

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:)
)
) CHAPTER 13 BANKRUPTCY
JAMES W. FERRIS, JR. AND) CASE NO. 93-41173
PATRICIA FERRIS,)
DEBTORS)
)
U.S. BANCORP MORTGAGE)
COMPANY, ITS SUCCESSORS OR)
ASSIGNS,)
MOVANT)
)
)
VS.)
)
)
JAMES W. FERRIS, JR. AND)
PATRICIA FERRIS,)
RESPONDENTS)

ORDER ON MOTION FOR RELIEF FROM STAY

The motion of U.S. Bancorp Mortgage Company requesting stay relief has been read and considered by the Court. The motion was heard on December 15, 1993 with counsel present for the debtors and the movant.

The movant demonstrated at the hearing that the debtors are twelve (12) post-petition payments in arrears. The movant claims a security interest in real property at 210 Springhouse Drive, Savannah, Georgia.

From the evidence presented it appeared that the fair market value of the property was One Hundred Fifty-six Thousand (\$156,000.00) Dollars. The movant's claim of security interest amounts to One Hundred Twenty-four Thousand Three Hundred Sixty-eight (\$124,368.00) Dollars.

The debtors are attempting to sell the property. There is a second mortgage against the property with a principal balance due of Eighteen Thousand (\$18,000.00) Dollars. The first and second mortgage would not appear to be sufficient to exhaust the value of the property.

Under 11 U.S.C. § 362(d)(2) the movant must show that the debtor does not have any equity in the property. The movant failed to make that showing. Under the preceding subparagraph (1), the movant was required to show that stay relief should be granted "for cause, including lack of adequate protection...." The movant could not demonstrate any lack of adequate protection since the equity cushion appears to be sufficient to permit the movant to realize the full amount of its secured claim during the foreseeable future.

At this time it appears that the motion for stay relief should be denied. If the debtors are unsuccessful in the immediate future in their efforts to sell the property, such failure might be considered at a hearing on another such motion as further evidence of the fair market value of the property. Likewise, the failure of the debtors to sell the property or to make payments to the first and second mortgage holder might be a basis for conversion of this case to Chapter 7. It does not appear that stay relief is an appropriate remedy at this time.

Now, therefore it is hereby

ORDERED that the Motion for Stay Relief is Denied.

SO ORDERED this ____ day of February, 1994.

JAMES D. WALKER, JR., Judge
United States Bankruptcy Court