

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings
	)	Under Chapter 7
LOWELL HULEN HAGEN, JR.,	)	
	)	No. BK 83-30732
Debtor.	)	
DONALD HOAGLAND, Trustee)	)	
	)	
Plaintiff,	)	
	)	
v.	)	ADVERSARY NO.
	)	No. 86-0153
EDWARD E. STREIF, W.J.	)	
BARTA, JOHN W. LESS and	)	
RICHARD TOON,	)	
	)	
Defendants.	)	

O R D E R

This matter is before the Court on the motion to compromise filed by the Trustee and objections thereto. The Trustee filed his motion to compromise a pending adversary involving a contract for deed between the debtor and the defendants.

On or about February 4, 1981, the debtor entered into a written agreement with the defendants in which debtor was to sell to the defendants approximately 532 acres of real estate with some improvements in Clay County, Illinois.

The debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code on October 28, 1983, which proceeding was converted to one under Chapter 7 on June 12, 1984, and plaintiff was appointed Trustee.

Listed as one of the debtor's assets in his Chapter 11 schedules was a contract for deed with one of the defendants,

Edward Streif.

The terms of the contract essentially provided that the debtor was to deliver good title and that the defendants were to pay a total of \$1,037,400.00, as follows: one payment to debtor at the execution of the contract in the amount of \$180,000.00, payments to the debtor in the amount of \$40,000.00 on December 1 of each year through 1996, and yearly mortgage payments on the debtor's mortgage directly to the Federal Land Bank. A partial payment of the December 1983 payment was made. The 1984, 1985 and 1986 payments were not made to the debtor and there is no record of the 1984, 1985 and 1986 mortgage payments being made to the Federal Land Bank.

On July 2, 1985, the plaintiff filed a three count complaint seeking, alternatively, specific performance by the defendants, judgment for damages for the difference between the purchase price and the value of the real estate on the date of the breach in December 1983, or for possession of the property to the Trustee.

In determining whether a proposed compromise should be approved, four criteria are to be considered: (1) probability of success in litigation; (2) difficulties in collection; (3) complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interests of the creditors. In re Neshaminy Office Bldg. Associates, 62 B.R. 798, 803 (Bankr. E.D. Pa. 1986); In re Patel, 43 B.R. 500, 504-05 (Bankr. N.D. Ill. 1984).

This Court denied a motion for summary judgment filed by the plaintiff, thereby making the determination that some question of fact

exists.

Indeed, there exists questions of fact and law with respect to: the possibility of the debtor's forfeiture of the contract and election of remedies; the value of the property, if indeed a forfeiture has occurred; whether the debtor made fraudulent misrepresentations to induce the sale; clouds on title; the validity of and representations regarding the "due on sale" clause in the Federal Land Bank's mortgage; the parties to the contract; and some of the specific terms of the contract, to-wit: an additional sum of \$140,000.00 for equipment which was in one version of the contract, and not in another. Because of these issues of fact and law, the litigation involved in plaintiff's complaint and the issues surrounding it indicate that it would be complicated and lengthy.

Also, one of the defendants has filed a Chapter 11 proceeding which has been converted to a Chapter 7 liquidation.

The debtor attempted to convince the Court that the property is worth far more than the compromise amount, but has failed to do so, in that no independent appraisal was offered by the debtor. The mere fact that the debtor is the owner of the property and therefore can testify to what he believes the value to be is insufficient evidence for the Court to conclude that the compromise amount is not adequate.

The facts and circumstances surrounding the contract mandate approval of the compromise and it is in the best interest of the creditors to approve the compromise.

For the foregoing reasons, the debtor's objection to the Trustee's compromise is overruled, and because Independent Oil Well Cementing

Company offered no evidence to support its objection to the compromise,  
its objection is overruled.

IT IS ORDERED that the Trustee's compromise is approved.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: April 30, 1987