UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	CASE NO. BK78-0-1142
VERLAN RUMBAUGH,	)	
	)	MEMORANDUM OPINION
DEBTOR.	)	

This matter was heard on December 11, 1985. Appearing on behalf of Bankrupt was John H. Kellogg, Jr. of Omaha, Nebraska. Appearing on behalf of Richard Morrow, Trustee for Southwest Bank, was Michael Helms of Schmid, Ford, Mooney and Frederick of Omaha, Nebraska.

MEMORANDUM OPINION

This is a Chapter 7 case filed under the Bankruptcy Act. The bankrupt was the sole shareholder of a corporation which filed bankruptcy in 1976. He then filed in 1978. On his schedules he did not list an ownership interest in the corporation, apparently because he thought the stock was worthless or because he thought the trustee in the corporate bankruptcy was the owner of the stock. On his statement of affairs he listed an affiliation with the corporation in 1976, but did not identify that affiliation.

While the corporate bankruptcy was still pending, but after his personal case was closed, he regained possession of the corporate books and records, revived the corporation under state law, and brought an action in State Court in the name of the corporation against the Southwest Bank, an Omaha, Nebraska banking organization.

Soon after the lawsuit commenced, counsel for Southwest Bank reviewed the bankrupt's schedules, determined he had failed to list the corporate stock on the schedules, notified the trustee in the bankrupt's case of such failure, offered to do the paperwork to reopen the case in the name of the trustee, offered to purchase the unadministered stock from the trustee for $1000.00, all with the intent to purchase the stock and dismiss the lawsuit.

The former trustee agreed to the proposal, the bankruptcy case was reopened and an agreement between the Bankruptcy Trustee and a nominee of the Southwest Bank was executed for the sale of the corporate stock for $1000.00.

When the bankrupt realized what was going on, he filed a motion in the Bankruptcy Court requesting the court to disapprove the sale, among other things. After two bankruptcy hearings and appeals to the District Court, this court held an evidentiary hearing on December 11, 1985.

The bankrupt claims, first, that even if he didn't specifically schedule the corporate stock, he referred to it in his statement of affairs and the Bankruptcy Trustee questioned him at length about the stock at the first meeting of creditors. Therefore, the stock was administered and is deemed abandoned if the trustee didn't do anything with it before the case was closed. Unfortunately, however, the tape and transcript of the first meeting is lost, the trustee doesn't remember the discussion and the property was not listed on the schedules. Ownership of stock was specifically denied on the schedules.

Therefore, the stock was not administered and was not abandoned. Bankruptcy Rule 608.

Next, the bankrupt argues that the trustee had no power or standing to reopen the case. Bankruptcy Rule 515 permitted a case to be reopened by the bankrupt or other person, to administer assets. The bankrupt is incorrect.

Next, the bankrupt claims he should have received notice of reopening and notice of sale of the stock. Bankruptcy Rule 203 requires certain parties to receive notice of sales, but the debtor is not listed as one to whom notice is required.

So it seems that under the Bankruptcy Act the letter of the law was followed. However, it does not seem to this court that the spirit of the law was followed and so this court will not approve the sale. The trustee may reschedule and advertise. See Fazakerly v. E. Kahn's Sons Co., 75 F.2d 110 (5th Cir. 1935).

The trustee testified that had he been aware that the corporation was a plaintiff in a lawsuit against the bank, with a prayer of $200,000.00, he would have investigated the matter and made an independent determination of value for the stock.

The trustee in the corporate bankruptcy also testified that the proper procedure would have been to independently investigate the value of the stock.

They both agreed that perhaps other purchasers should have been sought. The corporate trustee had been informed of a possible claim against the bank, but was advised by counsel that the likelihood of success was small and therefore he declined to pursue it.

The corporation has a claim against the bank. The corporation has filed a state court lawsuit on the claim. The trustee, without investigation of the value of the claim, agreed to sell the stock of the corporation to the bank, defendant. Neither the bankrupt, nor any other entity, were offered the opportunity to purchase the stock and thereby purchase the claim against the bank.

This court has no evidence concerning the potential for success of the state court lawsuit, other than testimony by bank's lawyer that the case has no merit. Such testimony is disregarded.

CONCLUSION

1. The procedure followed in reopening the case, appointment of trustee and sale agreement were permitted under the Act and Rules.

2. The Bankruptcy Court has the right to review the sale and disapprove it if it appears that it is not in the best interest of creditors.

3. The trustee should have investigated the value of the stock and claim prior to agreeing to sale.

4. Sale not approved. Trustee may resell, with notice to debtor and creditors.

DATED: April 14, 1986.

BY THE COURT:

Timothy J. Mahoney
U.S. Bankruptcy Court

Copies mailed this day to:

Michael Helms, Attorney, 1800 1st National Center, Omaha, NE. 68102
John Kellogg, Attorney, 1258 So. 119th Court, Omaha, NE. 68144