UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

In Re:	Case No. C-B-89-31265
	Chapter 11
CLAUDE WILLIAM SAVAGE, and WILMA JEAN SAVAGE,	
Debtors.	JUDGMENT ENTERED ON 1-12-90

ORDER GRANTING MOTION OF NED J. LYERLY AND ESTATE OF DR. THEODORE J. KOCAK FOR RELIEF FROM § 362 AUTOMATIC STAY

This matter is before the court on the motion of Ned J. Lyerly and Theodore J. Kocak, Jr., Administrator of the estate of Dr. Theodore J. Kocak, for relief from 11 U.S.C. § 362 automatic stay and the debtor's response thereto. The court has concluded that the motion of Lyerly and Kocak should be granted due to a lack of adequate protection as well as the failure of the debtor to have any equity in the property and such property not being necessary for the debtor's effective reorganization.

Facts and Contentions

On March 3, 1986, Claude and Wilma Savage, the debtors in this proceeding, purchased Lot 4, Block G at Cramer Mountain Country Club and Properties in Gaston County, North Carolina for $69,500.00. This property is located near the eighteenth green of the Cramer Mountain Country Club golf course in close proximity to the course's clubhouse, swimming pool and tennis courts, and it is approximately .75 acres in size. The debtors originally purchased the lot hoping to use the site to build a retirement home.

On or about June 4, 1987 the debtors executed and delivered to Ned J. Lyerly a promissory note and first priority deed of trust in the amount of $40,000.00 secured by the Cramer Mountain property. The debtors later executed an additional promissory note and second priority deed of trust to Lyerly on February 28, 1989 in the amount of $11,500.00 which was also secured by the Cramer Mountain lot. Finally, on this same date in February of 1989, the debtors executed a promissory note and third priority deed of trust on the same property to Dr. Theodore J. Kocak in the amount of $60,700.00.

The debtors defaulted in their performance on all three of these obligations. Thereafter, Lyerly chose to initiate foreclosure proceedings on his two deeds of trust which were to culminate in a foreclosure sale on October 16, 1989. Three days prior to such sale, the debtors filed their petition under Chapter 11, thereby staying any further actions of foreclosure. Since that time the debtors have made no further payment to either Lyerly or Kocak on their obligations. As of October 13, 1989 the outstanding balance on the Lyerly debt was $68,922.00, and while an amount was not precisely stated, the outstanding balance on the Kocak debt seems to be in excess of $60,000.00.

At the hearing, the present value of the Cramer Mountain property was in dispute. Mr. Savage testified that he had been actively marketing the property for at least six months at a price of $125,000.00. He stated that he based this price on information which suggested that nearby lots were being marketed

at the same price. Thus far, the debtor has had no offer to purchase at this price. Both sides also introduced evidence of appraisal which the court found to be credible. The appraiser testifying for Lyerly and Kocak estimated the lot's value at $82,500.00, while the appraiser for the debtors placed the value of the property at $111,500.00. Resolving all possible doubt in favor of the debtors, the court will utilize the value of $111,500.00 for the purposes of this order.

Discussion

When a bankruptcy petition is filed, 11 U.S.C. § 362(a) operates as a stay of, among other things, "any act to...enforce any lien against property of the estate." 11 U.S.C. § 362(a)(4). However,

> [o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a)...
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
>
> (2) with respect to a stay of an act against property under subsection (a)... if -
>
> (A) the debtor does not have an equity in such property; and
>
> (B) such property is not necessary to an effective reorganization.

11 U.S.C. § 362(d). In the present case, it is clear that the facts require the court to grant relief to Lyerly and Kocak, even when those facts are viewed in a light most favorable to the debtors.

The debtors do not have an equity in the Cramer Mountain property. At the present time, the sum of the outstanding balances of all the debts on the property totals at least $128,922.00. This figure does not include the full amount of the Kocak debt or any interest which has accrued since October 13, 1989. Moreover, there was also testimony at the hearing which indicated that taxes on the property have gone unpaid for the last two years. When these figures are compared to the highest appraised value of the lot, $111,500.00, there is already a deficit of $17,400.00.

The court also finds that the Cramer Mountain property is not necessary to the debtors' effective reorganization. In United Sav. Ass'n. of Texas v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 S.E.2d 740 (1988), the Supreme Court stated:

> What [§ 326(d)(2)(B)] requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means, as many lower courts...have properly said, that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.'

Id., 484 U.S. at 375 (quoting 808 F.2d 363, 370-71 (1987) (emphasis in original).

The Savages have already attempted to sell their property for at least six months. During this time, the position of the two mortgage holders has only deteriorated, and there is ample evidence before this court that this will continue to be the case. In fact, the debtors indicated at the hearing that they

would not be in a position to make any type of adequate protection payments to Lyerly and Kocak to at least preserve the status quo. For this reason, the interests of Lyerly and Kocak also lack adequate protection. Section 361 of the Code sets forth three methods which can be utilized to supply a creditor with adequate protection. These include: 1) cash payments to the creditor to offset a decrease in the value of the creditor's interest in the property; 2) providing the creditor with an additional or replacement lien on the property; and 3) other relief which would give the creditor the "indubitable equivalent" of its interest in the property. 11 U.S.C. § 361. Because they are not in a position to make periodic cash payments and the property lacks equity, the debtors are unable to avail themselves of any of the three methods in § 361.

The requirements of § 362(d) are clearly met in this case. Accordingly, this court must grant Lyerly and Kocak relief from the automatic stay.

It is therefore **ORDERED** that:

1. The motion of Ned J. Lyerly and Theodore J. Kocak, Jr., Administrator of the estate of Dr. Theodore J. Kocak be granted.

This the 11th day January, 1990.

George R Hodges

George R. Hodges
United States Bankruptcy Judge