

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

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DISTRICT OF NEBRASKA
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William L. Olson, Clerk
By _____ Deput

IN THE MATTER OF)
)
 EDWARD J. BRUHN and)
 SARA J. BRUHN,)
)
 Debtors.)
)
 EDWARD J. BRUHN, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 WESTERN STATE BANK, et al.,)
)
 Defendants.)

CV. 87-0-264

BK. 85-2966
A. 86-119

ORDER

This matter is before the Court on Edward and Sara Bruhn's appeal of the Bankruptcy Court's order of March 23, 1987. In an adversary proceeding on a fraudulent conveyance action, the Bankruptcy Court held there had been no fraudulent transfer under 11 U.S.C. § 548.^{1/} The action involves the purchase of certain improved

^{1/} That statute provides in pertinent part:

(a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily --

* * *

(2)(A) received less than a reasonably equivalent value in exchange for such transfer or obligation;
and
(B)(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

11 U.S.C. § 548.

property by Western State Bank. Debtors contend that the transfer should be set aside because debtors did not receive reasonably equivalent value in exchange for the transfer.

This Court may review the Bankruptcy Court's legal conclusions *de novo* but the Bankruptcy Court's findings of fact may not be set aside unless clearly erroneous. Bankr.R. 8013, *Wegner v. Grunewaldt*, 821 F.2d 1317, 1320 (8th Cir. 1987); *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985). This Court has carefully reviewed the record on appeal, including the transcript of proceedings, and finds that the Bankruptcy Court should be affirmed.

At issue is whether or not the Bankruptcy Court correctly found the debtors had received "reasonably equivalent value" for the property under 11 U.S.C. § 548. "Reasonably equivalent value" for purposes of 11 U.S.C. § 548(a)(2), is not defined in the Bankruptcy Code. "[T]he question of how to calculate it has been the subject of much debate in the bankruptcy courts." *In re Kjeldahl*, 52 B.R. 916, 929 (Bankr.Minn. 1985). No precise formula for determining reasonable equivalent value has been adopted in the Eighth Circuit. See *In re Hulm*, 785 F.2d 323 (8th Cir.), cert. denied, sub nom. *First Federal Savings & Loan Assoc. v. Hulm*, 469 U.S. 990 (1984). "Exactly what Congress had in mind by using this language, 'reasonably equivalent value,' in this section is not readily apparent However, what it does mean to this Court is not an exact exchange of dollar of debt for dollar of value, but something in between that reasonable minds can look at and say 'that's close,' 'that's all right,' 'that's acceptable,' or 'that's fair.'" *In re Kjeldahl*, at 933-34.

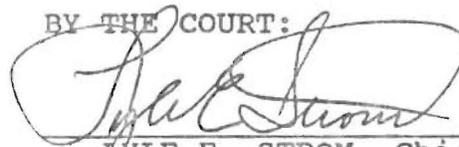
In the present case, competent evidence was adduced at trial showing that the value of the property on the date of the transfer was \$35,000 to \$40,000. The debtors received \$30,000 for the property. The Bankruptcy Court found: "[t]he real estate was sold at a trust deed sale -- not under the optimum conditions of a normal real estate transaction. The house was in such condition that it could not be occupied without considerable work and expense. Under those circumstances, this Court does not find it unreasonable that the debtors received \$30,000 for the property, which sum is at least eighty-five per cent of its minimum fair market value." This Court can find no clear error in the Bankruptcy Court's finding that the debtors received a reasonably equivalent value for their interest in the property.

"Proof under the Code § 548 requires plaintiffs' carrying of the burden that the transferee received less than a reasonably equivalent value in exchange for the transfer." *Kjeldahl*, at 934. Clearly, plaintiffs herein did not carry that burden. The Bankruptcy Court conducted a full evidentiary hearing in accordance with *In re Hulm*, 738 F.2d at 327. This Court finds no error by the Bankruptcy Court. Accordingly,

IT IS HEREBY ORDERED that the Bankruptcy Court's order of March 23, 1987, is affirmed.

DATED this 24th day of November, 1987.

BY THE COURT:



LYLE E. STROM, Chief Judge
United States District Court