UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

LEROY NORTHWAY,
BONNIE NORTHWAY,

Debtors.

Case No. 85-1928-C

LEROY NORTHWAY,
BONNIE NORTHWAY,

Plaintiffs,

v.

MELBOURNE SAVINGS BANK,
GARY NORTHRUP, IOWA DISTRICT,
COURT FOR STORY COUNTY,
IOWA DISTRICT COURT FOR
MARSHALL COUNTY, and
JAMES ANDERSON,

Defendants.

Adv.Pro.No. 88-0055

Chapter 7

MEMORANDUM ON COMPLAINT FOR INJUNCTION (Including T.R.O.) AND CONTEMPT RUlE

On April 19, 1988 a telephonic hearing designated as a status conference on complaint for injunction (including T.R.O.) and contempt rule was held before this court in Des Moines, Iowa. Mark S. Soldat appeared on behalf of the plaintiffs (debtors), Kathy Mace Skinner appeared on behalf of defendants, Iowa District Courts for Story and Marshall County, and David L. Davitt appeared on behalf of defendant, Melbourne Savings Bank.

During the hearing, the court was made aware of a

motion to dismiss the complaint that had been filed on behalf of the Melbourne Savings Bank. The debtors were given the opportunity to respond in writing to this motion. A resistance to the motion to dismiss complaint and a request for oral argument was filed by the debtors on April 26, 1988. The arguments therein are essentially the same as those presented at the time of the April 19, 1988 hearing. Accordingly, a separate hearing on the motion to dismiss and the.resistance thereto is unnecessary.

Now, having reviewed the record and the arguments of counsel and being fully advised in the premises, the court makes the following findings of fact and conclusions of law pursuant to R. Bankr. P. 7052.

FINDINGS OF FACT

The debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code on September 5, 1985. The Melbourne Savings Bank was listed on the debtors' schedules as a secured creditor. On January 10, 1986 the debtors received a discharge and on February 7, 1986 the trustee moved to abandon the property,.held as secured collateral by the Melbourne Savings Bank which included real estate, equipment, farm products, crops, livestock, fixtures, accounts and general intangibles. No objection to the trustee's motion was received and the property was deemed abandoned on February 17, 1986.

At the time of abandonment there was pending in the Iowa District Court for Marshall County an action by the

Melbourne Bank to foreclose its mortgage and for the appointment of James Anderson as receiver. On August 7, 1986 the Marshall County court granted the Bank's receivership application. On October 20, 1986 the debtors filed an adversary complaint seeking an injunction (including a T.R.O.) against the Iowa District Court for Marshall County and James Anderson. The debtors' complaint sought to enjoin Anderson and the state court from taking the debtors' 1986 crops. On October 28, 1986 after hearing the debtors' request for a temporary restraining order former Bankruptcy Judge Richard Stageman dismissed the adversary proceeding on the ground that the bankruptcy court lacked subject matter jurisdiction over property that had been abandoned. The state court action has continued and the receiver is now trying to obtain 1986 deficiency payments and crop proceeds from the debtors.

A second mortgage foreclosure action was commenced by the Melbourne Savings Bank in the Iowa District Court for Story County on March 2, 1987. On December 8, 1987 the Story County court appointed Gary Northrup as receiver of the debtors' real estate. On March 7, 1988 the state court entered an order requiring the debtors to turn over $32,955.00 received from conservation reserve programs to the receiver. From this order the debtors have filed post-order motions and an application for interlocutory appeal to the Iowa Supreme Court. At the time of the April 19, 1988 hearing,

the application for interlocutory appeal had not been determined.

It is apparent from the documents submitted that, the debtors asserted the effect of their discharge in bankruptcy before the state courts. The debtors also vigorously argued that the crops and federal program payments associated with their real property were not subject to the security interest of the Melbourne Savings Bank or were cut off by operation of 11 U.S.C. section 552. The state courts were not persuaded by these arguments.

The debtors filed this adversary complaint on March 16, 1988 and an amended complaint on April 5, 1988 asking this court to enjoin and to find in contempt the Bank, the receivers and the state district courts. The debtors contend that the defendants' actions are in violation of the discharge injunction provided by 11 U.S.C. section 524(a) and therefore constitute contempt.

Applicable Law and Analysis

A bankruptcy court has the power to effectuate its own lawful orders and to.prevent circumscription of those orders through the broad grant of power contained in 11 U.S.C. section 105(a). Thus a bankruptcy court may take steps to protect a debtor from efforts of others to interfere with the rights provided by a discharge in bankruptcy. In re Jones, 38 B.R. 690, 691 (N.D. Ohio 1983). Pursuant to 11 U.S.C. section 524(a)(2), a discharge "operates as an

injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor." Violations of this injunction may result in punishment for civil contempt. In re Rhyne, 59 B.R. 276, 278 (Bankr. E.D. Pa. 1986). However, to prevail on an action for contempt the moving party must prove the wrongfulness of the conduct of the defendant by clear and convincing evidence. Id. at 278-79.

It is clear from the language of section 524(a)(2) that the discharge injunction operates to enjoin only the efforts to enforce a debtor's personal liability for a discharged debt. The provisions of section 524 do not negate the preservation of in rem lien rights nor prevent creditors from post-discharge enforcement of a valid lien on property of the debtor. 3 Collier on Bankruptcy § 524.01[3] at 524-16 (15th ed. 1987); In re Smiley, 26 B.R. 680, 685 (Bankr. D. Kan. 1982).[1] The actions of the defendant Bank and the appointed receivers appear to fall within the allowable enforcement of valid liens on the property of the debtors. There is no indication of a collection effort against the debtors based on their personal liability. The

[1] The permissibility of post-discharge enforcement of valid liens was reinforced by the Bankruptcy Amendments and Federal Judgeship Act of 1984 which deleted the words "or from property of the debtor" from section 524(a)(2). Even the prior use of the phrase "property of the debtor" did not mean that a creditor with a lien on property could not enforce that lien. See In re Williams, 7 B.R. 234, 239 (Bankr. M.D. Ga. 1986).

actions of the defendant state courts likewise appear to-be in accordance with the judicial function attendant to the post-discharge enforcement of liens on property.[2]

The crux of the debtors' complaint is that the state courts have improperly construed the provisions of 11 U.S.C. section 552 and have found their crops and federal program payments to be subject to the Bank's mortgage lien. When asked by this court why the debtors' complaint would not be more efficiently handled by the state appellate process, the debtors' counsel responded that state courts do not have the expertise necessary to consider the ramifications of federal bankruptcy law. This court disagrees.

The discharge of these debtors is over two years old. Since then the debtors and the Melbourne Savings Bank have been involved in extensive litigation before the state courts in'Marshall and Story Counties. Both courts have been confronted with and have ruled on the arguments now

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[2] 28 U.S.C. section 1481, which was effectively repealed by the Bankruptcy Amendments and Federal Judgeship Act of 1984 stated:

> A bankruptcy court shall have the powers of a court of equity, law, and admiralty, but may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment.

In discussing whether a bankruptcy court may enjoin another court, at least one commentator suggests that the prohibition is implicit from legislative philosophy but speculates that a bankruptcy court could make an appropriate recommendation to the federal district court pursuant to 28 U.S.C. section 157(c)(1). 1 Collier on Bankruptcy § 3.01[8][b] at 102-03 (15th ed. 1987).

presented by the debtors. This court is not willing to intervene at this stage and overturn the allegedly erroneous state court rulings. Clearly the more appropriate remedy is an appeal within the state court system.

CONCLUSION

Based on the foregoing analysis, the court hereby finds no violation of the debtors' discharge, no grounds for injunctive relief and no showing of contempt.

The debtors' complaint for injunction (including a T.R.O.) and contempt rule shall be dismissed.

An order conforming with this memorandum of decision shall be entered forthwith.

Signed and filed this 27th day of May, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE

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in-Dec. Bk.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IN RE:

LEROY NORTHWAY and
BONNIE NORTHWAY,

Debtors.

CIVIL NO. 88-1453-B

AFFIRMANCE OF
BANKRUPTCY ORDER

This bankruptcy appeal has been submitted on the record and written briefs of the parties. Neither party has requested oral argument, and I determine that oral argument is not needed because the matter is adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. Bankruptcy Rule 8012.

The bankruptcy, judge's order dismissing the complaint of debtors-plaintiffs-appellants is correct for the reasons set .forth in the bankruptcy judqe's memorandum and the reasons articulated in parts I, III and IV of the brief of defendants-appellees. The complaint failed to state a claim for which relief could be granted because the complaint does not allege that the defendants are attempting to impose personal liability on the debtors-plaintiffs. The complaint discloses that what is involved in the state court litigation is a dispute as to whether the lien applies to federal conservation reserve program payments.

The order of the bankruptcy judge from which appeal is taken is affirmed.

DATED this 27th day of December, 1988.

HAROLD D. VIETOR, Chief Judge
Southern District of Iowa