding this memorandum, Bank has not persuaded the Court that the particular circumstances of this case justify an exception to the general principles of estoppel as enunciated in Montana v. United States, 440 U.S. at 162. The Court has no reason to "doubt the quality, extensiveness, or fairness of procedures followed in prior litigations." Id. at 163, n. 11. Accordingly, it is

ORDERED that the order of the Bankruptcy Court overruling appellant's objection to the valuation of its collateral as provided in the Chapter 12 Plan proposed by appellees is Affirmed.

Dated January 31, 1990.

BY THE COURT:


DONALD J. PORTER
CHIEF JUDGE

ATTEST:
WILLIAM F. CLAYTON, CLERK
BY: VICKY J. REINHARD
Deputy
(Seal of Court)