

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

KEITH LESTER O'DELL,
PATRICIA SUE O'DELL,
dba Circle Bin Sales;
fdbba Mid-Iowa Grain, Ltd.;
fdbba O'Dell Trucking;
fdbba K-0 Trucking,

Case No. 86-1165-W
Adv.Pro.No. 86-0233

Debtors.

KEITH LESTER O'DELL,
PATRICIA SUE O'DELL,

dba Circle Bin Sales;
fdbba Mid-Iowa Grain, Ltd.;
fdbba O'Dell Trucking;
fdbba K-0 Trucking,

Plaintiff,

v.

UNITED STATES OF AMERICA,
acting by and through the
Farmers Home Administration;
FEDERAL LAND BANK OF OMAHA,

Defendants.

ORDER ON MOTION TO DISMISS

On January 5, 1987 the motion to dismiss filed by the United States of America on behalf of the Farmers Home Administration (FMHA) on September 29, 1986 and the resistance filed by the debtors on December 31, 1986 came on for hearing before this court in Council Bluffs, Iowa. Assistant U.S. Attorney Linda Reade appeared on behalf of the FMHA. Deborah

L. Petersen appeared on behalf of the debtors (the plaintiffs in the above-captioned adversary proceeding). Michael J. Cunningham was also present on behalf of the Federal Land Bank of Omaha.

At the time of the hearing the debtors filed a brief in support of their resistance to the motion to dismiss. The FMHA was given a week to submit a brief in support of its motion. The FMHA did not file a brief. The matter was considered fully submitted on January 12, 1987.

The debtors filed a petition for relief under Chapter 7 on April 24, 1986. The debtors own a parcel of real estate in Taylor County, Iowa which is encumbered by mortgages held by the Federal Land Bank of Omaha and the FMHA. On August 15, 1986 the debtors filed a complaint to determine secured status pursuant to 11 U.S.C. section 506. The debtors seek a determination of the secured status of each claim and the release of liens to the extent the liens exceed the fair market value of the property.

The issue before the court is whether debtors in a Chapter 7 case have standing to pursue the valuation and lien avoidance provisions of section 506 where the debtors have no remaining equity in the subject property. In its motion to dismiss the complaint, the FMHA asserts that the debtors have no equity in the subject real estate and no financial interest in how the asset is distributed. Therefore, the FMHA contends that the debtors lack standing to seek a valuation ruling. In their resistance to the motion the debtors contend that they

have a real and substantial interest in the subject property because they desire to retain the land by paying the creditors the fair market value of the property.

The FmHA's argument that the debtors have no standing to seek a valuation ruling is predicated on the Western District of Missouri unpublished opinion in Matter of Hamilton, Case No. 83-6070-CV-SJ (D.C. N.D. Mo. 1984). The Hamilton decision in turn relied upon Kapp v. Naturelle, Inc., 611 F.2d 703, 706-707 (8th Cir. 1979) which addressed a debtor's standing to object to the allowance of a claim under section 57(d) of the Bankruptcy Act. [11 U.S.C. section 502(a)].¹ In that context the Eighth Circuit defined the term "party in interest" as one with a pecuniary interest in the estate to be distributed." Kapp v. Naturelle, Inc., 611 F.2d at 706. The court further stated that "since the bankrupt is normally insolvent, he is considered to have no interest in how his assets are distributed among his creditors and is held not to be a party in interest." Id. at 706-707. The above reasoning is not determinative of the issue facing this court.

Unlike section 502(a), section 506(d) contains no "party in interest" requirement.² Section 506(d) states:

To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void unless--

¹ 11 U.S.C. section 502(a) provides:

A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title objects.

² Prior to the Bankruptcy Amendments and Federal Judgeship Act of 1984, section 506(d) provided that a lien could not be avoided if a "party in interest [had] not requested that the court determine and allow or disallow such claim under section 502."

(1) such claim was disallowed only under section 502(b)(5) or 502(c) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

By necessity this provision only applies to property that is overencumbered by secured interests or property in which the debtor has no remaining equity. In re Gibbs, 44 B.R. 475, 478 (Bankr. Minn. 1984). Thus, use of section 506(d) will almost always be by debtors on exempt property or on property that has been abandoned by the trustee. Id. See also In re Everett, 48 B.R. 618, 620 (Bankr. E.D. Pa. 1985); In re Tanner, 14 B.R. 933 (Bankr. W.D. Pa. 1981).

WHEREFORE, without foreclosing a consideration of the real issue in this adversary proceeding -- whether the debtors may cure the defaults existing on what will be determined to be the secured claims and thereby reap the benefit of any subsequent increase in the value of the collateral, this court finds that 11 U.S.C. section 506 and the relevant legislative history contemplate that debtors may bring actions to determine secured status and to avoid liens on the unsecured portion of a particular claim.

THEREFORE, the relief sought by the FMHA in its motion to dismiss filed on September 29, 1986 is denied.

Signed and filed this 20th day of March, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE