

In the United States Bankruptcy Court

for the Northern District of Iowa

ELMER ALBERT WICKMAN

Debtor(s).

Bankruptcy No. L-92-00898W

Chapter 7

ERIC W. LAM Trustee

Plaintiff(s)

Adversary No. 94-6053KW

vs.

DUANE WICKMAN KATHLEEN
WICKMAN and OPAL R. WICKMAN

Defendant(s)

RULING ON MOTION FOR SUMMARY JUDGMENT

On August 23, 1995, the above-captioned matter came on for hearing in Waterloo pursuant to assignment. Attorneys Joseph Peiffer and Gary Boveia appeared on behalf of Trustee/Plaintiff Eric Lam. Attorney Mark Schwickerath appeared for Defendants Duane Wickman, Kathleen Wickman and Opal R. Wickman. The matter before the Court is Defendants' Motion for Summary Judgment. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(H).

STATEMENT OF THE CASE

This is an adversary proceeding arising out of the Chapter 7 bankruptcy case of Debtor Elmer Wickman. Plaintiff is the successor Trustee in that case. He seeks to avoid fraudulent transfers under § 548(a) and § 544. His complaint alleges that Debtor and his wife, Opal Wickman, transferred Debtor's real estate for less than reasonably equivalent value by entering into real estate contracts with their son and his wife, Duane and Kathleen Wickman. The contracts call for payment of \$96,000 for 160 acres of real estate which Plaintiff asserts is worth at least \$160,000. Plaintiff named Opal, Duane and Kathleen as defendants herein. He asserts the contracts were entered into to defraud creditors.

Defendants move for summary judgment. They state that Opal's statutory dower interest precedes and has priority over any interest of creditors. They argue that Opal had a dower interest encompassing the entire property when Debtor became liable to certain creditors. Defendants assert, therefore, that the creditors' interests are subordinate to Opal's. They further argue that the creditors did not lose anything when the real estate contracts transferred the property to Duane and Kathleen Wickman.

Plaintiff resists summary judgment. He states that Opal's dower interest is a one-third inchoate interest contingent on Elmer's death. He argues that when Opal entered into the real estate contracts, she relinquished that interest. Plaintiff asserts that a question of fact exists regarding whether the creditors lost anything when Elmer and Opal transferred the property by real estate contracts with their son and his wife.

CONCLUSIONS OF LAW

Fed.R.Civ.Proc. 56(c), which is applicable to adversary proceedings pursuant to Fed.R.Bankr.Proc. 7056 provides that:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Hesitancy in granting summary judgment is no longer appropriate in light of the Supreme Court's recent decisions. Midwest Radio Co. v. Forum Pub. Co., 942 F.2d 1294, 1296 (8th Cir. 1991). Although the Eighth Circuit views summary judgment as a drastic remedy which must be exercised with extreme care, the Court has also recognized the principle that "the summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the federal rules as a whole which are designed to secure the just, speedy and inexpensive determination of every action." Wabun-Inini v. Sessions, 900 F.2d 1234, 1238 (8th Cir. 1990) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S. Ct. 2548, 2554-55 (1986)). The moving party must show an absence of any genuine issue of material fact in order to succeed in its motion for summary judgment. In re Earhart, 68 B.R. 14, 15 (Bankr. N.D. Iowa 1986).

Contrary to Iowa case law, Defendants assert that Opal Wickman's dower interest in Debtor's real estate encompasses Debtor's entire interest in the property, rather than the one-third interest traditionally attributed to dower rights. See In re Estate of Wulf, 471 N.W.2d 850, 852 (Iowa 1991) (noting that a spouse's statutory distributive share encompasses a one-third interest in real estate under Iowa Code § 633.238). Regardless of the extent of Opal's dower or statutory interest, Plaintiff argues that Opal's execution of the real estate contracts extinguished her rights. He asserts that avoiding the real estate contracts as fraudulent transfers would not revitalize that interest, resulting in the creditors' ability to look to the entire property for satisfaction of their claims. This raises a genuine issue of material fact making summary judgment inappropriate.

WHEREFORE, Defendants' Motion for Summary Judgment is DENIED.

SO ORDERED this 30th day of August, 1995.

Paul J. Kilburg
U.S. Bankruptcy Judge