

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
 STANLEY AND ROSA SLANGAL, ) CASE NO. BK87-1982  
 )  
 DEBTORS ) CH. 12

MEMORANDUM

Hearing on the value of real property of the debtors was held March 8, 1988.

APPEARANCES

David Hahn, Attorney for debtors, 245 So. 84th St., #212, Lincoln, NE 68510  
James Frost, Attorney for FDIC, 200 Historic Burlington Place, 10th & Farnam - On the Mall, Omaha, NE 68102  
Laurene M. Barrett, Attorney for FDIC, 218 South 108th Ave., Omaha, NE 68154

Facts, Legal Conclusions, Discussion

Debtors own a fractional interest in land with improvements in which the FDIC has a lien. At trial on the valuation of the property, debtor presented evidence that property owned by co-tenants must be discounted when valuing the fractional share of the debtor to reflect the cost of partition and the negative impact, in this case, of the "notoriety" of the debtors vis a vis the FDIC. The FDIC presented evidence that the value of the whole property should be determined and then the value of the interest of the debtors should simply be the pro rata share equivalent to the fractional interest of the debtors with no discount attributable to the fractional ownership or the "notoriety" of the parties.

The Court, after requesting briefs and further written arguments and having received additional materials, finds the FDIC analysis appropriate. In the absence of competent evidence to the contrary, the value of a fractional interest in real estate is equal to its proportionate part of the value of the whole. There is very little authority in this area, but several cases involving valuation for federal tax purposes support this legal conclusion. The United States Board of Tax Appeals in Appeal of Clifford A. Cook, 2 B.T.A. 126 (1925) and Appeal of Adelaine McColgan, 10 B.T.A. 958 (1928) found that, without evidence of special

conditions which would reduce the value of a fractional part to less than its proportionate share of the value of the whole parcel, no such reduction would be appropriate. In the same manner, the United States District Court for the Southern District of Indiana determined that an undivided one-fourth interest entered in real property had a fair market value equal to the pro rata part of the fair market value of the total real property, without discount. Blackburn v. United States, 6 A.F.T.R. 2d 6146, 60-2 U.S.T.C. p. 11,964 (S.D. Ind. 1960). In this case, debtors' appraiser gives an opinion that a discount is appropriate, both because of the fractional interest and the notoriety of the parties. The debtors own a two-thirds interest with the remaining one-third owned by Marie Slangal, a relative of the husband debtor. Although debtors' appraiser believes a discount is necessary because of his knowledge and experience and discussion with them, he provides no factual basis for the opinion. No comparable sales of fractional interests are provided. No specific facts are presented which enable this Court to understand and appreciate the negative impact of the notoriety of the parties on any sale of the property.

Debtors have also urged the Court to find that the appraisals of the FDIC are insufficient because they do not properly value the modular home owned by debtors but located on the land in question.

The Court finds that debtors alone, and not Marie Slangal, provided funds for the purchase of the modular home and actually executed the purchase documents. The debtors should, therefore, be credited with 100 percent of the increase in value of the real estate resulting from the improvement. See generally 59 Am.Jur.2d Partition, § 244.

Finally, debtors suggest that if Marie Slangal, the co-tenant, refuses to allow sale of the real estate, without partition by a court, the cost of the partition action should be deducted in whole or in part from the fair market value of debtors' interest, to reflect the actual liquidation value of the debtors' interest. However, debtors' analysis has little support under Nebraska law. In general, the right to partition is absolute. Malcolm v. White, 210 Neb. 724, 316 N.W.2d 752 (1982). Once joint title is established, partition may be had as a matter of law. Yunham v. O'Toole, 199 Neb. 317, 258 N.W.2d 810 (1977); Neb. Rev. Stat. § 25-2170.01.

Since there is no defense to partition, attorney fees and costs are taxes in the action. Neb. Rev. Stat. § 25-21,208. Under the Nebraska statutes, such costs will either be allowed to the plaintiff, upon judgment in plaintiff's favor, Neb. Rev. Stat. § 25-1708, or in the discretion of the Court the costs may be taxed to either party. Marie Slangal has no valid reason to dispute the right of the co-tenants to voluntarily sell the property and if she does dispute it, partition may be had. If

costs are incurred in such partition action, the appropriate court could, in its discretion, assess all costs against her interest in the proceeds.

Therefore, this Court agrees with the FDIC that debtors' interest should be valued without reduction for costs of partition.

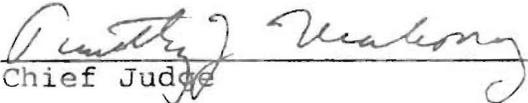
Based upon the above analysis, this Court finds that the value of the real estate only is \$98,200 for the whole parcel. Debtors' two-thirds interest equals \$65,466. The additional value to the property attributable to the modular home improvement is \$28,000, all of which is to be included in the value of debtors' interest which is the subject of the FDIC lien.

Total value of debtors' interest = \$93,466.

Separate Journal Entry to be filed.

DATED: May 10, 1988.

BY THE COURT:

  
Chief Judge