

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:

Bk. No. 03-13171-MWV
Chapter 11

William G. Cote and Lucille R. Cote,
Debtors

The Houle Family Investments Trust and
Donald Gelinas,
Movants

v.

William G. Cote and Lucille R. Cote,
Respondents

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and
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MEMORANDUM OPINION

The Court has before it the motion of Houle Family Investments Trust and Donald Gelinas for relief from the automatic stay to exercise their rights as holders of a first mortgage on real estate of the Debtors at 1253 Hooksett Road, Hooksett, New Hampshire. This matter was tried before the Court during three days in June and August 2004. At trial, the Court took testimony from the Movants, an appraiser for the Movants, the Debtors and a broker for the Debtors who was attempting to sell the property.

JURISDICTION

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

DISCUSSION

This is the second Chapter 11 filing of these Debtors. The only asset in the estate is the real property located at 1253 Hooksett Road in Hooksett, New Hampshire. The property in question is essentially raw land which, at the time of the filing of this Chapter 11 on September 16, 2003, and during the course of the Chapter 11, has provided no income for the Debtors, and payments have not been made on the Movants’ note secured by the mortgage nor has other adequate protection given. The Movants assert in their motion that at the time of the filing they were owed \$1,872,160.39. Mr. Houle testified that with accruing interest, that amount by the time of trial, had grown to over \$2,000,000. Richard E. Marquis, the Movants’ appraiser, testified that, in his opinion, the value of the property was \$1,310,000. Mr. Fini, the Debtors’ broker, testified that the property was listed for \$3,600,000, which he thought was a fair price. Although the property had been subject to several offers to purchase, they had all fallen through. While the Court heard and received as evidence voluminous testimony and documents as to the various comparables used by the Movants’ appraiser, the advantageous location of the property, the advantageous permits that the Debtors held, and the various development possibilities, the Court does not believe at this juncture that it has to reach an exact value of the premises.

An essential element for denying relief from the automatic stay under section 362 is not only that there is no equity in the property, but also and most important in this case, that the property is required for a reorganization, and that reorganization is in prospect. United Sav. Ass'n. of Texas v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.), 484 U.S. 365, 375-76, 108 S. Ct. 626, 633, 98 L. Ed. 2d 740 (1988). At trial, the Debtors produced an option agreement with Konover Development Corporation, a well-known developer, particularly for supermarket projects. The option term was for one year, apparently from June 2004. Based on this potential development opportunity, the Court has hesitated to grant the motion for relief under the theory that, if the sale took place, the obligation to the Movants would be satisfied.

At a hearing held on April 19, 2005, the Court was informed that the option agreement had been terminated and that there were no other offers pending. At that hearing, a Chapter 11 trustee was appointed, but the Court is unaware of any current prospects for the sale of the property. This case has been in Chapter 11 for over twenty months with no confirmable plan of reorganization. Based on the above, the Court finds that there is no reorganization in prospect and grants the Movants' motion for relief from the automatic stay.

CONCLUSION

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 2nd day of June, 2005, at Manchester, New Hampshire.

/s/ Mark W. Vaughn
Mark W. Vaughn
Chief Judge