

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED

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MOLLIE C. JONES, CLERK

BY _____ DEPUTY

IN RE:

ROBERT VERNON RILEY, SR.

CASE NO. 8702080JC

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Edward Ellington, Bankruptcy Judge

OPINION AND ORDER

THIS CAUSE came on to be heard on the Proof of Claim filed herein by the Farmers Home Administration (FmHA), United States Department of Agriculture; the Objection of the Debtor herein, Robert V. Riley, Sr., to the said Proof of Claim; the Response to the Objection filed by the FmHA; a Pre-Trial Order, including the Stipulation therein, filed herein on June 13,

1988, and the Briefs of the parties. The parties have agreed that the said Court should decide the matter on said pleadings, Pre-Trial Order including the Stipulation therein, and the Briefs, and the Court having heard and considered said matter and otherwise being fully advised in the premises, finds as follows:

The critical issue in the case at bar is whether the actions of the parties were such that the debtor conveyed 118 acres, more or less, valued at approximately \$47,500.00 to the FmHA and thus canceled his personal liability on loans which approach an amount of almost \$1,000,000.00.

7 C.F.R. Ch. XVIII, Part 1955, Subpart A delegates authority and prescribes procedures for the liquidation of certain types of Farmers Home Administration (FmHA) loans and acquisition of property by voluntary conveyance to the government, by foreclosure and by certain other actions which result in acquisition of property by the government. The significance of a voluntary conveyance to the FmHA under these regulations is that a debtor can be released from any personal liability on his loans and have his indebtedness to the FmHA canceled, either in whole or in part.

As stipulated by the parties, the loans involved herein were farm related loans defined as CONACT loans 1/ and the amount claimed is in excess of \$945,656.42.

1 7 C.F.R. 1955.3(b)

7 C.F.R. 1955.10 is the particular regulation which governs the voluntary conveyance of real property and release of liability. Due to the size of this loan, all approval had to be made by the State Director of the FmHA. 2/

The procedure for the Debtor to make an offer of voluntary conveyance is contained in 1955.10(d). Basically, it provides that the Debtor will use a particular form referred to as "Offer to Convey Security" to make his proposal and that the offer is to be accompanied by a warranty deed and current financial statement. Thereafter, a lien search is to be obtained and an appraisal made of the property.

The parties stipulated that these actions were taken and there is no disagreement up to this point.

A copy of the FmHA Form 1955-1, "Offer to Convey Security" submitted by the Debtor and his wife is attached as Exhibit 1 to the response filed by the FmHA on March 16, 1988. The form is not dated, but the briefs of both parties indicate that it was executed on September 23, 1985. A copy of the warranty deed submitted by the debtor at the same time is allegedly attached as Exhibit 2, but the copy is improperly

2 7 C.F.R. 1955.10(a); 1955.10(f)(2)

reproduced. Both sides of the sheet are of page one of the deed and there is no copy of page two. Therefore, there is no date shown on the deed.

The disagreement arises as to the legal effect of the action, or inaction, of the FmHA after the Debtor made his offer of voluntary conveyance.

7 C.F.R 1955.10(d)(2) provides in part:

The deed will not be recorded until it is determined the voluntary conveyance will be accepted. At the time of the offer, the borrowers will be informed that the conveyance will not be accepted until the property has been appraised and a lien search has been obtained. If the voluntary conveyance is not accepted, the deed and Form FmHA 1955-1, properly executed, will be returned to the borrower along with a memorandum stating the reason(s) for nonacceptance. (Emphasis added).

7 C.F.R 1955.10(f)(2)(ii) provides the procedure for processing an offer to convey property and the acceptance by the FmHA for CONACT loans which are not within the County Supervisor's approval authority, such as the one which we have in this case. It basically says that the County Supervisor will assemble the file and send it to the State Director for his determination. It goes on to specifically provide:

(B) If the approval official determines the conveyance should be accepted, the file will be returned to the County Supervisor with a memorandum of conditional approval. The same conditions for release of liability apply an (sic) in Paragraph (f)(2)(i) of this section.

If the approval official does not concur in acceptance of the conveyance, the file will be returned with a memorandum stating the reasons for rejecting the offer and giving instructions to the County Supervisor for further servicing of the account.

In the case at bar, during all times material, the FmHA never explicitly indicated its decision to reject the offer of the Debtor by so indicating on the back of the form and returning it to the Debtor, together with the deed and a memorandum stating the reason(s) for nonacceptance.

In his brief the Debtor asserts that since the FmHA did not return the deed and the offer form and did not issue to the Debtor a memorandum in which it states the reasons for nonacceptance, that the Debtor was denied "procedural due process" with the effect that his offer was accepted and his personal liability was extinguished.

In support of his argument he cites the case of United States v. White, 429 F.Supp. 1245 (N.D.Miss. 1977). In that case the debtors had obtained a FmHA rural housing loan to purchase a home. The deed of trust given to the FmHA on the home contained language whereby the debtors waived any personal notice from the FmHA of default on their loan and permitted foreclosure to proceed as otherwise provided by state law. Because of alleged default in payments, the FmHA foreclosed on

the property in accordance with state law and then brought eviction proceedings against the debtors.

Chief District Judge William Keady held that the foreclosure was constitutionally impermissible as well as contrary to statutory requirements. In summary, he held that the ownership as well as the right to occupy government subsidized housing is a property interest protected by the Fifth Amendment; that the determination of any benefits which are a matter of statutory entitlement held by a qualified recipient brings the due process clause into play; that such benefits cannot be terminated without satisfying minimal procedural safeguards; that due process mandates two fundamental principles or minimal requirements which are adequate notice and an opportunity to be heard or to defend; and, that under the facts of the case the debtors were not afforded due process. He held that due process rights may be waived by contract but that in order to establish contractual waiver, the FmHA had the burden of demonstrating that the debtors made a voluntary and intelligent waiver of their known due process rights. The FmHA failed to meet this burden.

Granted the correctness of Judge Keady's opinion under the particular facts of the White case, supra, this Court is of the opinion that it does not answer the questions raised in this case.

In the case at bar, the Debtor made an offer to voluntarily convey 118 acres of land in return for having an indebtedness forgiven by the FmHA. The FmHA has not yet accepted the offer or rejected the offer. The Debtor argues that since his offer was not rejected then it should be deemed accepted.

The Court finds this argument not to be well taken. The "Offer to Convey Security" form which the Debtor and his wife executed and submitted contains the following language:

VI. FmHA may accept or reject this offer at anytime by indicating so in Item VII below and delivering or mailing a copy of this offer to us at the address currently in the FmHA Finance Office records or such other address as we may direct. We understand that we may withdraw this offer by written notice delivered to FmHA at anytime prior to its acceptance by FmHA.

The form clearly states that the offer can be accepted or rejected by the FmHA at anytime and the Debtor can withdraw the offer at anytime prior to acceptance. This is in keeping with basic "hornbook" law.

It is also basic "hornbook" law that in order to have a contract you must have an offer and an acceptance. Without acceptance, there is no contract. The Court found nothing in the regulations to the contrary. Specifically, in this case, the Debtor's

offer to FmHA has not been accepted and therefore he is still fully indebted to the FmHA.

Assuming that the offer of the Debtor to voluntarily surrender his property and to have his indebtedness forgiven in whole or in part is a benefit which entitles him to due process, the fact that his offer has not been rejected in accordance with the regulation and that he has not had an opportunity to seek at least a plenary administrative review does not lead to the conclusion that the Debtor's indebtedness of almost \$1,000,000.00 is satisfied and canceled. No cases to this effect have been cited to the Court and this Court knows of none.

A related or ancillary issue contained in the briefs concerns allegations to the effect that the FmHA County Supervisor made certain representations to the Debtor that if he would convey certain other property to the government, which he did, that all of his indebtedness would be forgiven. Assuming, arguendo, that these representations were made by the County Supervisor, the County Supervisor cannot exceed the authority with which he is vested by government regulations. United States v. Hughes, 340 F.Supp. 539, 554 (N.D. Miss. 1972). Federal Crop Insurance Corporation v. Merrill, 332 U. S. 380, 384 (1947), Robinson v. Vollert, 602 F.2d 87, 93-94 (5th Cir. 1979).

IT IS, THEREFORE, ORDERED AND ADJUDGED that the objection of the Debtor to the allowance of claim submitted by the FmHA should be, and it hereby is, denied and held for naught.

ORDERED AND ADJUDGED this the 23rd day of June, 1988.


UNITED STATES BANKRUPTCY JUDGE