FILED
United States Court of Appeals
Tenth Circuit

FEB 08 1989

ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In Re: RAINBOW TOWER ASSOCIATES,

Debtor,

RAINBOW TOWER ASSOCIATES, JOHN LUCIANI, BERNARD RODIN, RLT CONSTRUCTION COMPANY, and ROBERT L. THOMPSON,

Appellants,

v.

FEDERAL SAVINGS & LOAN INSURANCE CORPORATION, Receiver for Century Savings Association,

Appellee.

No. 87-1796
(D.C. No. 84-2084-S)
(D. Kansas)

ORDER AND JUDGMENT

Before **MOORE**, **TACHA**, and **BRORBY**, Circuit Judges.

This is an appeal from an order of the district court sitting in review of a bankruptcy court judgment. Among other things, appellants argue that FSLIC is an unsecured creditor not entitled to the proceeds of the sale of the estate property. This argument overlooks the fact that FSLIC's predecessor was a secured creditor entitled to payment of the <u>full</u> <u>value</u> of its secured claim as a consequence of the cramdown provisions of Chapter XII. Because the bankruptcy court set aside the plan, that value is presently undetermined.[1]

As a consequence of the sale of the secured property, one might reasonably expect that the bankruptcy court will determine the value of the FSLIC claim is equal to the sale price of the security. In any event, because the property sold was part of the bankruptcy estate, and because that estate is still pending, all issues relating to the property of the estate, including the proceeds of the sale and the claims against it, are within the exclusive jurisdiction of the bankruptcy court. In the meantime, appellants have no right whatever to continued possession of the sale proceeds, and appellants harbor those proceeds contrary to the jurisdiction of the bankruptcy court.

We have considered the remaining issues raised by the appellants and conclude they are specious. We further conclude that this appeal is frivolous. Therefore, the judgment of the district court is **AFFIRMED** substantially for the reasons set forth in the district court orders of April 3, 1987, and May 6, 1987.

It is further **ORDERED**, within ten days of the date of this order, counsel for the appellants shall show cause in writing why he should not be sanctioned in accordance with the provisions of

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[1]Appellants have misread the import of the footnote relating to FSLIC's predecessor in our prior order and judgment. We did not "misdirect[] some of [our] sympathy for the secured creditor" as offensively suggested in appellants' brief. Appellants, however, have patently misconstrued the legal consequences of the concept of "cramdown" as well as the import of the orders of the bankruptcy court. Until a new plan is confirmed or there is another disposition of FSLIC's secured claim, it should be obvious that FSLIC's claim has not been satisfied, appellants' frivolous protestation to the contrary notwithstanding.

Fed. R. App. P. 38; 28 U.S.C. § 1912, and Tenth Circuit Rule 46.6.1 for prosecuting a frivolous appeal. Braley v. Campbell, 832 F.2d 1504 (10th Cir. 1987). Counsel for the appellee shall within ten days of the date of this order file an affidavit setting forth the time and effort he spent on this appeal together with the amount of the attorney fees charged to his client.

Entered for the Court

John P. Moore
Circuit Judge