IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOHN V. JURICEK and MARY ANNE JURICEK,	)	CV 86-L-477
	)	BK 86-882
Appellants,	)	
	)	
v.	)	APPEAL FROM THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEBRASKA
CRETE STATE BANK,	)	
	)	
Appellee.	)	

In this Chapter 11 proceeding the debtors, proceeding pro se, appeal the decisions of the bankruptcy court which overruled their objections to the creditor's (bank's) proof of claim. I affirm the decisions of the bankruptcy court, and, therefore, approve the bank's proof of claim.

I. BACKGROUND

The bank filed an amended proof of claim on September 3, 1986. Two claims were asserted. The first claim was based on a promissory note secured by a first real estate mortgage. The second claim was based on a note secured by a fifth real estate mortgage. The debtors objected to this proof of claim, and on May 12, 1987, a hearing was held. At this hearing the bankruptcy court determined that there was no fraud on the part of the bank. The court held that the bank provided full accounting of the loans and payments on the loans. Although the court determined that the bank was entitled to their claims, the court found that the bank did delay in crediting certain payments from the debtors which caused them to pay additional interest. Thus, the court ordered the bank to file an amended proof of claim with a deduction for the improperly applied interest. The bank filed such amended proof of claim on July 27, 1987. The debtors filed a motion to reconsider, but the bankruptcy court overruled the motion after determining that there was no evidence that debtors had paid the notes in question in full.

On appeal, the debtors make the following arguments: (1) the failure of the bank to file a trial brief was prejudicial to the debtors; (2) the bankruptcy court incorrectly established the secured and unsecured status of the creditor; (3) the

bankruptcy court erred in its determination of the validity of the various notes executed and delivered by the debtors to the bank; (4) the bankruptcy court improperly allowed the creditor's claim to continue to accrue interest; (5) the bankruptcy court improperly allowed a continuing claim where FmHA has satisfied the debt; and (6) the failure of the bank to furnish all of the debtors' records was prejudicial to the debtors.

II. STANDARD OF REVIEW

A bankruptcy court's conclusions of law are subject to de novo review by the district court on appeal, but Bankruptcy Proc. Rule 8013 binds the district court to a clearly-erroneous standard in reviewing findings of fact by the bankruptcy court. In re Annett Ford, Inc., 64 B.R. 946 (D. Neb. 1986). This means that unless the court is left with a firm conviction that a mistake has been committed, the findings of fact by the bankruptcy court are to be affirmed. Matter of Hansen, 60 B.R. 359 (D. Neb. 1982).

III. DISCUSSION

A. Trial Brief

The debtors claim that because the bank failed to file a brief, they were unable to properly prepare a defense. However, the debtors were not prejudiced by the failure of the bank to file a brief, and are not entitled to have the bankruptcy court's decision overturned on this ground.

The bank filed a proof of claim along with the papers and documents evidencing the debt and the security for the debt. The documents contain the debtors' signatures, and, at trial the debtors admitted signing them. According to Bankruptcy Proc. Rule 3001(g), a proof of claim executed in this manner constitutes prima facie evidence of the validity and amount of the claim. Thus, the debtors carry the burden of going forward with evidence supporting their objection to the validity or amount of the claim. This evidence must at least equal the force of the allegations of the bank's proof of claim. In re Wells, 51 B.R. 563 (D.C. Colo. 1985). Regardless of what the bank may have argued in a brief, the burden of proving that the proof of claim was invalid remained with debtors. The debtors had to come forward with their evidence; how that could have been affected by a brief submitted by the bank is not explained. The debtors have not shown in any way what they would have been able to do differently if the creditor had submitted a brief. They have not been prejudiced by the bank's failure to submit a brief.

The bankruptcy judge found that the debtors failed to meet their burden of moving forward with their evidence. I cannot say that the bankruptcy judge's findings were clearly erroneous. At the trial, and also in the brief submitted to this court, the debtors have argued that certain promissory notes are invalid because they were either forged or paid. However, the debtors presented no meaningful evidence of their own indicating that they had repaid the debts owed or that the notes were invalid. The bank, on the other hand, presented evidence accounting for all the funds advanced to the debtors and all payments made on the debts by the debtors. Most importantly, the debtors have not presented any evidence showing that they made any payments, other than as shown by the creditors, on the two notes that support the bank's proof of claim. These are the only two notes that are important to their objection to the proof of claim.

B. Secured and Unsecured Status

The debtors allege that during a hearing held on August 4, 1986, the bankruptcy court held that the bank's fifth lien on the debtors' real estate was totally unsecured for bankruptcy purposes, but, then, on July 2, 1987, ordered that "the bank is allowed a secured claim equal to the value of the collateral," and "an unsecured claim for the balance remaining beyond the value of the collateral . . ." The debtors claim that this is inconsistent. However, the debtors have misread the bankruptcy court's orders. It is clear that the bankruptcy court was considering two different liens. True, the fifth lien status would be unsecured for bankruptcy purposes due to the fact that the value of the real estate on which such lien position was held would not be sufficient to reach the claim of the fifth lien. The bankruptcy court, however, was considering the creditor's first real estate mortgage when it made its ruling on July 2, 1987. Therefore, the bankruptcy court properly determined that the first lien position held by the bank would constitute a secured claim up to the value of the collateral, and that the fifth lien position, also held by the bank, would hold an unsecured status.

The debtors have also alleged that it was bad faith for the creditor to ask the bankruptcy court to grant them an unsecured claim. However, the status of an interest as secured or unsecured does not change the claim which may be filed by a creditor. It is proper to indicate by means of a proof of claim any amount which is still owed by the debtor to the creditor. Although the secured-unsecured status will affect the outcome of a bankruptcy proceeding in regard to a particular creditor, it does not affect the amount which may be claimed by a proof of claim.

C. Validity of Notes

Debtors have attacked as invalid several notes which are payable by the debtors to the bank. It is important to note here that debtors have not specifically attacked the validity of either of the notes that the bank has relied upon in making its proof of claim. However, because the debtors allege that the bank committed some kind of fraud against them in the execution of these notes, they will be discussed here. The bankruptcy court found that there was no fraud committed by the bank. I find that these findings are not clearly erroneous. Thus, the debtors' arguments must fail.

First, the debtors claim that the bank is entitled to only one-half of its alleged claim and cite First Nat'l Bank of Tekamah, Nebraska v. Hansen, 60 B.R. 359 (D. Neb. 1982), as authority. In Hansen, however, the court found that the creditor had failed to bind the wife who held the property subject to the lien in joint-tenancy with her husband. In the present situation, both Mary Anne and John Juricek have signed the notes which the bank relies on in making its proof of claim. Both debtors are bound, and their argument fails.

The debtors argue that notes numbered 20709 and 21231 are invalid because there was no consideration given for them. This argument is without merit. The bank advanced these funds, and the debtors promised to pay. This is sufficient. The bank's liability ledger indicates that payments of these notes were properly credited on August 3, 1979.

The debtors argue that they were forced to pay note number 26099 twice because it was stamped "paid" without a reduction in the amount of the note. However, the debtors produced no evidence of double payment, and the bank's liability ledger shows that all payments and credits were properly recorded on this note. Payments of principal and interest were credited on February 18, 1981, and March 5, 1981.

The debtors' next argument concerns notes numbered 26167, 26339, 26626, and 26614. The bankruptcy judge found that the bank had unnecessarily delayed in crediting payments on these notes which resulted in additional interest being charged to the debtors. The court ordered the bank to amend its proof of claim making an adjustment for the improperly applied interest. The debtors argue that although the bank amended its proof of claim, sufficient credit was not given for overcharged interest. They argue that only one month's interest on one note was credited. The bank, however, has shown that one month's interest was reduced on each of the four notes. The total deduction amounted to $381.25.

Next, the debtors argue that note number 24339 is invalid because Mary Anne Juricek's signature on the note was forged.

The debtors claim that the forgery of the note is evidenced by the fact that on this note only her first initial "M" appears, whereas on the other notes her full first name appears. The bankruptcy judge ruled against the debtors on this issue. I cannot find that the bankruptcy judge's finding is clearly erroneous. The fact that Mrs. Juricek normally uses her full name is not convincing evidence of forgery on note 24339.

The debtors' arguments concerning notes 30416 and 31000 are confusing. Both parties agree that the notes have been paid in full. The evidence presented does not show any improper handling of these notes by the bank. Debtors argue that the bank's records do not show proper crediting on the date the note numbered 30416 was stamped "paid." However, as the bankruptcy judge correctly determined, a note stamped "paid" may simply indicate that a new note took its place. This is the case here. As indicated on the face of note number 31000, it renewed note 30416. Thus, 30416 was stamped "paid." Also, the debtors' lack of consideration argument is without merit. Consideration existed on the original note. On the renewal note, the bank in effect has extended the due date of the original note and the debtors have promised to pay. This is sufficient consideration.

In regard to notes numbered 20973 and 22121, debtors argue that the bank has committed some kind of impropriety, evidenced by the fact that note 22121, which renews 20973, is smaller in amount. The bank adequately explained the difference. Payments had been made on 20973 and new money had been advanced for the purchase of 40 head of hogs. I find that the bank has given sufficient accounting of note numbered 20973 and the renewal note numbered 22121.

Lastly, the debtors allege that note number 21366 is not their note. However, the records show that the debtors accepted the proceeds and also repaid the note. Therefore, they cannot now argue that there should have been no liability on the note.

D. Interest

The debtors argue that the bank's amended proof of claim is invalid because it indicates that interest is accruing on the secured and unsecured claims. However, as the bankruptcy court properly determined, it is allowable for interest to accrue on the bank's first secured position because the property used as security for such first position has a value greater than the amount of the first lien. See 11 U.S.C. § 506(b). The proof of claim filed by the bank indicates that the secured claim is the only claim accruing interest, not the unsecured claim.

E. FmHA Loan Guarantee

The debtors allege that it was improper for the bankruptcy court to allow the bank's claim because their liability has been satisfied by payments made by the FmHA to the bank pursuant to a loan guarantee agreement. This is simply not the case. Regardless of any amount paid or not paid to the bank on the guarantee, the debtors remain primarily liable for their debts. It is true that the bank cannot be unjustly enriched by recovering from both the FmHA and the debtors. However, any amounts recovered from the debtors will have to be reimbursed to the FmHA if the FmHA has made payment. As the bankruptcy court properly held, the debtors cannot litigate any sort of a third party claim. Also, because this concerns a third party, any letters concerning the FmHA guarantee were properly excluded as irrelevant.

F. Records

The debtors allege that not all of the records concerning their loan obligations to the bank have been produced. However, I find that all necessary documents have been produced. The bank has testified that all records have been furnished to the debtors, and the ledgers and other information produced by the bank date back to the time when the loans involved in this proof of claim were made. Any other documentation is irrelevant. The debtors claim that a note numbered 28340 has not been produced. It is clear, however, that this note is not a part of the bank's proof of claim. The debtors allege that all other records must be produced so that they can point out further discrepancies. However, with the exception of the delay in crediting certain payments, which has already been discovered by the bankruptcy court, the debtors have failed to demonstrate any discrepancies in their records thus far.

IV. CONCLUSION

The debtors have failed to produce any evidence which indicates that amounts have been paid towards the debt which supports the bank's proof of claim. Although the debtors have demonstrated their thorough review of the records evidencing the transactions made with the bank, I cannot hold that the bankruptcy court's finding that there was no fraud on the part of the bank is clearly erroneous.

The bankruptcy court's decision overruling the debtors' objection to the bank's proof of claim is affirmed.

Dated February 5, 1988.

BY THE COURT

United States District Judge