

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
 RAYMOND FRANZEN and ) CASE NO. BK83-2086  
 SONJA FRANZEN, ) A 88-175  
 ) Chapter 11  
 DEBTORS )  
 )  
 RAYMOND FRANZEN and SONJA FRANZEN, )  
 )  
 Plaintiffs )  
 )  
 vs. )  
 )  
 THE FEDERAL LAND BANK OF OMAHA, )  
 )  
 Defendant )

MEMORANDUM

Debtors have sued Federal Land Bank (FLB) and others for damages allegedly incurred as a result of a violation of the automatic stay of 11 U.S.C. § 362 and the Agriculture Credit Act of 1987. FLB has moved to dismiss on the grounds that relief from the stay was properly granted and all acts by FLB to foreclose the mortgage in state court took place prior to the effective date of the Agriculture Credit Act of January 6, 1988.

At the hearing on the motion to dismiss, debtors argued that although they had consented to relief being granted by the bankruptcy judge, they had not understood that FLB would then foreclose in state court and eventually sell their property, according to debtors to their detriment and to the detriment of all other creditors. Debtors argue that a grant of relief from the automatic stay does not give the creditor the right to obtain a state court judgment nor does it permit a sale of the property. According to debtors, even after relief from the stay is granted, the property remains property of the estate and the stay remains in place pursuant to 11 U.S.C. § 362(c). In addition, debtors argue that relief was not properly granted because FLB could not have succeeded under either Section 362(d)(1) or (d)(2) either on the facts or the law.

The court has reviewed the materials filed by debtors entitled "Response to Defendant's Motion to Dismiss" filed September 26, 1988, at Filing Number 25. The "Response" contains further written argument and citations of authority.

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Judith M. Napier  
Clerk, Bankruptcy Court  
By *[Signature]* Deputy

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Debtors have no standing to bring an action for violation of the automatic stay. Debtors and FLB stipulated to relief from the stay several years ago and the bankruptcy judge, by journal entry, approved such stipulation. Debtors did not appeal the order granting relief and it thus became a final order. Relief was granted. If such relief was improper, the method to be used to challenge such an order was by appeal, not by a lawsuit several years later.

The final order granting relief from stay (or more specifically sustaining the motion for relief as filed) removed the property from the protection of the automatic stay and allowed FLB to pursue its rights against the property in state court.

There is no argument that all creditors with a lien or other claimed interest in the real property were made parties to the foreclosure case. If, after completion of the foreclosure case and the running of all state appeal periods or "stay" periods, a sale had been held and proceeds of the sale had exceeded all liens, the balance of the proceeds, still being "property of the estate," would have reverted to debtor-in-possession.

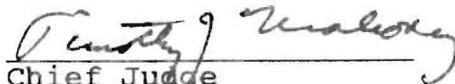
In conclusion, debtors' complaint is grounded upon a misunderstanding of Section 362 and debtors' failure to challenge the order sustaining the motion for relief from the Section 362 automatic stay. That order became final and all foreclosure actions were completed, including sale of the property, before the effective date of the Agriculture Credit Act of 1987. Since the FLB actions have not taken place since January 6, 1988, the effective date of the Act, FLB cannot have violated such Act as alleged in the complaint.

The motion to dismiss is sustained.

Separate journal entry to be filed.

DATED: October 7, 1988.

BY THE COURT:

  
Chief Judge