UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF EDWARD J. BRUHN and SARAH J. BRUHN, DEBTORS	)	CASE NO. BK85-2966 A86-119
EDWARD J. BRUHN and SARAH J. BRUHN, Plaintiff vs. WESTERN STATE BANK AND KENNETH SHREVES, TRUSTEE, Defendant	)	Affirmed 87:289

MEMORANDUM OPINION

This fraudulent conveyance action came on for hearing on December 22, 1986. Appearing on behalf of the debtors/plaintiffs, Edward J. Bruhn and Sarah J. Bruhn, was Marion F. Pruss of Thompson, Crounse, Pieper & Quinn of Omaha, Nebraska. Appearing on behalf of the defendant, Western State Bank, was Eric Kruger of Bradford & Coenen of Omaha, Nebraska.

Findings of Fact

The debtors filed for relief under 11 U.S.C. Chapter 13 on December 20, 1985. At that time, the debtors were indebted to Western State Bank (the "Bank") on three notes in the total amount of $51,500 plus interest accrued thereon, less payments made by the debtors in excess of $11,000 on said notes. One of the notes was secured by a trust deed executed on September 13, 1984, by the debtors on Lot 2, Safford Acres, situated in Douglas County, Nebraska, (the "real estate").

On December 20, 1985, the same day as the filing of the debtors' petition herein, the Bank purchased the real estate at a trust deed sale for $30,000, $29,000 of which was credited to the debtors' loan. The Bank later filed a claim for $10,805.05 remaining on the debt. On the date of the filing of their petition, the debtors were insolvent.

Evidence adduced at trial indicated that the real estate was a five-acre tract of land onto which Edward Bruhn had moved an old house. Edward Bruhn was refurbishing the house with the intent of reselling it. At the time of the trust deed sale, much of the work on the house was incomplete, and Mr. Bruhn testified that he had not intended to complete work on the house until he had a buyer for fear of vandalism. The work required for finishing included but was not limited to the following: plumbing for the kitchen and bathroom; kitchen cabinets; water holding tank; electrical work; storm windows and doors; heating and air conditioning; bathroom vanity; painting; carpeting and floor covering; and insulation.

Neither party had the real estate appraised prior to the trust deed sale. Testimony offered at trial was based on estimates of what the value of the property would have been at the time of sale. The debtors testified that they received an offer of $57,500 for the real estate prior to the trust deed sale. However, that offer was contingent upon all of the necessary work on the house being done prior to the closing. The sale apparently did not go through because of zoning problems. The Bank presented evidence from a real estate appraiser, John Giordano, that the house would have been worth $35,000 to $40,000 in its condition at the time of the sale. Mr. Giordano had seen the exterior of the house in October and December of 1985 and had talked to the realtors who had listed it. There was also evidence that a comparable property was worth $56,500. However, the comparable house was finished. Another comparable property in Waterloo, Nebraska, was appraised at $40,000. It is difficult to accept testimony about comparable worth, however, when there is no evidence that these properties required the amount of finishing work that this house did. Given the extensive amount of work that was required on the house before it could be sold, the Court accepts the Bank's appraisal and finds that the fair market value of the real estate at the time of the sale was $35,000 to $40,000.

Subsequent to the trust deed sale, the Bank spent $13,179.02 to complete the premises, and after reviewing the evidence presented at trial, the Court finds that the costs incurred by the Bank were not so high as to be considered unreasonable. Mr. Bruhn testified that he knew of sub-contractors who would have done the work for less than the Bank paid to have it done, but he never made any attempt to put those sub-contractors in contact with the Bank. On February 14, 1986, the Bank sold the real estate to John and Barbara Kinart for $57,600. The debtors have filed this action seeking to have the trust deed sale declared a fraudulent transfer under 11 U.S.C. §548, alleging that they did not receive a reasonably equivalent value in exchange for their interest in the real estate as required by In re Hulm, 738 F.2d 323 (8th Cir. 1984).

Issues

1. Did the debtors receive a reasonably equivalent value in exchange for the transfer of their interest in the real estate?

2. If the trust deed sale was a fraudulent transfer, is the Bank entitled to recover the expenses it incurred completing the work on the house?

Decision

The debtors received a reasonably equivalent value for their interest in the real estate. Therefore, there was no fraudulent transfer pursuant to Section 548. Judgment should and shall be entered for the defendant.

Discussion

11 U.S.C. §548 states in pertinent part as follows:

> "(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;"

In In Re Hulm, 738 F.2d 323 (8th Cir. 1984), the Court held that Section 548 applies to transfers of debtors' interests in property such as the transfer which occurred in the instant case. There is no question that the transfer of the debtors' interest occurred on or within one year of the date of the filing of the petition, and this Court has already found that the debtors were insolvent at the time of the transfer. Therefore, what remains is a determination of whether the debtors received a reasonably equivalent value for the transfer of their interest. Having already found as a matter of fact that the fair market value of the real estate on the date of the sale was $35,000 to $40,000, this Court must decide whether a sale price of $30,000, obviously less than the fair market value, was a reasonably equivalent value.

In Hulm, the court held that the sale price at a regularly conducted foreclosure sale cannot automatically be considered a reasonably equivalent value and that evidence must be taken. Id., at 327. Obviously, the Court must look at other factors besides the sale price itself. However, Hulm does not appear to preclude the Court from finding that the sale price provided a reasonably equivalent value so long as all of the pertinent evidence has been considered. The evidence has been so considered in the instant case. The 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 85% of its minimum fair market value. The fact that the house was sold for $57,600 two months later does not affect the Court's opinion. Given the fact that the Bank spent more than $13,000 finishing the house, on major items such as heating and air conditioning, plumbing, kitchen cabinets, painting and carpeting, it is not surprising that the value of the house was enhanced by considerably more than the cost of the repairs. Therefore, the Court concludes that $30,000 was a reasonably equivalent value and that there was no fraudulent transfer.

Once the debtors received a reasonably equivalent value for their interest in the property, and the transfer was complete, their interest was extinguished. The Bank had the right to make whatever improvements were necessary and retain the profits from the sale.

Therefore, judgment shall be entered in favor of the Bank by separate Journal Entry.

DATED: March 23, 1987.

BY THE COURT:

Timothy J. Mahoney

U.S. Bankruptcy Judge

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