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Friday, July 31, 1987

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

LORIE V. CRAIN,

No. 1-87-00052

[Debtor](#)ⁱ.

_____ /

CHARLES DUCK, [Trustee](#)ⁱ,

[Plaintiff](#)ⁱ,

v.

A.P. No. 1-87-00076

ROBERT V. CONNOR,

ROBERT NORTHRUP,

and WORLD SAVINGS AND LOAN,

Defendants.

_____ /

Rulings on Motions

The complaint of the Trustee in this matter alleges that within one year before the filing of the debtor's [Chapter 7](#) petition her real property worth \$120,000.00 was sold at a foreclosure sale for \$64,803.65. The complaint also alleges that the foreclosure sale was not noticed in accordance with California law and that there was collusion between the foreclosing [creditor](#), World Savings and Loan Association, and the third party purchasers at the foreclosure sale. World has made motions for a more definite statement, for determination of non-core status, for jury trial, for abstention, and for dismissal.

Motion for More Definite Statement

World argues that paragraph 8 of the complaint, which alleges improper notice of the foreclosure proceedings, is "downright bewildering." The court finds World's problems with the paragraph downright disingenuous. Like all federal pleading, all that is required here is fair notice of the nature of the [claim](#). A motion for a more definite statement contemplates a major ambiguity which renders the allegation unanswerable. 27 Fed.Proc.L.Ed., sec. 62:39.

World can easily admit or deny defective notice. Its motion for a more definite statement will be denied.

Determination of non-Core Status

As the Court of Appeals has recently reaffirmed, nothing is more of a core proceeding than a fraudulent transfer action, even if it is based on state law. In re Mankin (9th Cir.1987) 87 Daily Journal D.A.R. 4550. World appears to concede this, but argues that since the fraudulent transfer portion of the complaint should be dismissed all that will remain is the dispute over adequacy of notice under state law, which should not be a core proceeding. As will be seen below, the court takes the substance out of this argument by declining to dismiss the fraudulent transfer claim. Even if the only issue before the court was the sufficiency of notice, this case would still be a core proceeding. The list of core proceedings, which is not exclusive, includes orders to turn over property of the estate, matters concerning administration of the estate, and other proceedings affecting [liquidation](#) of assets of the estate, all of which would still be involved. In addition, the question of irregularities in a foreclosure sale is a question of law reviewable de novo on appeal regardless of whether this court treats the matter as core or non-core. In re Worcester (9th Cir.1987) 811 F.2d 1224, 1229. The matter will therefore proceed as a core matter.

Right to Jury Trial

In this circuit, right to a jury trial is determined based upon whether the claim to be tried is legal or equitable in nature. American Universal Insurance Co. v. Pugh (9th Cir.1987) 87 Daily Journal D.A.R. 4140. Although the Trustee improperly prays for damages, which the court may award only after the transfer has been avoided (11 U.S.C. sec. 550(a)), the thrust of the action is rescission of the foreclosure sale. This is purely an equitable matter, with no right to a jury. The request for a jury trial will accordingly be denied.

Abstention

The pending state court actions do not involve upsetting the foreclosure sale as a fraudulent transfer. While the Superior Court action does raise the issue of the sufficiency of notice, there has been no showing that the issue can be timely adjudicated there. The mandatory abstention provision of 28 U.S.C. section 1334(c)(2) therefore does not apply; the court declines to recommend discretionary abstention.

Dismissal

The court seriously doubts that In re Madrid (9th Cir.1984) 725 F.2d 1197, is still good law in the wake of the 1984 amendments to the [Bankruptcy Code](#)ⁱ. While some of the legislative history may indicate that the amendments to section 101(48) were not intended to overrule Madrid, statements in legislative history should not be considered by the court where the statutory language appears clear and unambiguous. U.S. v. Oregon (1961) 366 U.S. 643; In re Evans (Bkrtcy.D.Ore.1987) 72 B.R. 21, 24. At least one court has already held that Madrid was overruled by the congressional action, so that the decision is no longer binding on courts in this circuit. In re Verna (Bkrtcy.C.D.Cal.1986) 58 B.R. 246, 251. In any event, the complaint alleges collusion on the part of World and the buyers at the foreclosure sale. This allegation takes the case out of the rule in Madrid even if that case is still applicable law. The motion to dismiss will therefore be denied.

Orders

Counsel for the Trustee shall prepare separate orders denying each of the above motions, and shall submit them to the court in compliance with Local Rule 220-11.

Dated: July 31, 1987

ALAN JAROSLOVSKY

U.S. [BANKRUPTCY JUDGE](#)ⁱ

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