

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
JAMES H. SMITH and )  
PAULINE B. SMITH, ) CASE NO. BK95-81883  
 )  
 )  
DEBTOR ) CH. 7

MEMORANDUM

Hearing was held on April 15, 1996, on Objection to Claim and Resistance by Security Pacific Financial Services, Inc. Appearances: Richard Lydick for the debtors and Lisa Faisant for Security Pacific Financial Services, Inc. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b) (2) (B).

**Background**

The debtors, James H. and Pauline B. Smith, filed a petition for Chapter 7 relief under the Bankruptcy Code on November 16, 1995. A creditor, Security Pacific Financial Services (Security Pacific), filed a proof of claim to assert a secured claim against the bankruptcy estate in the amount of \$4,544.18. The debt to Security Pacific is secured by a deed of trust in real estate. The debtors have objected to the claim of Security Pacific.

The debtors only contest the portion of the claim which represents insurance premiums added to the initial loan for credit life and credit disability insurance and prepetition interest on the premiums at 18.21%. The debtors allege that the credit insurance contracts are null and void for lack of delivery under Nebraska law. They ask that Security Pacific's secured claim be reduced by the amount of the total premiums (\$830.89), and prepetition interest (\$412.09).

Security Pacific has resisted the debtors' motion. Security Pacific takes the position that failure to deliver the credit life or disability policy does not void a credit insurance policy under Nebraska law. In addition, Security Pacific notes that one of the debtors, Pauline B. Smith, presented a claim for disability insurance coverage in connection with the loan from Security Pacific and that General Fidelity Life Insurance Company, a subsidiary of Security Pacific's parent corporation, paid Security

Pacific the amount of \$822.28 for 144 days of disability coverage, which was credited against the balance of the debtors' loan. Security Pacific argues that the debtors should not be entitled to void a contract from which they have received a benefit.

### Discussion and Decision

To support its argument that the insurance is void for lack of delivery, the debtor points to Section 44-1707 of the Nebraska Revised Statutes, which provides:

- (1) All credit life insurance and credit accident and health insurance sold shall be evidenced by an individual policy, ..., which individual policy ... *shall be delivered to the debtor.*

NEB. REV. STAT. § 44-1707 (Reissue 1993) (emphasis added).

The primary case on Section 44-1707 is Elm Creek State Bank v. Johnson, 195 Neb. 131, 236 N.W.2d 838 (1975). In Elm Creek, the Nebraska Supreme Court agreed that Section 44-1707 required delivery of the credit insurance contract to the debtor, but found that the statute is silent concerning the liability of the creditor to the debtor if delivery is not made. Id. at 134. The court concluded that "[p]resumably [the delivery requirement was] enacted to give the borrower notice." Id.

The statute does not give a private cause of action to an insured if the delivery requirements are not met. Instead, at § 44-1713, the legislature provided that if any part of Section 1701-1713 was violated, the Director of Insurance could punish the violator and/or criminal actions could be brought. There is no hint in the statute that failure to deliver a policy should void it, or that the insured should be reimbursed premiums and interest paid.

In this case, debtors had notice of and have received the benefit of the policy. The promissory note specifically enumerates the indebtedness added to the total debt for the credit life and the credit disability insurance premiums, and the deed of trust reflects that the total amount of debt to be secured, including the premium payments. In addition, the Schedule/Insurance Disclosure Contract sets forth the specific benefits from the premiums and was signed by both debtors. Clearly, the debtors had notice of the insurance contract since the inception of the promissory note.

Moreover, one of the debtors, Pauline Smith, filed a claim form, which was processed and paid, for a disability. The total amount of benefits credited towards the outstanding debt under the promissory note matches the amount of monthly benefits set forth in the contract (144 days/30 days [approximation] = 4.8 months x

171.00 (contracted benefit per month) = \$ 820.80).

The debtors' objection to the claim of Security Pacific is denied.

Separate journal entry to be filed.

DATED: April 21, 2006

BY THE COURT:

Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

LYDICK, RICHARD                    333-9256  
MYERS, RICHARD                    493-7005

Copies mailed by the Court to:

Lisa Faisant, 11605 Arbor St., Omaha, NE 68144  
United States Trustee

Movant (\*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

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PAULINE B. SMITH, )  
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DEBTOR(S) )  
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)  
Plaintiff(s) )  
vs. )  
)  
)  
Defendant(s) )

CASE NO. BK95-81883  
A  
CH. 7  
Filing No. 7, 9  
JOURNAL ENTRY  
DATE: June 5, 1996  
HEARING DATE: April 15,  
1996

Before a United States Bankruptcy Judge for the District of Nebraska regarding Objection to Claim; Resistance by Security Pacific Financial Services, Inc.

APPEARANCES

Richard Lydick, Attorney for debtors  
Lisa Faisant, Attorney for Security Pacific Financial Services

IT IS ORDERED:

The debtors' objection to the claim of Security Pacific is denied. See memorandum entered this date.

BY THE COURT:

Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

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