

FEB 10 1997

CHARLENE J. PENNINGTON, CLERK
BY DEPUTY

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

IN RE: WILLIAM MANN and
DOROTHY D. MANN

CASE NO. 96-01303JEE
CHAPTER 11

MOTION NO. M960403
MOTION NO. M960406

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Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

The Court has before it for consideration the following matters:

The motion of the Debtors-in-Possession for voluntary dismissal of this case;

The amended motion of AFLIC and AFIC to convert this Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code¹;

Motion No. M960403 filed by American Federated Life Insurance Company (AFLIC) seeking relief from the automatic stay as it applies to an apartment complex known as the Alta Woods Apartments;

¹ Hereinafter all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

Motion No. M960406 filed by American Federated Insurance Company (AFIC) seeking either adequate protection or relief from the automatic stay as it applies to an apartment complex known as the Dolphin South Apartments; and

The motion of the Debtors-in-Possession for authority to use certain cash collateral of AFLIC and AFIC.

After notice and a hearing on each of the above matters, and being fully advised in the premises, the Court finds that the motion of the Debtors for voluntary dismissal is not well taken and should be denied. The motion of AFLIC and AFIC to convert this case to a case under chapter 7 should also be denied, without prejudice to being renewed at a later time. The Court further finds that the motion of AFLIC for relief from the automatic stay as to the Alta Woods Apartments is well taken and should be granted. The Court will not grant the motion of AFIC for relief from the automatic stay as to the Dolphin South Apartments, but will order the Debtors to provide adequate protection to AFIC as set forth below. Because the Court will grant the motion of AFLIC for relief from the automatic stay as to the Alta Woods Apartments, the Debtors' motion of for authority to use cash collateral derived from the Alta Woods Apartments is moot and will be denied. As to the portion of the motion for authority to use cash collateral relating to the Dolphin South Apartments, the Court is advised that AFIC has no objection to the use of its cash collateral for the payment of 1995 ad valorem taxes. The Court will address the cash collateral issue, as it pertains to the Dolphin South Apartments, more specifically below.

In so deciding, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On April 11, 1996, William Mann and Dorothy D. Mann filed a joint petition for relief under Chapter 11 of the Bankruptcy Code. In May of 1996, AFLIC filed a *Motion to Lift Stay and for Other Relief*. In its motion, AFLIC states that it holds a secured claim against the Debtors' residence and an apartment complex known as the Alta Woods Apartments located in Jackson, Mississippi, and seeks relief from the automatic stay as to those two properties. Only the portion of the motion dealing with the Alta Woods Apartments is before the Court. An order previously was entered regarding the portion of the motion relating to the Debtors' residence.

Also in May of 1996, AFIC filed a *Motion for Adequate Protection and for Other Relief*. In its motion, AFIC states that it holds a secured claim against an apartment complex located in Pascagoula, Mississippi known as the Dolphin South Apartments. AFIC seeks either adequate protection or relief from the automatic stay.

In August of 1996, AFLIC and AFIC filed an *Amended Motion to Convert to Chapter 7 Case*.

In October of 1996, the Debtors filed their *Motion for Authority to Use Cash Collateral*.

In October of 1996, the Court set the foregoing matters for trial in November of 1996. However, by agreement of the parties, the trial was continued until December 18, 1996.

On December 6, 1996, the Debtors filed their *Motion for Voluntary Dismissal*, asking the Court to shorten the time for notice of the motion to ten days. The Court granted the Debtors' request and shortened the notice time to ten days so that the motion for voluntary dismissal also could be heard on December 18, 1996.

At the trial on December 18, 1996, both parties presented evidence to the Court in support of their respective positions on all of the above listed contested matters. Because some items of proof pertained to more than one issue, the parties did not necessarily present their evidence in a particular order. Instead, the proof was presented with the understanding of the Court and the parties, that after entering all evidence into the record, the parties would be permitted the opportunity to tie together their proof and arguments as they deemed necessary. The Court granted the parties additional time to submit post-trial memorandum briefs setting forth their arguments.

In addition to documentary proof, three witnesses were called to testify at the trial. AFLIC and AFIC called James Craig, an appraiser who testified as to the value of the two apartment complexes. The Debtors called Van Duncan, also an appraiser, who testified regarding the same. The Debtors also called Mr. Frank

Moore, an attorney who is representing the Debtors in an action against AFLIC and AFIC pending in the United States District Court.

The existence of AFLIC's security interest in the Alta Woods Apartments and cash collateral derived therefrom is not in dispute. Neither is the amount of the outstanding indebtedness in dispute. Likewise, there is no dispute as to the existence of AFIC's security interest in the Dolphin South Apartments and the cash collateral derived therefrom or the amount of the outstanding indebtedness. Instead, the parties disagree as to the present market value of the two properties and the proper disposition of the properties. The parties also disagree on the proper disposition of the chapter 11 case. The Debtors want to voluntarily dismiss their case; AFLIC and AFIC want the case converted to chapter 7.

THE ALTA WOODS APARTMENTS

William D. Mann is the owner of a certain parcel of real property and improvements thereon known as the Alta Woods Apartments, located in Jackson, Mississippi. He purchased the apartments in February of 1994 for \$ 370,000. In connection with the purchase of the apartments, Mr. Mann borrowed \$ 380,000 from AFLIC as evidenced by a promissory note dated February 1, 1994. In order to secure the indebtedness, Mr. Mann executed a deed of trust naming AFLIC as the beneficiary.

The parties stipulated that the amount owing to AFLIC as of the trial date is \$ 341,382.20. The 1995 ad valorem taxes, which

were unpaid at the time of trial, are \$ 14,160.69. The 1996 ad valorem taxes, which became due February 1, 1997 are \$ 11,792.30. The 1995 and 1996 unpaid taxes constitute liens against the property which prime the lien of AFLIC.

James Craig, an appraiser, was called as a witness by AFLIC and AFIC. He testified that, in his opinion, the present market value of the Alta Woods Apartments is \$ 365,000. He explained that the \$ 365,000 value includes a reduction for the tax lien for unpaid 1995 taxes. The 1996 taxes were not due at the time of the appraisal and are not considered in Mr. Craig's appraisal.

Mr. Craig testified that the property is in general disrepair. In his opinion, the property needs a substantial investment of \$ 4,500 per unit for each of the forty units in order to upgrade the property to a point where reliable tenants can be obtained. One of the factors considered by Mr. Craig in arriving at his opinion of present market value was that Mr. Mann purchased the property for \$ 370,000 in February of 1994. Mr. Craig also considered that no substantial repairs or improvements have been made since that time. Mr. Craig's written appraisal dated December 16, 1996, was introduced into evidence.

In support of their position, the Debtors called Van Duncan, also an appraiser, to testify as to the present market value of the Alta Woods Apartments. Mr. Duncan testified that, in his opinion, the present market value of the property is \$ 525,000. His calculation of market value was not reduced to reflect any tax liens. Mr. Duncan testified that in arriving at the market value

he did not consider the purchase price paid by Mr. Mann for the property. He did acknowledge that the property needs repairs, but stated that his market value was adjusted to account for the needed repairs. Mr Duncan's written appraisal dated December 5, 1996, was entered into evidence.

In addition to the December 5, 1996 appraisal, a prior appraisal of the Alta Woods Apartments dated February 1, 1994, and prepared by Mr. Duncan was entered into evidence. The appraisal, dated the same date as Mr. Mann's purchase of the property, found the market value to be \$ 625,000. Mr. Duncan testified that he was not aware that Mr. Mann purchased the property for \$ 370,000. When questioned as to why the second appraisal was \$ 100,000 lower than his first appraisal, Mr. Duncan explained that his first appraisal assumed that certain repairs and improvements would be performed. Since they were not performed, he adjusted the value accordingly in his second appraisal.

After considering the testimony of both Mr. Craig and Mr. Duncan, along with their written appraisals, the Court finds, as an issue of fact, that the present market value of the Alta Woods Apartments is \$ 379,160. In arriving at this value, the Court used the value assigned by Mr. Craig, but added back the 1995 taxes subtracted by Mr. Craig in his appraisal. The 1995 and 1996 ad valorem taxes are a lien against the property and will be considered in determining whether the Debtors have any equity in the property. In making this finding, the Court gave substantial weight to the fact that the property was purchased in 1994 for

\$ 370,000 at an arm's length transaction and has had no substantial repairs or improvements since that time.

THE DOLPHIN SOUTH APARTMENTS

In July of 1994, William Mann purchased a certain parcel of property and improvements thereon located in Pascagoula, Mississippi known as the Dolphin South Apartments. The purchase price for the apartments was \$ 662,500. In connection with the purchase of the Dolphin South Apartments, Mr. Mann borrowed \$ 672,500 from AFIC and executed a promissory note dated July 15, 1994 in favor of AFIC. In order to secure the indebtedness, Mr. Mann also executed a deed of trust naming AFIC as the beneficiary.

The parties stipulated that as of the date of the trial the amount due under the terms of the promissory note is \$ 618,456.81. The ad valorem taxes for 1995 are \$ 13,355.78. At the time of the trial, the 1995 taxes had not been paid. The 1996 ad valorem taxes, which became due and payable February 1, 1997, are \$ 15,726.56. The unpaid 1995 and 1996 taxes constitute liens against the property priming AFIC's lien.

AFLIC and AFIC called James Craig also to testify as to the present market value of the Dolphin South Apartments. Mr. Craig testified that the Dolphin South Apartments are in generally good condition and are located in a good market. In his opinion, the present market value of the apartments is \$ 715,500. Mr. Craig testified that the present market value reflects an adjustment for the lien for 1995 taxes due. Mr. Craig also testified that in

arriving at his conclusion, he considered the purchase price of \$ 662,500 paid by Mr. Mann in 1994 in an apparent arm's length transaction. Mr. Craig's written appraisal dated December 16, 1996 was introduced into evidence.

Mr. Van Duncan again testified for the Debtors regarding his opinion of the present market value of the Dolphin South Apartments. In Mr. Duncan's opinion, the present market value of the Dolphin South Apartments is \$ 900,000. Mr. Duncan's written appraisal dated November 14, 1996 was introduced into evidence. The Court did not find compelling, Mr. Duncan's testimony that the property has appreciated almost fifty percent in value since July of 1994.

The Court finds, as an issue of fact, that the present market value of the Dolphin South Apartments is at least \$ 744,562. This amount represents the value assigned by Mr. Craig, plus an adjustment for the 1995 ad valorem taxes subtracted by Mr. Craig in his appraisal. The 1995 and 1996 unpaid taxes will be considered in determining whether the Debtors have any equity in the property. The evidence shows that the apartments have been maintained in reasonably good condition and have not depreciated since Mr. Mann purchased the property in July of 1994.

THE U.S. DISTRICT COURT LITIGATION
BETWEEN THE DEBTORS AND AFLIC AND AFIC

At the trial, the Debtors called Mr. Frank Moore to testify regarding the nature and value of a lawsuit filed by the Debtors against AFLIC, AFIC, Tower Loans of Mississippi, Inc. and Jack R.

Lee. Mr. Moore is representing the Debtors in the case. Originally, the case was commenced in the Circuit Court for the First Judicial District of Hinds County, Mississippi. Based on the existence of bankruptcy jurisdiction, the case was removed by the Defendants to the United States District Court for the Southern District of Mississippi, Jackson Division, Civil Action No. 3:96cv741LN.

Mr. Moore testified that the lawsuit involves the same transactions by which AFLIC and AFIC loaned Mr. Mann the purchase money for his residence, the Alta Woods Apartments and the Dolphin South Apartments. The Debtors allege in the district court litigation that the Defendants are liable to them for actual and punitive damages as a result of wrongful acts in connection with the loans. Mr. Moore testified that if the bankruptcy case is dismissed, then the case will be remanded to state court, where he believes the potential recovery is greater than it is in U.S. District Court.

CONCLUSIONS OF LAW

THE DEBTORS' MOTION TO VOLUNTARILY DISMISS AND THE MOTION OF AFLIC AND AFIC TO CONVERT TO CHAPTER 7

The Court first will address the question of whether this case should be dismissed, as the Debtors request, converted, as AFLIC and AFIC request, or remain in Chapter 11.

The conversion or dismissal of a case under Chapter 11 of the Bankruptcy Code is governed by § 1112(b), which provides in part as follows:

11 USC § 1112

§ 1112. Conversion or dismissal.

....
(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee or bankruptcy administrator, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including -

(1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;

(2) inability to effectuate a plan;

(3) unreasonable delay by the debtor that is prejudicial to creditors;

(4) failure to propose a plan under section 1121 of this title within any time fixed by the court;

(5) denial of confirmation of every proposed plan and denial of a request made for additional time for filing another plan or a modification of a plan;

(6) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or a modified plan under section 1129 of this title;

(7) inability to effectuate substantial consummation of a confirmed plan;

(8) material default by the debtor with respect to a confirmed plan;

(9) termination of a plan by reason of the occurrence of a condition specified by the plan; or

(10) nonpayment of any fees or charges required under chapter 123 of title 28.

In considering a motion to convert or dismiss under § 1112, the Fourth Circuit Court of Appeals has stated:

A motion filed under this section invokes a two-step analysis, first to determine whether "cause" exists either to dismiss or to convert the Chapter 11 proceeding to a Chapter 7 proceeding, and second to determine which option is in the "best interest of creditors and the estate." See In re Mechanical Maintenance, Inc., 128 B.R. 382, 386 (E.D. Pa. 1991). Once "cause" is established, a court is required to consider this second question of whether to dismiss or convert. See In re Finny, 992 F.2d 43, 45 (4th Cir. 1993).

Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.), 14 F.3d 240, 242 (4th Cir. 1994).

"The inquiry under § 1112 is case-specific, focusing on the circumstances of each debtor." United Savings Association of Texas v. Timbers of Inwood Forest Associate, Ltd. (In re Timbers of Inwood Forest Associates, Ltd.), 808 F.2d 363, 371-2 (5th Cir. 1987). "Also, once brought voluntarily by a debtor, a chapter 11 proceeding may not be dismissed upon his motion alone, but requires a 'for cause' finding by the court." Stinson v. Williamson (Matter of Williamson), 804 F.2d 1355 (5th Cir. 1986).

In light of the foregoing authority, the Court must first find "cause" under § 1112 before addressing the issue of whether conversion or dismissal is in the best interest of the creditors.

To support their motion to dismiss, the Debtors assert that there is substantial equity in both apartment complexes and that the lawsuit, which is an asset of the estate, has a potential recovery that could satisfy all creditors. The Debtors argue that no creditor will be prejudiced if the case is dismissed, and the potential for recovery under the lawsuit is greater if the bankruptcy case is dismissed, destroying federal jurisdiction.

The evidence presented to the Court by the Debtors pertained in large part to the value of the apartment complexes and the existence of the debts. Evidence was also presented by the Debtors regarding the pending litigation between the Debtors and AFLIC and AFIC. Counsel representing the Debtors in the district court litigation testified as to the nature of the lawsuit and the damages sought. He also testified that, in his opinion, recovery might be greater if the case were tried in state court rather than federal court. Absent bankruptcy jurisdiction the case can not be maintained in federal court.

At trial, the Court questioned the parties as to the procedural status of the district court litigation. The parties informed the Court that the case is on the August, 1997 trial calendar of United States District Judge Tom S. Lee, and will be tried in 1997, unless a resolution is reached earlier.

To support their motion to convert to chapter 7, AFLIC and AFIC presented evidence pertaining to the existence of the debt and the value of the apartments. AFLIC and AFIC also presented documentary evidence of checks written by Mr. Mann on an account bearing the heading, Mid-South Trading, Inc. Mid-South Trading, Inc. is listed in the Debtors' schedules as an asset of the estate with no value. AFLIC and AFIC also introduced into evidence a deposition of Mr. Mann taken by AFLIC and AFIC. AFLIC and AFIC argue that Mr. Mann's deposition testimony and the checks written on the Mid-South Trading, Inc. account support their motion to convert. They argue that the case should be converted to chapter

7 so that a Trustee may liquidate the estate and pursue possible assets that the Debtors may not have disclosed. They also stated that they would prefer to litigate the pending action in federal court and negotiate any potential settlement with a chapter 7 trustee. AFLIC and AFIC concede there is equity in the Dolphin South Apartments located in Pascagoula, Mississippi.

In considering both the Debtors' motion to voluntarily dismiss and the motion of AFLIC and AFIC to convert to chapter 7, the Court finds that neither party has met their burden of showing cause for dismissal or conversion. Evidence that would support a finding of cause under § 1112(b) generally is evidence showing why a certain case cannot successfully reorganize or liquidate under chapter 11. The Debtors instead take the position that plenty of equity exists in the apartment complexes, and recovery under the lawsuit is probable in an amount sufficient to satisfy all creditors. The testimony regarding the pending litigation is inconclusive and the Court has no opinion as to the merits of the case. However, the Court does believe the case will go to trial this year, determining the issue of whether there may be a recovery.

This bankruptcy case has been pending since April of 1996 with the Debtors having received the benefit of protection under the Bankruptcy Code during that time. The Court is of the opinion that if the Debtors realize any recovery from the litigation, the interest of the creditors will best be protected by the retention of any proceeds by the estate. Estate assets can then be distributed in accordance with the Bankruptcy Code. If the case

remains under chapter 11 and a recovery is sufficient to satisfy all claims of creditors, then the liquidation of additional assets of the estate and the appointment of a trustee with attendant administrative expenses may be unnecessary.

For the foregoing reasons, the Court finds that the Debtors' motion to voluntarily dismiss should be denied. The Court also finds that the motion of AFLIC and AFIC should be denied at this time without prejudice to being renewed at a later time.

THE MOTION OF AFLIC FOR RELIEF FROM THE AUTOMATIC STAY
AND
THE MOTION OF AFIC FOR ADEQUATE PROTECTION
OR RELIEF FROM THE AUTOMATIC STAY

Having decided that this case will remain under chapter 11 for the present time, the Court must consider the motion of AFLIC for relief from the automatic stay as it applies to the Alta Woods Apartments, and the motion of AFIC for adequate protection or relief from the automatic stay as it applies to the Dolphin South Apartments.

The movants are proceeding under § 362(d), which provides in relevant part as follows:

11 USC § 362
§ 362. Automatic stay.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay -

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if -

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

When relief from the automatic stay is sought pursuant to § 362(d)(2), the creditor has the burden of proving that the Debtor has no equity in the property. Once the creditor proves that the Debtor has no equity, the burden shifts to the Debtor to show that the property in question is necessary to an effective reorganization. 11 U.S.C. § 362(g). United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, LTD., 484 U.S. 365, 375, 98 L.Ed.2d 740, 751, 108 S.Ct. 626 (1988).

"'Equity' as used in section 362(d) portends the difference between the value of the subject property and the encumbrances against it." Sutton v. Bank One, Texas National Ass'n (Matter of Sutton), 904 F.2d 327, 329 (5th Cir. 1990) (citations omitted). Since the total amount due each movant under the terms of the promissory notes is not in dispute, whether the Debtors have equity in either property is determined by the value of the property.

In considering the evaluation of property by bankruptcy courts Congress did not dictate a particular appraisal method. Rather, valuation is determined case-by-case, taking into account the nature of the debtor's business, market conditions, the debtor's prospects for rehabilitation, and the type of collateral. See 2 Collier on Bankruptcy ¶ 361.02 (15th ed. 1990); H.R. Rep. No. 595, 95th Cong., 2d Sess. 339, reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 6295; In re Conquest Offshore

Int'l, Inc., 73 B.R. 171 (Bankr. S.D. Miss. 1986).

Sutton v. Bank One, Texas National Ass'n (Matter of Sutton), 904 F.2d 327, 330 (5th Cir. 1990).

The Court has found, as an issue of fact, that the value of the Alta Woods Apartments is \$ 379,160. There is no dispute that under the terms of the promissory note and deed of trust AFLIC holds a lien against the property in the amount of \$ 341,382.20. The liens for unpaid taxes are \$ 14,160.69 for 1995 and \$ 11,792.30 for 1996. When these liens are subtracted from the present market value, there is at best approximately \$ 11,825 equity remaining in the property, which amount represents little more than 3 percent of the market value of the property.

The evidence showed that the property has deteriorated since purchased by Mr. Mann in 1994. The apartments and grounds are in a state of disrepair and no funds have been available for maintenance and improvements. Unless certain maintenance and improvements are performed, the property will continue to deteriorate. In light of the testimony as to the need for necessary expenditures, the Court is of the opinion that any equity that may exist will be consumed by necessary repairs. Therefore, the Court concludes that AFLIC has met its burden under §362(d)(2)(A) of showing that the Debtors do not have equity in the property.

Next, the Court must consider whether the Debtors have met their burden of showing that the property is necessary to an effective reorganization.

The United States Supreme Court has stated that the Debtor's burden of showing that the property is necessary to an effective reorganization requires:

"not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect*. This means, as many lower courts, including the en banc court in this case, have properly said, that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.' 808 F2d, at 370-371, and nn 12-13, and cases cited therein."

United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, LTD., 484 U.S. 365, 375-6, 98 L.Ed.2d 740, 751, 108 S.Ct. 626 (1988).

In support of their argument that the Alta Woods Apartments are necessary to an effective reorganization if the case is not dismissed, the Debtors argue that they should be allowed a reasonable time to market the property while they make interest only payments. The Debtors concede that the apartments are in poor condition.

The Court is not persuaded by the Debtors' argument. This case has been pending since April of 1996 and the Debtors have repeatedly stated their desire to market the property, although no evidence has been presented to the Court to show that the Debtors are attempting to sell the property. Even if the Court were to allow the Debtors a period of time in which to market the property, it is doubtful that the unsecured creditors would receive any distribution. If the Debtors could sell the property for its

market value of \$ 379,160 without incurring any expenses in disposing of the property, then under the Debtors' proposed plan, the Debtors would retain fifty percent of any equity realized. Taking the amount that the Debtors intend to retain into account, the unsecured creditors would receive at best 1.5 percent of the value of the property.

The Court finds that the Debtors have not met their burden of showing that the property in question is necessary to an effective reorganization. Therefore, AFLIC is entitled to relief from the automatic stay as to the Alta Woods Apartments. However, the property will not be abandoned from the estate. In the event that the property is sold for an amount in excess of its liens, any surplus will remain for the benefit of the estate.

Next the Court will consider the motion of AFIC for adequate protection or relief from the automatic stay as it applies to the Dolphin South Apartments.

The undisputed amount of AFIC's lien against the Dolphin South Apartments is \$ 618,456.81. The liens for unpaid taxes are \$ 13,355.78 for 1995 and \$ 15,726.56 for 1996. The Court has found that the property has a value of at least \$ 744,562. Therefore, AFIC has not proved the first element required under § 362(d), a lack of equity. In fact, AFIC's own proof showed that the Debtor has substantial equity in the property. The proof also shows that the Dolphin South Apartments have been reasonably well maintained.

Since AFIC has not met its burden as to the first element of § 362(d), the Court need not consider whether the property is

necessary to an effective reorganization, and the automatic stay will not be lifted as to the Dolphin South Apartments.

In its motion, AFIC requests adequate protection if the stay is not lifted. The Debtors request authority to use the cash collateral of the Dolphin South Apartments. The two issues are closely related since the Debtors will have to use AFIC's cash collateral to make adequate protection payments to AFIC.

THE DEBTOR'S MOTION TO USE CASH COLLATERAL

In their motion for authority to use cash collateral the Debtors request authority to use surplus cash generated by the apartments to make previously ordered adequate protection payments on the Debtors' residence. The Court ruled prior to the trial that cash collateral from the apartments may not be used for adequate protection payments on the Debtors' residence. In addition to the issue of adequate protection payments for the residence, the Debtors orally sought authority to use cash collateral to pay 1995 ad valorem taxes on the property, and sought guidance as to the extent of the Debtors' authority to use cash collateral.

Since the stay will be lifted on the Alta Woods Apartments, the motion will be denied as moot regarding cash collateral generated by the Alta Woods Apartments.

The Court will enter a judgment providing adequate protection for AFIC's interest in the Dolphin South Apartments and in cash collateral generated by the Dolphin South Apartments. The judgment will provide as set forth below.

The Debtors shall place all revenues generated by the Dolphin South Apartments in a separate, uncomingled account. From the funds held in that account, the Debtors may use, without further order of the Court, cash collateral to pay expenses incurred in the ordinary course of operating the apartments, including amounts for the payment of insurance and ad valorem taxes. The Debtors may not use any of the funds generated by the Dolphin South Apartments for personal expenses including, but not limited to, adequate protection payments for their residence, which the Debtors are required to make to AFLIC. All funds remaining after payment of ordinary business expenses shall be held, and no distribution may be made without further order of the Court or agreement of the parties. The Debtors shall provide to AFIC on or before the 15th day of each month, a monthly accounting for the previous month of gross receipts generated, expenses paid, and net amounts held in the account. When the amounts held in the separate account merit consideration, the matter of use of cash collateral may be brought back before the Court if the parties cannot reach agreement.

A separate order consistent with this opinion will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

This the 10th day of February, 1997.


UNITED STATES BANKRUPTCY JUDGE

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

U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED

FEB 10 1997

CHARLENE J. PENNINGTON, CLERK
BY _____ DEPUTY

IN RE: WILLIAM MANN and
DOROTHY D. MANN

CASE NO. 96-01303JEE
CHAPTER 11

MOTION NO. M960403
MOTION NO. M960406

FINAL JUDGMENT

Consistent with the Court's opinion dated contemporaneously herewith, the Court does hereby order and adjudge as follows:

1. The motion of the Debtors-in-Possession for voluntary dismissal of this case is denied;
2. The amended motion of AFLIC and AFIC to convert this Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code is denied without prejudice;
3. Motion No. M960403 filed by American Federated Life Insurance Company (AFLIC) seeking relief from the automatic stay as it applies to an apartment complex known as the Alta Woods Apartments is granted;
4. Motion No. M960406 filed by American Federated Insurance Company (AFIC) seeking either adequate protection or relief from the automatic stay as it applies to an apartment complex known as the Dolphin South Apartments is granted in part and denied in part. AFIC's request for relief from automatic stay is denied. AFIC's request for adequate protection is granted, as set forth in the following provisions regarding the Debtors' motion for authority to use cash collateral; and
5. The portion of the Debtors' motion for authority to use cash collateral of AFLIC generated by the Alta Woods Apartments is moot and, therefore, is denied.

6. The portion of the Debtors' motion for authority to use cash collateral of AFIC generated by the Dolphin South Apartments is granted according to the following provisions:

a. The Debtors shall place all revenues generated by the Dolphin South Apartments in a separate, uncomingled account.

b. From the funds held in that account, the Debtors may use, without further order of the Court, cash collateral to pay expenses incurred in the ordinary course of operating the apartments, including amounts for the payment of insurance and ad valorem taxes.

c. The Debtors may not use any of the funds generated by the Dolphin South Apartments for personal expenses including, but not limited to, adequate protection payments for their residence, which the Debtors are required to make to AFLIC.

d. All funds remaining after payment of ordinary business expenses shall be held and no distribution may be made without further order of the Court or agreement of the parties.

e. The Debtors shall provide to AFIC on or before the 15th day of each month, a monthly accounting for the previous month of gross receipts generated, expenses paid, and net amounts held in the account.

f. When the amounts held in the separate account merit consideration, the matter of use of cash collateral may be brought back before the Court if the parties cannot reach agreement.

This judgment constitutes a final judgment pursuant to Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

SO ORDERED this the 10th day of February, 1997.


UNITED STATES BANKRUPTCY JUDGE