UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY

In the Matter of John and Cathleen Kennedy

158 B.R. 589 (Bankr. D.N.J. 1993) · No. Bankruptcy No. 92-12743 · Decided September 10, 1993

SUMMARY

The bankruptcy court considered whether individual Chapter 11 debtors could modify and repay a New Jersey residential foreclosure judgment through a Chapter 11 plan despite the creditor's objection. The court held that the Bankruptcy Code authorizes modification or satisfaction of a foreclosure judgment under 11 U.S.C. § 1123(a)(5)(E), because Chapter 11 lacks Chapter 13's home-mortgage anti-modification provision. The court further analyzed whether the proposed twenty-year repayment term satisfied the fair-and-equitable requirement of 11 U.S.C. § 1129(b).

CASE DETAILS

COURT	United States Bankruptcy Court for the District of New Jersey
WRITING FOR THE COURT	Judith H. Wizmur
JURISDICTION	New Jersey
DECIDED	September 10, 1993
DOCKET	Bankruptcy No. 92-12743
DISPOSITION	other
PROCEDURAL POSTURE	Debtors sought confirmation of a Chapter 11 plan over the objection of Dominion Bancshares Mortgage Company, the holder of a foreclosure judgment secured by the debtors' residence.
STANDARD OF REVIEW	The court applied the statutory confirmation standards under 11 U.S.C. §§ 1129(b)(1) and 1129(b)(2)(A), evaluating whether the proposed treatment of the secured creditor was fair and equitable in light of the creditor's state-law rights and the facts of the case.
PRECEDENTIAL VALUE	Published bankruptcy court opinion; persuasive authority

TOPICS

chapter 11 · foreclosure · mortgages · statutory interpretation · remedies

PRACTICE AREAS

Bankruptcy | Chapter 11 reorganization | Mortgage foreclosure | Real estate

QUESTIONS PRESENTED

1. Whether a Chapter 11 plan may satisfy or modify a New Jersey foreclosure judgment secured by the debtor's principal residence after entry of the judgment.
2. Whether the debtors' proposed twenty-year payout of the foreclosure judgment satisfied the fair-and-equitable requirement for confirmation over the objection of the impaired secured creditor under 11 U.S.C. § 1129(b).

HOLDINGS

1. A Chapter 11 plan may satisfy or modify a foreclosure judgment because 11 U.S.C. § 1123(a)(5)(E) expressly authorizes satisfaction or modification of any lien, and the Bankruptcy Code's broad definition of claim includes a foreclosure judgment or the resulting right to payment.
2. The proposed twenty-year payout of Dominion's foreclosure judgment was not fair and equitable and could not be confirmed over Dominion's objection.

KEY QUOTATIONS

> *"In concluding that there is express statutory authority for treatment of a foreclosure judgment in a Chapter 11 plan, we are mindful of the admonitions in Roach and Perry that state law rights must prevail absent specific and clearly expressed congressional intention to preempt state law."* (at 597)

> *"Where, as here, congressional intent is clear, our sole function is to enforce the statute according to its terms, i.e. to recognize that a Chapter 11 plan may satisfy or modify a foreclosure judgment."* (at 598)

> *"It is impossible to conclude that modification of a secured creditor's opportunity for immediate sale of the property to satisfy its claim from the proceeds, to require a twenty year waiting period for payment in full of the claim, is a "fair and equitable" treatment of the claim under § 1129(b)."* (at 601)

FACTUAL BACKGROUND

Dominion held a purchase-money mortgage on the debtors' New Jersey residence, which the debtors assumed when they purchased the property. After the debtors defaulted, a foreclosure judgment fixing Dominion's claim at $78,000 was entered on January 16, 1992. Before the sheriff's sale, the debtors filed Chapter 11 on June 1, 1992, proposing to pay the foreclosure judgment over twenty years at seven percent interest. The residence was valued at approximately $112,500 after estimated costs of sale, and Dominion was oversecured, but the proposed plan would shift the risks of delay, default, and possible depreciation to Dominion.

PROCEDURAL HISTORY

The debtors filed a Chapter 11 petition before the scheduled sheriff's sale of their residence. Their plan proposed to pay Dominion's $78,000 foreclosure judgment over twenty years at seven percent interest. At confirmation, the debtors established all requirements of 11 U.S.C. § 1129(a) except § 1129(a)(8), because Dominion rejected the plan. The bankruptcy court denied confirmation because the proposed treatment was not fair and equitable under § 1129(b).

DISPOSITION

other

CASES CITED

- In re Roach, 824 F.2d 1370 (3d Cir. 1987)
- First National Fidelity Corp. v. Perry, 945 F.2d 61 (3d Cir. 1991)
- Toibb v. Radloff, 501 U.S. 157 (1991)
- Pennsylvania Department of Public Welfare v. Davenport, 495 U.S. 552 (1990)
- Johnson v. Home State Bank, 501 U.S. 78 (1991)
- Midlantic National Bank v. De Seno, Civil No. 92-4902, Bankruptcy No. 92-31919, 1993 WL 513212 (D.N.J. Mar. 31, 1993)
- First Fidelity Bank v. Mulroy, 1993 WL 235622, 1993 U.S. Dist. LEXIS 8594
- In re Smith, 156 B.R. 11 (Bankr. D.N.J. 1993)
- Rake v. Wade, 508 U.S. 464 (1993)
- United States v. Ron Pair Enterprises, Inc., 489 U.S. 235 (1989)
- Younger v. Harris, 401 U.S. 37 (1971)
- Kelly v. Robinson, 479 U.S. 36 (1986)
- In re Sandy Ridge Development Corp., 881 F.2d 1346 (5th Cir. 1989)
- In re D & F Construction, Inc., 865 F.2d 673 (5th Cir. 1989)
- In re Manion, 127 B.R. 887 (Bankr. N.D. Fla. 1991)
- In re Briscoe Enterprises Ltd. II, 994 F.2d 1160 (5th Cir. 1993)
- Butner v. United States, 440 U.S. 48 (1979)
- Nobleman v. American Savings Bank, 508 U.S. 324 (1993)
- In re Stendardo, 991 F.2d 1089 (3d Cir. 1993)
- In re Brunson, 87 B.R. 304 (Bankr. D.N.J. 1988)
- Case v. Los Angeles Lumber Products Co., 308 U.S. 106 (1939)
- Consolidated Rock Products Co. v. Du Bois, 312 U.S. 510 (1941)