

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

ANTON THOMAS STACEY and )  
MARY FRANCES BURGR STACEY, )

DEBTORS )

CASE NO. BK81-1900

MEMORANDUM AND ORDER

Before me is the application filed by Merle Nicola, Trustee, for authority to enter into contract to sell real property. The application recites that the applicant is the trustee of the above-captioned estates, that the estate consists of certain real estate, that the trustee gave notice to all creditors of his intention to sell property free and clear of interest and, within the time specified, no objection to the proposed sale was filed. The application goes on to request approval of the purchase agreement attached. Section 363(b) provides that the trustee, "after notice and a hearing", may sell property of the estate if the sale is other than in the ordinary course of business.

After notice and a hearing is specifically defined in §102 of the Code. As used in the Code, it

"(A) means after such notice as is appropriate in particular circumstances, and such opportunity for hearing as is appropriate in the particular circumstances; but

"(B) authorizes an act without an actual hearing if such notice is given properly and if--

"(i) such a hearing is not requested timely by a party in interest; or

"(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the Court authorizes such act;"

My understanding of the foregoing provision is that trustees should give notice of their intent to do acts where the "after notice and a hearing" procedure is specified. A deadline is given creditors for objecting and, if no objection is filed, the trustee is authorized to proceed with the act. The result is

that the Court does not become involved unless there is an objection and a dispute between the trustee and a third party to be resolved.

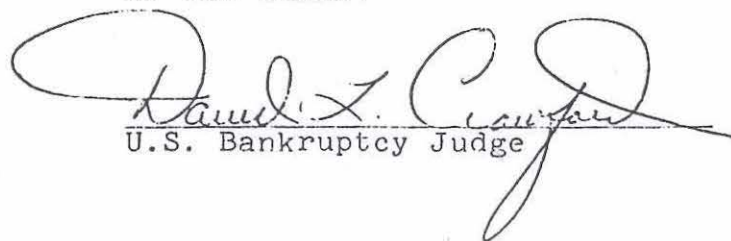
The present application recites that the appropriate procedure has been given and that no objection was filed. However, it requests that the Court become involved and approve the Purchase Agreement. This I decline to do because it is not in keeping with the spirit of the Code as I understand it. I note for example that the application recites that the trustee gave notice to creditors of his intent to sell real property free and clear of all interests. My approval of the Purchase Agreement may be construed to be an approval of the procedure followed whereas, an argument can be made that an adversary proceeding must be instituted against mortgage holders and other lien holders on the real property for a sale free and clear to be authorized. I note further that my approval of the application may be construed to be approval of the private sale of the property for \$46,500.00. I have no way of knowing whether this is the fair market value of the property.

Both of the foregoing reasons come to mind when I consider whether I should approve the application or decline to do so. Without this memorandum being in any way a judgment as to the foregoing issues, it is

ORDERED that the application of trustee for authority to enter into contract to sell real property be, and it hereby is, denied.

DATED: December 15, 1981.

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies to:

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