UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

JAN 14 1991

ROBERT L. HOECKER
Clerk

In re: DIXON EUGENE LAW and SANDRA KAY LAW,

Debtors,

DIXON EUGENE LAW and SANDRA KAY LAW,

Appellants,

v.

THE FARM CREDIT BANK OF WICHITA, formerly known as The Federal Land Bank of Wichita,

Appellee.

No. 90-3205
(D.C. No. 89-4118-S)
(D. Kansas)

ORDER AND JUDGMENT*

Before LOGAN, SEYMOUR, and TACHA, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Debtors Dixon Eugene Law and Sandra Kay Law appeal the United States district court's decision affirming a ruling by the bankruptcy court giving particular treatment to the excess realized in a foreclosure sale of certain real estate mortgaged to the Farm Credit Bank of Wichita. Debtors filed a Chapter 11 bankruptcy plan, confirmed in 1988. Under the plan debtors did not retain the land at issue in the instant case, which was in foreclosure, although they did retain certain property mortgaged to the Farm Credit Bank. The foreclosure sale of the tract at issue here was stayed by the filing of the bankruptcy petition. Because the sale had not been completed, debtors assigned a value to the property for purposes of determining the amount owed to the Farm Credit Bank following its sale. This value was set and approved at $65,110, leaving the Farm Credit Bank with an unsecured claim of $139,181.45.

When the original pre-bankruptcy sale was finally completed after confirmation of debtors' reorganization plan, the sale realized $22,498.58 more than the $65,110 set value. The bankruptcy court then had to determine whether debtors had any interest in this excess and how it should be used. Debtors claimed that because the approval of the sale was post-confirmation, the excess amount should be used first to reduce the unsecured debt owed to the Farm Credit Bank after confirmation (under the plan debtors were to pay only ten percent of the Farm Credit Bank's original unsecured claim), with the remainder offsetting the debt owed on the mortgaged land retained under the plan. The Farm Credit Bank argued that the order confirming debtors' Chapter 11 plan, which stated that the debtor was "making no claims as to this property [at issue in the instant proceeding] under the Confirmed Plan," R. doc. 196 p. 3, barred debtors from claiming any interest in the proceeds of the sale. The bankruptcy and district courts accepted neither of these arguments, but treated the excess as apparently a mistaken calculation in value (though it is characterized by the parties as appreciation since the filing of the debtors' bankruptcy petition in 1984, nearly four years before). To account for the mistaken calculation, these courts made an adjustment in the amount of the bank's pre-confirmation unsecured claim, reducing it by the $22,498.58. The Farm Credit Bank's ten percent post-confirmation unsecured claim apparently was then adjusted by this reduction.

The Farm Credit Bank makes two res judicata arguments on appeal. First, it argues that the waiver of claims provision in the confirmation order was res judicata and, therefore, the court should not have made any adjustment whatsoever. Second, it argues that failure of debtors to seek redemption or to raise the appreciation issue in the state court's sale approval proceedings barred debtors from bringing a subsequent action in the bankruptcy court.

We do not comment on the Farm Credit Bank's res judicata arguments. It admits that it did not appeal the adjustment order and hence is foreclosed from making these arguments. We do agree, however, that debtors were entitled to no more consideration with respect to the excess money than the bankruptcy and district courts gave them. A court handling a reorganization in bankruptcy is essentially a court of equity. In re Chicago, Milwaukee, St. Paul and Pac. R.R. Co., 891 F.2d 159, 162 (7th Cir. 1989). Although finality is paramount after the orders of confirmation and consummation have been entered, "the finality principles must be balanced against the general equitable power of the court to avoid unfairness." Id. at 162-63. In the instant case, we agree with the bankruptcy and district courts' apparent conclusion that the balance of equities favors using the excess to reduce the Farm Credit Bank's unsecured claim. Because of their disclaimer debtors should not be allowed to claim an interest in the property--just as the Farm Credit Bank would not have been entitled to argue for an increased claim against debtors had the property brought less at foreclosure than the valuation it did not object to in the bankruptcy court. Debtors had no more interest than the court gave them in reopening the issue of the proper value of the bank's unsecured claim.

Insofar as the appeal turns upon a fact determination, we do not find that the determinations of the bankruptcy and district courts were clearly erroneous. See In re Branding Iron Motel, Inc., 798 F.2d 396, 399-400 (10th Cir. 1986). We also do not find the decision to reduce the Farm Credit Bank's unsecured claim an abuse of discretion. In re Chicago, 891 F.2d at 163.

AFFIRMED.

Entered for the Court

James K. Logan
Circuit Judge