FILED
U.S. Bankruptcy Appellate Panel
of the Tenth Circuit
May 8, 2002
Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE TAMA R. KITTEL, Debtor.	BAP No. WO-01-094 BAP No. WO-01-095
TAMA R. KITTEL, Appellant, MICHAEL KITTEL, Plaintiff – Appellant, v. FIRST UNION NATIONAL BANK, Defendant – Appellee, JOHN R. HARDEMAN, Trustee, Appellee.	Bankr. No. 01-16780 Adv. No. 01-1264 Adv. No. 01-1269 Chapter 13 ORDER AND JUDGMENT*

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

MICHAEL KITTEL,
Appellant,
TAMA R. KITTEL,
Plaintiff – Appellant,
v.
FIRST UNION NATIONAL BANK,
Defendant – Appellee,
JOHN R. HARDEMAN, Trustee,
Appellee.

Appeal from the United States Bankruptcy Court
for the Western District of Oklahoma

Before PUSATERI, BOULDEN, and NUGENT, Bankruptcy Judges.

NUGENT, Bankruptcy Judge.

None of the parties requested oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

Appellants Tama Kittel and her husband, Michael Kittel, appeal from the memorandum of decision of the United States Bankruptcy Court for the Western District of Oklahoma (i) denying Michael Kittel's adversary proceeding for declaratory relief concerning the bankruptcy court's July 2001 stay relief orders; (ii) denying Tama Kittel's adversary proceeding seeking similar relief and objecting to the allowance of First United National Bank's secured claim with the Bank's pre-petition and post-petition attorney's fees as part of its secured claim under 11 U.S.C. § 506(b); (iii) denying confirmation of Ms. Kittel's Chapter 13

plan because the allowance of the attorney's fees and expenses renders it not feasible; and (iv) granting the Bank's motion for further stay relief to seek and obtain state court confirmation of a previously conducted sheriff's sale of the appellants' home.

Also before the Court is the appellants' motion for clarification of this Court's February 6, 2002, order granting a stay pending appeal. This motion seeks sanctions against the Bank for requesting stay relief in Mr. Kittel's Chapter 11 bankruptcy case filed on January 22, 2002, after this appeal was perfected.

I. Background

The dizzying array of pleadings and requests for relief made by the appellants here and in the bankruptcy court belie the relatively simple and straightforward factual setting from which this case arises. In June 1998, the appellants executed and delivered a promissory note to First Union Equity Bank, N.A. in the original principal amount of $33,200.00, payable over twenty years at 9.9% interest. The note was secured by a mortgage covering the appellants' principal residence located in Oklahoma City, Oklahoma. The note and mortgage were assigned to the Bank in July 1998. The note provides: "[i]n the event it becomes necessary to refer this Note to an attorney-at-law for collection, . . . the Note Holder will have the right to be paid back by the undersigned for all of its costs and expenses in enforcing this Note [sic] the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees." (Appellee Supp. App. at 137.) The mortgage provides that the lender may expend sums necessary to protect the property and the lien, and "[a]ny amounts so expended shall be deemed principal advances secured by this Mortgage, shall bear interest from the time expended at the rate prescribed in the Note and shall be due and payable on demand." (Appellee's Supp. App. at 140.) The mortgage also provides that the Bank "shall be entitled to collect all costs and expenses incurred

in pursuing the remedies . . ., including, but not limited to, reasonable attorney's fees and cost of title evidence." (Appellee's Supp. App. at 140.)

Upon the advice of their counsel, appellants stopped making mortgage payments after April 2000. Appellants apparently believed that the Bank had violated certain provisions of the Truth in Lending Act, 15 U.S.C. § 1601, et seq. In August 2000, appellants' counsel sent the Bank a letter rescinding the note and mortgage pursuant to 15 U.S.C. § 1635. In response, the Bank filed a foreclosure action against appellants in the District Court of Oklahoma County, Oklahoma (the "State Court Action").

Curiously, appellants neither entered an appearance nor answered the foreclosure petition, nor did they raise any affirmative defenses and counterclaims to the foreclosure of the mortgage on their home. The Bank took a default judgment in the State Court Action on October 30, 2000. The state court granted the Bank a judgment of $31,782.32 plus 9.9% interest from April 29, 2000, until paid; $350 for abstract expense; and $2,500 in attorney's fees, plus any other sums advanced by the Bank since the filing of the State Court Action, including expenses and attorney's fees to be incurred in any bankruptcy instituted by any party and all expenses, costs, and attorney's fees of execution and sale.

Instead of defending the foreclosure action in state court,[1] appellants' counsel filed the first in a procession of actions apparently designed to thwart the foreclosure and preserve the appellants' homestead. This separate action against the Bank in the United States District Court for the Western District of Oklahoma in November 2000 (the "District Court Case") raised various alleged violations of the Truth in Lending Act and sought rescission of the note and mortgage. In addition, the appellants asserted various defenses to liability under the note and

[1] The bankruptcy court noted that appellants' counsel, Ms. Bonnie Platt, is not admitted to practice in the Oklahoma state courts.

mortgage. In December of 2000, because the State Court Action was proceeding toward a sheriff's sale of appellants' home, Mr. Kittel filed a Chapter 13 bankruptcy petition. On February 19, 2001, the District Court dismissed the District Court Case, finding that the appellants' claims for rescission against Bank under the Truth in Lending Act were compulsory counterclaims, which could and should have been asserted in the State Court Action and were therefore barred by res judicata. Appellants appealed the District Court's dismissal order to the Tenth Circuit Court of Appeals where the matter remains pending. Mr. Kittel's Chapter 13 plan was not confirmed, and his bankruptcy case was dismissed on June 12, 2001.

After the District Court Action was dismissed, appellants returned to state court and sought relief from the default judgment. Appellants filed various pleadings in the State Court Action and attempted to obtain a restraining order enjoining the sheriff's sale of their home. These actions were unsuccessful and substantially increased the Bank's attorney's fees and costs incurred in the enforcement of its mortgage, thereby increasing the amount of debt secured by the mortgage.

As one last effort, Ms. Kittel filed her Chapter 13 petition on July 2, 2001, in an attempt to forestall the sheriff's sale of her home scheduled for the next day. That same day, the Bank filed an emergency motion seeking an immediate stay relief hearing so that the sheriff's sale could take place. The bankruptcy court heard the Bank's motion the next morning before the scheduled sale and entered an order dated July 3, 2001, lifting the stay to permit the sheriff's sale to take place, but keeping the stay in effect with respect to the confirmation of the sheriff's sale. Ms. Kittel did not timely appeal from this order.

At the sheriff's sale, the Bank entered a credit bid of $16,800 and purchased the home. The Bank then sought further stay relief to confirm the

sheriff's sale and obtain a deficiency judgment against the appellants.

While Ms. Kittel's bankruptcy case was pending, two adversary proceedings were filed. The first, Michael W. Kittel v. First Union National Bank, Adv. No. 01-1264-TS, was filed on September 10, 2001. Mr. Kittel's complaint sought vacation of the bankruptcy court's July 3, 2001, stay relief order as well as a declaration that the Bank was estopped from asserting an oversecured claim based upon its mortgage covering the appellants' home. The second adversary proceeding was filed on September 18, 2001, by Ms. Kittel as Tama R. Kittel v. First Union National Bank, Adv. No. 01-1269-TS. Although the record on appeal lacks a copy of the actual complaint, the Bank's answer is included. From the answer and the bankruptcy court's comments in its order, we can divine that the complaint questioned the validity and extent of the Bank's lien, challenged the Bank's entitlement to have its attorney's fees and expenses allowed as part of its secured claim, and questioned the bankruptcy court's jurisdiction to enter the July 3, 2001, stay relief order. In essence, both adversary proceedings sought reconsideration of the bankruptcy court's prior final order granting stay relief as well as disallowance of the Bank's secured claim.

The bankruptcy court consolidated the two pending adversary proceedings, Ms. Kittel's Chapter 13 plan confirmation, and the stay relief motion for trial and issued its memorandum of decisions on same on November 28, 2001, finding for the Bank on all issues.

Summarizing the bankruptcy court's detailed legal analysis, the court first concluded that the state court judgment was a final and binding judgment that determined the appellants' liability to pay the Bank's attorney's fees and costs. The bankruptcy court noted that the state court judgment expressly included the Bank's post-judgment attorney's fees and costs, whether they were incurred in any bankruptcy instituted by the appellants, or if they were reasonably necessary

for the preservation of the subject property. The bankruptcy court found that all of the attorney's fees and costs claimed by the Bank as part of its secured claim specifically related to the bankruptcy proceedings instituted by the appellants, or related to challenges they made to the validity of the Bank's lien. The bankruptcy court held that the Bank had a secured claim in the amount of $148,661.32, but did not distinguish between pre- and post-petition components.

The bankruptcy court further determined that the appellants were not entitled to any declaratory or other relief from the July 2001 stay relief order. The Chapter 13 trustee advised the bankruptcy court that Ms. Kittel's plan would not be feasible if any attorney's fees were found to be part of the Bank's claim. The court found that Ms. Kittel's plan was not feasible because, in order to retain her home, Ms. Kittel would need to pay all of the Bank's allowed secured claim (including the attorney's fees in excess of $100,000) under 11 U.S.C. § 1322(b)(2). The bankruptcy court denied confirmation of the plan and granted Ms. Kittel ten days to convert her case to Chapter 7 or to dismiss it. Because Ms. Kittel could not provide for payment of this claim, the bankruptcy court granted the Bank's second stay relief motion. Appellants timely filed their notice of appeal of the bankruptcy court's decision.

This Court granted appellants' motion for stay pending appeal on February 6, 2002. Previously, on January 23, 2002, Mr. Kittel filed yet another bankruptcy case, this time choosing to proceed in Chapter 11.[2] On March 21, 2002, appellants filed a motion here seeking either clarification of this Court's prior stay order or sanctions against the Bank. Appellants complain that the Bank was stayed from pursuing stay relief against Mr. Kittel in his bankruptcy case by this Court's stay pending appeal order.

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[2] In re Michael Kittel, Case No. 02-1058BH (Bankr. W. D. Okla. January 23, 2002).

II. Appellate Jurisdiction

The parties have consented to this Court's jurisdiction in that they have not opted to bring this appeal in the United States District Court for the Western District of Oklahoma. 28 U.S.C. § 158(b) and (c). Nevertheless, we must determine whether we have jurisdiction to consider the merits of this appeal. Semtner v. Group Health Serv., 129 F.3d 1390, 1392 (10th Cir. 1997). Appellants appeal from the bankruptcy court's decision in the adversary proceedings refusing to revisit its July 3, 2001, order granting the Bank relief from stay to permit the sheriff's sale to take place. Appellants further appeal from the bankruptcy court's order allowing the Bank's secured claim including attorney's fees and costs. Appellants also appeal from the bankruptcy court's order granting the Bank stay relief to obtain a state court order confirming the sheriff's sale. These three orders are final, and, under 28 U.S.C. § 158, the bankruptcy appellate panel has jurisdiction to hear appeals of final orders. 28 U.S.C. § 158(b). As a general rule, orders granting or denying relief from the automatic stay are appealable final orders. Eddleman v. United States Dept. of Labor, 923 F.2d 782, 784 (10th Cir. 1991), overruled in part on other grounds, Temex Energy, Inc. v. Underwood, Wilson, Berry, Stein & Johnson, 968 F.2d 1003, 1005 n.3 (10th Cir. 1992).

In this instance, this Court has jurisdiction to hear Ms. Kittel's appeal of the bankruptcy court's order denying confirmation of her proposed Chapter 13 plan entered on November 28, 2001. While orders denying confirmation of a Chapter 13 plan generally are not final orders under 28 U.S.C. § 158(a), Simons v. Fed. Deposit Ins. Corp. (In re Simons), 908 F.2d 643, 644 (10th Cir. 1990) (per curiam), in this case, the order denying confirmation of the Chapter 13 plan and allowing a brief period in which Ms. Kittel could convert or dismiss her case essentially terminated the case. When the bankruptcy court denies confirmation and the underlying petition or proceeding is effectively dismissed, the order is

final for purposes of appeal. See id. at 644 (citing Maiorino v. Branford Sav. Bank, 691 F.2d 89, 90-91 (2nd Cir. 1982)). Because Ms. Kittel appealed this order within ten days as required by Fed. R. Bankr. P. 8002(a), this Court has jurisdiction over this remaining issue.

III. Standard of Review

"For purposes of standard of review, decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable de novo), questions of fact (reviewable for clear error), and matters of discretion (reviewable for 'abuse of discretion')." Pierce v. Underwood, 487 U.S. 552, 558 (1988); see Fed. R. Bankr. P. 8013; Fowler Bros. v. Young (In re Young), 91 F.3d 1367, 1370 (10th Cir. 1996). We review the bankruptcy court's findings with regard to the amount of attorney's fees and expenses to be added to the Bank's secured claim as questions of fact. The bankruptcy court's conclusions concerning the allowance of attorney's fees and expenses as part of the secured claim and whether the appellant is required to pay those fees and expenses under her plan are reviewed de novo as questions of law. The granting of stay relief is reviewed for abuse of discretion. Franklin Sav. Ass'n v. Office of Thrift Supervision, 31 F.3d 1020, 1023 (10th Cir. 1994). The bankruptcy court's findings concerning the feasibility of the Chapter 13 plan are questions of fact, which are reviewable for clear error. See In re Wagner, 259 B.R. 694, 698 (8th Cir. BAP 2001).

IV. Discussion

It is difficult to relate the appellants' pleadings below and the issues presented by them on appeal. Suffice it to say that appellants argue the bankruptcy court erred in allowing the Bank's secured claim including its pre- and post-petition attorney's fees and costs in excess of $100,000, by requiring Ms. Kittel to demonstrate an ability to repay both the balance due on the mortgage and

the fees in order to confirm her plan, and by lifting the stay to permit the sheriff's sale and confirmation of same. Each argument lacks merit.

At first blush, the attorney's fees and costs allowed by the bankruptcy court appear excessive, particularly in view of the facts that the appellants' home appeared to be worth little more than $50,000 and that the Bank was only owed $31,782.32 when the State Court Case was reduced to judgment. Indeed, had this case progressed as it should have, the appellants should have been able to restructure their obligations to their creditors in a Chapter 13 plan that could easily have provided for them to repay this amount. Such a restructuring would have resulted in very little additional legal expense to the Bank (or the appellants). Instead, the appellants and their counsel embarked on a torturous path of litigation in both District and Bankruptcy Court as well as in the state courts, which substantially increased the Bank's need for counsel.

The bankruptcy court did not err in holding that the Bank's attorney's fees and expenses incurred in defending the foreclosure action were part of the Bank's allowed claim. Ordinarily, the prevailing party is not entitled to attorney's fees unless one of two exceptions is met: (1) the parties have entered into a contract that shifts attorney's fees, or (2) a statute provides for fee shifting. See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247, 257-59 (1975); Bennett v. Coors Brewing Co., 189 F.3d 1221, 1237-38 (10th Cir. 1999). Here, the note, mortgage, and state court judgment expressly provide for appellants to pay the Bank its fees and costs associated with the foreclosure action. The note specifies that the Bank may recover all of its costs and expenses incurred in enforcing the note including "reasonable attorneys fees." The mortgage allows for any fees expended "for the protection of the lien of this Mortgage" to be "deemed principal advances secured by this Mortgage . . . ." (Appellee's Supp. App. at 140.) It further allows "[l]ender . . . to collect all costs and expenses

incurred in pursuing the remedies provided in this paragraph 13, including, but not limited to, reasonable attorney's fees . . . ." (Appellee's Supp. App. at 140.) The state court awarded the Bank $2,500 in attorney's fees plus any "costs, expenses and attorney's fees incurred in any bankruptcy instituted by any party defendant . . . ." (Appellee's Supp. App. at 157.) Appellants do not challenge any of the bankruptcy court's findings of fact with respect to the amount of the attorney's fees charged or their reasonableness; rather, they complain that the allowance of the fees as part of the Bank's claim somehow violates the Bankruptcy Code and that the Bank did not properly apply for the allowance of the fees under Fed. R. Bankr. P. 2016.

As to the Bank's prepetition fees and expenses, the bankruptcy court rightly recognized and accorded full faith and credit to the previously-granted state court judgment, which granted to the Bank not only fees for the foreclosure case, but also fees that might prospectively be incurred in the defense of the Bank's lien in a bankruptcy case. Collateral estoppel is generally available in bankruptcy. Johnson v. Laing (In re Laing), 945 F.2d 354, 358 (10th Cir. 1991). A federal court sitting in Oklahoma determining whether to grant such full faith and credit must decide whether the Oklahoma courts would have accorded the judgment preclusive effect. If they would, the federal court is bound by the Full Faith and Credit Statute, 28 U.S.C. § 1738, to follow the judgment and not to modify it. Id. Such full faith and credit is only accorded, however, where the party opposing the preclusive effect of a prior judgment has been afforded a full and fair opportunity to litigate the issues that are being precluded. Merrill v. Merrill (In re Merrill), 252 B.R. 497, 504 (10th Cir. BAP 2000), aff'd, No. 00-5201, 15 Fed. Appx. 766 (10th Cir. Aug. 13, 2001). "Under Oklahoma law, collateral estoppel is a doctrine that prevents the relitigation of an issue of ultimate fact that has already been determined by a valid judgment in previous litigation between the same parties."

Id. (citing Fent v. Okla. Natural Gas Co., 898 P.2d 126, 133 (Okla. 1994)). Preclusion only occurs where a party has been afforded a full and fair opportunity to litigate. Id. Even though the state court judgment foreclosing the appellants' mortgage was taken by default, until relief from that judgment is granted by the state court, the judgment remains valid and binding upon the parties. Spears v. Preble, 661 P.2d 1337, 1342 (Okla. 1983) ("Even where a party has the right to have a judgment by default set aside, until the judgment is vacated, it must be regarded as a subsisting and regular judgment."). Under Oklahoma law the state court foreclosure judgment would have preclusive effect in the bankruptcy court, and the bankruptcy court rightly concluded that the state court's determinations with respect to attorney's fees were binding upon it. Therefore, the Bank's pre-petition attorney's fees and expenses fees are a part of the Bank's claim.

The Bank's pre-petition claim amounts to $111,945.59, which includes $75,174.97 in attorney's fees and expenses incurred through July 1, 2001, the date of the Chapter 13 filing. The bankruptcy court's order awarded fees in the total amount of $101,890.70. The Bank's post-petition fees must then amount to $26,715.73. The pre-petition fees were included in the Bank's proof of claim. Appellants objected to the allowance of the Bank's claim, later withdrawing that objection and commencing the adversary proceedings disposed of by the bankruptcy court's order. Appellants apparently raise no factual dispute with regard to the Bank's counsel's methods of timekeeping or accounting for fees billed. Their legal objections to the allowance of these pre-petition fees are dealt with above. Prepetition claims are asserted by filing a proof of claim, which is prima facie evidence of the validity and amount of the claim under § 502(a) and Fed. R. Bankr. P. 3001(f). An objecting party must bring forward evidence equal in probative force to that underlying the proof of claim in order to shift the burden of ultimate persuasion to the proponent of the claim. In re Fullmer, 962

F.2d 1463, 1466 (10th Cir. 1992) (citing In re Wells, 51 B.R. 563, 566 (D. Colo. 1985)), abrogated on other grounds, Raleigh v. Ill. Dep't of Revenue, 530 U.S. 15, 20 (2000). The Bank met its burden of proving its claim for prepetition attorney's fees and expenses. It thus became the appellants' burden to disprove the Bank's entitlement to its claim. Appellants brought forward no such evidence, and the bankruptcy court properly allowed the prepetition fees and expenses.

We need not address the appellants' argument concerning the post-petition fees. Based on the Chapter 13 trustee's statement at the hearing below, Tama Kittel's plan would not be feasible even if the post-petition fees were disallowed.

We find the appellants' argument that Fed. R. Bankr. P. 2016(a) precludes the Bank's attorney's fees to lack merit. Rule 2016 requires an entity seeking interim or final compensation for services or reimbursement of necessary expenses from the estate to file an application setting forth a detailed statement of services rendered and amounts requested. See Fed. R. Bankr. P. 2016(a). With respect to the pre-petition fees, the Bank is not required to comply with Rule 2016 because it is not seeking compensation for services rendered during the bankruptcy case or for services rendered to the bankruptcy estate. In any event, the bankruptcy court was presented extensive evidence concerning the degree, extent and reasonableness of the Bank's fees and expenses and did not find any entry that was excessive under the circumstances. The multitude of actions that Bank was required to take to protect its claim added to the fees and costs incurred and were not the fault of the Bank.

The crux of the appellants' position is that allowance of the Bank's attorney's fees and expenses thwarts the confirmation of their plan by making the Bank's claim too large. In arguing this point, the appellants ignore the import of 11 U.S.C. § 1322(b)(2), which provides that Chapter 13 debtors may not modify

the "rights" of holders of secured claims "secured only by a security interest in real property that is the debtor's principal residence . . . ." Id. In allowing the Bank's secured claim for Chapter 13 confirmation purposes after allowing the Bank's claim including the attorney's fees component, the bankruptcy court had no alternative but to find that Ms. Kittel would be required to repay not only the principal and interest due the Bank, but also the balance of its allowed claim.

The appellants argue that the fees are not allowed under In re Hatcher, 208 B.R. 959 (10th Cir. BAP 1997), and that the limitations on the allowance of fees set forth in § 506(b) preempt the protections afforded to the Bank under § 1322(b)(2). The appellants confuse the law applicable to the allowance of prepetition and postpetition fees. We will not address Hatcher, because it is limited to allowance of postpetition fees under § 506(b), which, as stated above, we need not decide in this case. To the extent that the appellants argue that Hatcher or § 506(b) apply to prepetition fees, they are mistaken, as those authorities have no relevance to the allowance of prepetition fees.

Because we believe that the bankruptcy court correctly decided the issues concerning the Bank's entitlement to its prepetition attorney's fees and expenses as part of its claim against the appellants, we affirm the bankruptcy court's order denying the appellants judgment on their adversary proceedings. In so doing, we note that both adversary proceedings, each filed in September of 2001, two months after the bankruptcy court entered the July 3, 2001, stay relief order, seek the vacation of that order and constitute collateral attacks upon an otherwise valid and final order of the bankruptcy court. The bankruptcy court correctly rejected these attacks.

Our determination that the bankruptcy court was correct in its allowance of the Bank's claim requires that we affirm the bankruptcy court's order denying confirmation of Ms. Kittel's Chapter 13 plan. It is apparent from the record that

Ms. Kittel would have been wholly unable to make payments sufficient to service her obligation to the Bank once it was increased by the amount of the allowed fees and expenses. And, because Ms. Kittel was unable to demonstrate that she could make these payments, the bankruptcy court's order lifting the stay to permit the Bank to seek confirmation of the sheriff's sale was also proper and should be affirmed.

Lastly, we deny appellants' motion for clarification or for sanctions against the Bank with respect to our previous stay order. This Court's stay pending appeal order stayed further proceedings on the bankruptcy court's November 28, 2001, order. Thus, the Bank was stayed from seeking to confirm the sheriff's sale in state court pending the completion of this appeal. Our order in no way purported to restrain the Bank from protecting its rights in another bankruptcy case that was not even filed when appellants first sought the stay order in this case. At this time, this Court has no jurisdiction of any of the proceedings in Mr. Kittel's Chapter 11 case. Appellants' filing of this motion only needlessly increased the cost of this litigation. The Bank's request for sanctions against the appellants and their counsel is well taken, but this Court believes that the bankruptcy court, having close familiarity with the case and manner in which it has been conducted, is best situated to determine whether the circumstances warrant the imposition of sanctions against any party, and the Court defers that determination to the bankruptcy court.

While the fees and expenses incurred by the Bank have forfeited the appellants' hopes of retaining their home in Chapter 13, much of the fault for this lies with the appellants and their counsel who have chosen to approach what should have been a straightforward Chapter 13 case in a convoluted and litigious manner. Starting with the appellants' failure to appear and defend the State Court Case and ending with the spurious motion denied above, the appellants have taken

a string of disjointed and misguided steps that have vastly complicated and ultimately overwhelmed their effort to reorganize their affairs. The Bank has been led an expensive chase as it attempted to defend the appellants' assaults on its lien rights. Under the Bank's documents and Oklahoma law, the cost of the Bank's defense must be ultimately borne by the appellants who now owe the Bank more than four times what they owed when the case was filed and before their counsel initiated the ill-conceived onslaught of litigation detailed herein. While the appellants' lot is unfortunate, it is largely of their own making, and this Court cannot offer them any remedy.

For the reasons set forth above, the judgments and orders contained in the bankruptcy court's memorandum of decision are AFFIRMED.