

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEBRASKA

William L. Olson, Clerk

IN RE:

GERALDINE DONICE MARUSKA,

Debtor.

RECEIVED  
OCT 30 1987  
UNITED STATES BANKRUPTCY CLERK  
FOR THE DISTRICT OF NEBRASKA  
OMAHA

CV. 87-0-70

CV. 87-0-71

CV. 87-0-72

BK. 83-698

ORDER

Affirmed 88:275

This matter is before the Court on three appeals of Bankruptcy Court orders. Geraldine Donice Maruska (hereinafter debtor) first appeals the Bankruptcy Court's order dated January 7, 1987, overruling debtor's motion for contempt (CV. 87-0-70). She also appeals the Bankruptcy Court's order dated January 8, 1987, sustaining the Bank's motions for sanctions and a protective order (CV. 87-0-71); and the Bankruptcy Court's order dated January 14, 1987, sustaining the Bank's motion to dismiss (CV. 87-0-72). All appeals rise out of a common set of facts and will be consolidated for decision.

This Court may review the Bankruptcy Court's legal conclusions *de novo* but the Bankruptcy Court's findings of fact may not be set aside unless clearly erroneous. Bankr.R. 8013, *Wegner v. Grunewaldt*, 821 F.2d 1317, 1320 (8th Cir. 1987); *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985).

Pertinent facts are as follows: a Chapter 13 plan was approved by the Bankruptcy Court. The plan provided that upon default, the Bank had the right to bring an immediate foreclosure action. The debtor defaulted and the Bank foreclosed. Debtor then filed a motion to reopen the bankruptcy case which was

granted. Debtor filed several motions in bankruptcy court which the court ordered stricken as improper. Debtor was further ordered to refrain from filing any further motions to find any person in contempt or alleging any facts similar to those which were ordered stricken. Debtor also filed a motion for contempt against the Bank, alleging that it misapplied certain payments by debtor.

After a hearing on November 12, 1986, the Bankruptcy Court made the following determination: "Evidence is clear that the Bank properly applied all payments. Debtor quit making payments because she did not receive accounting. Per her plan, she was in breach and Bank had right to foreclose. Bank's actions were not improper."

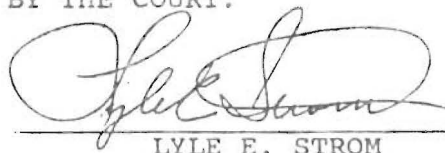
The Bank filed for a protective order, which the Court sustained. The Court then ordered the case dismissed for violation of its previous order.

On appeal, the debtor lists as issues: (1) whether the appellee properly accredited all payments to the appellant's account, and (2) whether the balloon payment was lawfully authorized under the Chapter 13 plan. Those factual issues were resolved against the debtor by the Bankruptcy Court. The only issue for resolution by this Court is whether the Bankruptcy Court's findings were clearly erroneous. The debtor has presented no evidence to show that the Bankruptcy Court's findings were clearly erroneous. This Court has reviewed the record on appeal and the Bankruptcy Court file and finds no abuse

IT IS ORDERED that the decisions of the Bankruptcy Court are hereby affirmed.

DATED this 28<sup>th</sup> day of October, 1987.

BY THE COURT:



LYLE E. STROM