# In the United States Bankruptcy Court

## for the Northern District of Iowa

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| ROBERT H. DEKLOTZ and FAYE E. DEKLOTZ<br>Debtors. | Bankruptcy No. L-87-00021C<br>Chapter 7 |
| ROBERT H. DEKLOTZ, ET AL.<br>Plaintiffs<br>vs.<br>PEOPLES BANK & TRUST COMPANY<br>n/k/a NORWEST BANK IOWA, N.A.<br>Defendant. | Adversary No. 93-1007LC |

ORDER RE: MOTION FOR SUMMARY JUDGMENT

This matter came on for hearing before the undersigned on August 10, 1993 on Defendant's Motion for Summary Judgment. Defendant Norwest Bank Iowa appeared by attorney Roger W. Stone. Attorneys John C. Wagner and Sarah E. Holecek appeared for Plaintiffs Robert and Faye Deklotz. After hearing arguments of counsel, the Court took the matter under advisement.

**STATEMENT OF FACTS**

Plaintiffs filed a Chapter 7 petition on January 5, 1987, the day before a Sheriff's sale of their farm was scheduled by first mortgagee Metropolitan Life Insurance Co. Defendant held a second mortgage on the property. Subsequently, Plaintiffs entered into a stipulation for relief from stay and the foreclosure sale was held on June 16, 1987. Metropolitan obtained the Sheriff's certificate at this sale. Defendant later redeemed the property from Metropolitan. It then sold the farm real estate consisting of 360 acres, on June 28, 1989 at an auction sale for $2,100 per acre. Plaintiffs' total debt to Defendant is not established in the record. However, the proceeds from the auction sale allegedly exceeded the amount of the debt.

Plaintiffs filed a petition in Iowa District Court in Benton County on September 20, 1991 alleging that:

> "Defendant's actions constitute undue influence, duress, tortious interference with business advantage, breach of good faith and fair dealings, breach of fiduciary duty, fraud, misrepresentation, and breach of an implied contract established by course of performance and pattern of dealing. Defendant has wrongfully profited and been unjustly enriched as a result of the actions described above."

Plaintiffs outline the following allegedly wrongful actions by Defendant in their petition: influencing Plaintiffs to mortgage their land with Metropolitan in 1979, influencing the second mortgage with Defendant in 1984, and refusing to supply Plaintiffs input financing in 1986. Plaintiffs also allege that Defendant unjustly benefited from redeeming Metropolitan's mortgage, gaining possession of the farm real estate and selling it at auction, all in 1989, for an amount substantially greater than the amounts Plaintiffs owed.

Defendant filed Notice of Removal and Petition for Reference. The U.S. District Court ordered the case transferred to this court on December 29, 1992.

Defendant moves for summary judgment. It asserts that Plaintiffs' claims accrued prior to filing their Chapter 7 petition on January 5, 1987. Defendant argues that Plaintiffs have no standing to prosecute the claims and that the claims are

barred by collateral estoppel.

Plaintiffs resist summary judgment. They assert that their claims against Defendant did not accrue until the 1989 auction sale, long after filing bankruptcy. They assert that their claims are based in equity rather than lender liability and are not barred by the prior bankruptcy proceedings.

**CONCLUSIONS**

It is the finding of this Court that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O). The test of whether a matter is a core proceeding is whether the Plaintiffs' action "strikes at the heart of the debtor-creditor relationship." In re Tranel, 940 F.2d 1168, 1174-75 (8th Cir. 1991). An examination of the entire file, including the pleadings, briefs of the parties, and arguments of counsel to the Court, establish that Plaintiffs' petition does go to the heart of the debtor-defendant relationship and is therefore a core proceeding.

The underlying issue in this case is whether the Plaintiffs are barred from maintaining this lawsuit against Defendant lending institution. The law is well established that a debtor is barred from asserting a lender liability action which accrued prior to filing of the bankruptcy petition. In re Hoffman, 99 B.R. 929, 934-37 (N.D. Iowa 1989); In re Baudoin, 981 F.2d 736, 744 (5th Cir. 1993). This bar to a debtor's subsequent lawsuit against a lending institution for lender liability is based upon principles of equitable estoppel, judicial estoppel and res judicata. Hoffman, 99 B.R. at 934-37. See also Sure-Snap Corp. v. State Street Bank & Trust Co., 948 F.2d 869, 870 (2d Cir. 1991). The common theme of all cases barring further litigation is that lender liability claims which could have been brought in Chapter 11 bankruptcy cannot be relitigated another day in another court. This theme is given legal effect through application of the test of whether a debtor's cause of action accrued prior to bankruptcy. A debtor's cause of action which accrues prior to bankruptcy becomes property of the bankruptcy estate upon the filing of the petition. In re Bobroff, 766 F.2d 797, 803 (3d Cir. 1985). Whether a cause of action has accrued and is thereby included as property of the estate can ordinarily be determined by analyzing whether the cause of action is sufficiently rooted in the pre-bankruptcy past. In re Doemling, 127 B.R. 954, 957 (W.D. Pa. 1991).

A cause of action is determined to be accrued when all of the elements of the claim are present and the Plaintiff has knowledge of the claim. Harris v. Saint Louis Univ., 114 B.R. 647, 649 (E.D. Mo. 1990). Iowa law holds that there must be actual loss to the interest of another before a cause of action accrues. Collins v. Federal Land Bank, 421 N.W.2d 136, 139 (Iowa 1988) (legal malpractice claim that attorneys' advice led to debtor's bankruptcy accrued, in part, pre-bankruptcy). A cause of action is accrued under Iowa law where all the necessary elements of a claim, including a loss, have occurred, even though a separate injury may manifest itself at a later time. LeBeau v. Dimig, 446 N.W.2d 800, 803 (Iowa 1989) (suit commenced more than two years after auto accident after diagnosis of epilepsy barred by statute of limitations).

A debtor may not maintain a cause of action which has accrued and has thereby become property of the estate. A cause of action which is property of the estate may only be asserted by the trustee. Lambert v. Fuller Co., 122 B.R. 243, 246 (E.D. Pa. 1990). Likewise, a cause of action which has accrued but which was not disclosed in the bankruptcy proceeding, is not deemed to be abandoned upon discharge and, therefore, remains property of the estate over which only the trustee has subsequent control. Harris v. Saint Louis Univ., 114 B.R. 647, 649 (E.D. Mo. 1990).

A major issue of contention is whether the underlying lawsuit is an action in lender liability which accrued pre-bankruptcy or whether it is an equitable action based upon principles of unjust enrichment accruing post-petition as contended by the Plaintiffs.

A tort liability lawsuit categorized as a lender liability action is, in reality, ordinarily a multiple count petition based upon alternative legal theories including fraud, violation of fiduciary responsibility, misrepresentation, negligence and bad faith. See Hoffman, 999 B.R. at 930. Unjust enrichment is an action based on equitable principles "mandating that one shall not be permitted to unjustly enrich oneself at the expense of another or to receive property or benefits without making compensation for them." West Branch State Bank v. Gates, 477 N.W.2d 848, 851-52 (Iowa 1991).

Plaintiffs have attempted to categorize their underlying lawsuit against the Defendant as one in equity for unjust enrichment. However, all of the indicia establish this as lender liability action which accrued pre-bankruptcy.

Examination of the underlying petition filed in Benton County, Iowa on September 20, 1991 establishes that the action was filed at law and not in equity. This was an action which sought a jury trial and not a trial to the Court. While this is a single count petition, the Plaintiffs assert undue influence, duress, tortuous interference with business advantage, breach of good faith and fair dealing, breach of fiduciary duty, fraud, misrepresentation, and breach of implied contract established by course of performance and pattern of dealing. These allegations are identical to a cause of action which is generically labeled lender liability under both bankruptcy and Iowa law.

The Plaintiffs assert unjust enrichment by Defendant. However, reference to unjust enrichment was raised in the context of damages which accrued as a result of all of the previously discussed conduct. It was not plead or raised independently as a theory of recovery. The pleadings in the underlying tort cases, as well as the deposition presented to the Court, the briefs, and the oral arguments inevitably migrate toward the pre-petition conduct of the Defendant. Throughout the entire course of this lawsuit, unjust enrichment is always discussed in vague terms and secondary to Plaintiffs' other allegations of misconduct which occurred pre-petition. Ultimately, it is the conclusion of this Court that it was Plaintiffs' intent to file a lender liability lawsuit and an evaluation of the documents filed confirmed that this is indeed a lender liability action as opposed to one sounding in unjust enrichment.

Plaintiffs have raised vague allegations of misconduct surrounding the sale of Plaintiffs' farm in 1989. As previously discussed, unjust enrichment is an equitable principle whereby one should not be permitted to unjustly enrich oneself. However, a lender's acquisition of proceeds which are legally authorized through Bankruptcy Court cannot constitute unjust enrichment. Millers Nat'l Ins. Co. v. Commercial Credit Business Loans, Inc., 893 F.2d 165, 169 (8th Cir. 1990). A party cannot be unjustly enriched merely because it has chosen to exercise a legal or contractual right. Westside Galvanizing Servs., Inc. v. Georgia Pacific Corp., 921 F.2d 735, 740 (8th Cir. 1990). Benefits which are received by lender pursuant to its security interest do not constitute unjust enrichment. Larson v. Warrington, 348 N.W.2d 637, 642 (Iowa App. 1984). Any claims of unjust enrichment in this case are properly elements of damage and not a separate claim post-petition.

In summary, applying the previously stated legal principles to the matters established in this record, it is largely immaterial whether Plaintiffs' actions are classified as lender liability or unjust enrichment. It is the conclusion of this Court that this action was filed as a single count petition and the conduct complained of by the Plaintiffs is sufficiently rooted in the pre-bankruptcy past to constitute property of this estate. A cause of action under Iowa law accrues when all the necessary elements of a claim, including a loss, have occurred. In this case, all of Defendant's alleged actions, of which Plaintiffs complain, occurred prior to the filing of the bankruptcy petition with the exception of the redemption and sale of the farm real estate in 1989 which was performed under the auspices of the Bankruptcy Court. It is the conclusion of this Court that all of the elements of any alleged conduct by the Defendant accrued pre-petition. Additionally, a loss, which is required under LeBeau, occurred pre-petition. Plaintiffs have alleged that a pre-bankruptcy injury did occur through their claim that Defendant's alleged actions effectively shut down their farm operations and directly led to the subsequent foreclosure and bankruptcy. This Court concludes that any additional alleged injury to Plaintiffs, which may have arisen from the final sale, is merely a subsequent manifestation of injury resulting from pre-bankruptcy actions which also caused pre-bankruptcy injury.

Under LeBeau, a cause of action accrues at the time of the first injury. Here, by the Plaintiffs' own petition, the injury arose pre-petition and therefore, any claim is property of the bankruptcy estate and it may not now be litigated by Plaintiffs. As the cause of action was not listed by Plaintiffs in their bankruptcy schedules, it is not deemed abandoned upon discharge and remains property of the estate over which only the bankruptcy trustee has control. Lambert, 122 B.R. at 246. Further, Plaintiffs are barred by collateral estoppel from any attempt to relitigate matters which could have been raised in bankruptcy but were not. Baudoin, 981 F.2d at 739.

**WHEREFORE**, for all of the reasons set forth herein, it is the finding of this Court that Plaintiffs' Petition constitutes a pre-bankruptcy action.

**FURTHER**, any claim is property of the bankruptcy estate and may not now be litigated by the Plaintiffs.

**FURTHER**, any claim made is not deemed abandoned and remains property of the estate over which only a bankruptcy trustee has control.

**FURTHER**, Plaintiffs are barred by principles of collateral estoppel from their attempt to relitigate matters which could have been raised in the bankruptcy proceeding but were not.

**FURTHER**, there are no substantial facts in issue in this case which preclude the granting of a Motion for Summary Judgment.

**FURTHER**, for all the reasons set forth in this opinion, the Defendant's Motion for Summary Judgment must be and is hereby GRANTED.

**FURTHER**, judgment is hereby entered for Defendant Norwest Bank Iowa and against Plaintiffs Robert and Faye Deklotz.

**SO ORDERED** this 1st day of September, 1993.

Paul J. Kilburg, Judge
U.S. Bankruptcy Court