IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

136

UNPUBLISHED OPINION

In re	)	
	)	
SNYDERVILLE PROPERTIES, INC.,	)	Case No. 84C 00673
	)	Chapter 11
Debtor.	)	

MEMORANDUM AND ORDER

This matter came on for hearing on April 26, 1984, upon the Motion, of Virginia Beach Federal Savings and Loan Association, to Determine the Applicability of the Automatic Stay, or, in the Alternative for Relief from the Automatic Stay, Dismissal, Conversion, or Order Shortening Exclusive Periods for Filing and Confirmation of Plan of Reorganization Chapter 11. Stephen Roth and Bryce Panzer, of Snow, Christensen & Martineau, Salt Lake City, Utah, appeared as counsel for Virginia Beach Federal Savings and Loan Association, and Steven W. Rupp, of McKay, Burton, Thurman & Condie, Salt Lake City, Utah, appeared as counsel for debtor.

For the reasons hereinafter stated, this court holds the automatic stay provision is applicable and otherwise denies the requested relief.

Background

The debtor filed a voluntary petition for relief under Chapter 11 on March 9, 1984. The debtor, Snyderville Properties, Inc., is a Utah corporation whose assets consist solely of notes secured by a second deed of trust on real property located at the Park West ski area in Summit County, Utah. This property is subject to a senior encumbrance. Virginia Beach Federal Savings and Loan Association ("Association") holds the senior lien--two trust deeds

executed by Jack E. and Marilyn Roberts. Mr. Roberts is the president of debtor. The Roberts defaulted on the Association note. Non-judicial foreclosure proceedings were then instituted and sale was scheduled for March 12, 1984. On March 29, 1984, the Association filed a motion to determine if the proposed sale was violative of the automatic stay provision of 11 U.S.C. Sec. 362(a). Oral argument was presented on April 26, 1984. The matter was taken under advisement. The court now renders its decision.

Discussion

The question of the applicability of the automatic stay presents two issues. First, does the lien held by the debtor on real property constitute part of the property of the debtor's estate? Second, whether a foreclosure by a senior lienholder, of property where the debtor is the junior lienholder, is violative of the automatic stay provisions of Sec. 362(a)?

Section 541(a) expansively defines property of the estate to include "all legal or equitable interest of the debtor in property." The legislative history indicates that Congress intended that Section 541 be interpreted to include a broad range of property in the estate. U. S. v. Whiting Pools, Inc., ___ U.S. ___, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983).

The estate "includes all kinds of property, both tangible and intangible and causes of action." H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 363 (1977). See generally 4 Collier on Bankruptcy ¶ 541.01, at 541-5 to -7 (15th ed. 1983).

A promissory note secured by a trust deed is a lien on real property. See 11 U.S.C. Sec. 101(28). Such a lien is clearly within the pervasive ambit of the Section 542(a) definition of property for the estate. In re Capital Mortgage and Loan Co., 35 B.R. 967 (Bky. E.D. Cal. 1983).

In determining the applicability of the automatic stay the case of In re Capital Mortgage and Loan, Inc., supra, is directly on point. In Capital Mortgage, the Department of Veteran's Affairs was the senior lienholder. The debtor, Capital Mortgage, held a junior lien in the form of a promissory note secured by a second deed of trust. The senior lienholder cancelled the loan to the third-party trustors and took a quitclaim deed from the trustors in lieu of foreclosure. The court noted that in California law, a junior lienholder enjoyed certain preforeclosure rights including the right of reinstatement. Judge Dahl held that the debtor's rights, as junior lienholder, of preforeclosure redemption or reinstatement were separate property rights belonging to the estate. Id. at 971. Thus, the running of the statutory period for exercising a junior lienholder's preforeclosure rights was tolled by the automatic stay. Id.

The California court held that the actions of the senior lienholder violated the automatic stay for two reasons. One, because the stay prohibits "the initiation of any steps, such as recording a notice of default, that would lead to foreclosure of property (the second deed of trust) of the debtor's estate." Id. at 971. Second, the senior lienholder's actions were injurious to debtor's property rights of preforeclosure reinstatement or redemption.

Following the authority of In re Capital Mortgage, this court holds that action to foreclose the debtor's property interest in the second trust deed would violate the automatic stay provision of Sec. 362(a).

Utah foreclosure law provides a three-month cure period in which a junior lienholder, as an interested party, has a right of reinstatement. U.C.A. Sec. 57-1-31 (Supp. 1983). This court has previously held the automatic stay tolls the running of the Utah statutory right of redemption. In re LaVon Dahl, Bky. No. 83M-00120 (transcript of hearing) (D. Utah, April 7, 1983).

The running of the three-month cure period is, by analogy, also tolled by the automatic stay. Capital Mortgage and Loan, Inc., (supra) at 971; In re Eagles, 26 B.R. 41, 42 (Bky. C.D. Cal. 1982); In re Bialac, 712 F.2d 426 (9th Cir. 1983). Foreclosure under the senior trust deed would be injurious to the debtor's right as junior lienholder of reinstatement and thus would be violative of the automatic stay.

In addition to requesting a determination of the applicability of the automatic stay, the Association requested various forms of alternative relief. This court finds that the evidence presented in this case is not sufficient to warrant the granting of the requested relief.

Relief from Stay

Relief from the automatic stay may be granted under 11 U.S.C. Sec. 362(d)(1) "for cause, including the lack of adequate protection of an interest in property...". In this case the Association's allowed secured claim is for $700,000. This claim is secured by a first lien, in the form of a trust deed, on real property worth $1,000,000. There is no evidence that the collateral and, therefore, the lien are in any danger of declining in value. Thus, there is ample collateral to protect the property interest of the Association. In addition, the debtor's interest in the second trust deed is clearly essential to the reorganization of the debtor. Debtor's interest in the Park West property is the sole asset of the estate. As such it is the only source, whether through reorganization or orderly liquidation, that the unsecured creditors could hope to be paid. In In re Alycan Interstate Corp., 12 B.R. 803, 809 (Bky. D. Utah 1981), this court held that a party, such as the Association, is not entitled to relief where they held a first lien on real property with ample collateral, where the property was essential to the reorganization of the Chapter 11 debtor.

Conversion or Dismissal

Under 11 U.S.C. Sec. 1112(b) in determining whether conversion or dismissal of a Chapter 11 case is unwarranted, the court must weigh the "best interest of the creditor's and the estate." The Association's interest appears to be adequately protected. the interests of the unsecured creditors on the other hand, depends heavily on the orderly administration of the sole asset of the debtor. The Association claims that reorganization of the debtor is impossible because the debtor has no power to restructure the legal relationship between itself and the defaulting Roberts. In answer, it should be noted that the concept of "reorganization" in Chapter 11 embraces both rehabilitation and liquidation. In re Koopmans, 22 B.R. 395, 398 (Bky. D. Utah 1982).

Section 1112(b) lists nine nonexclusive reasons why a Chapter 11 case may be converted to a Chapter 7 case or dismissed. The evidence is not sufficient to warrant conversion or dismissal of this case based on any of the reasons enumerated in Sec. 1112(b) or any alleged "unique circumstances" of this case.

Shortening Exclusive Periods

Section 1121(d) allows the court to extend or reduce the time periods for filing and attempted confirmation of a plan of reorganization under Chapter 11. The Association alleges that because the debtor has only one asset, that it has only one problem to deal with and the time periods should be shortened accordingly.

This court finds that although debtor has only a single asset, that the case does not appear "unusually small," H.R. Rep. No. 595, 95th Cong., 1st Sess. 406 (1977). On the contrary, the claims, secured and unsecured total nearly $900,000, there are at least seven unsecured creditors, and the debtor faces potentially complex negotiations amongst the unsecured creditors, the Association, and the owners of the property.

The automatic stay provides a "'breathing spell' for the debtor's to regroup" and the "benefits derived from the stay should not be lightly discarded." In re Alycan Interstate Corp., supra, at 806.

This court declines to shorten the important statutorily provided "breathing spell" in the absence of compelling evidence that such action is indicated.

Conclusion

The automatic stay applies to the proposed foreclosure sale. For the foregoing reasons, the Association's motion shall be otherwise denied.

IT IS, THEREFORE, ORDERED that the Association's Motion be, and hereby is, denied without prejudice.

DATED this 21 day of August, 1984.

BY THE COURT

United States Bankruptcy Judge

I certify that the following parties received a copy of the foregoing Memorandum Opinion and Order this 22nd day of August, 1984:

Bryce Panzer
SNOW, CHRISTENSEN & MARTINEAU
Hand-delivered

Stephen Rupp
McKAY, BURTON, THURMAN & CONDIE
Hand-delivered to mail box in Bankrutpcy Court

Wm H. Dwyer
Deputy Clerk