UNITED STATES BANKRUPTCY COURT
For the Northern District of Iowa

CERTIFICATE OF TRUE COPY

I do hereby certify that the attached copy of five pages of documents in the case No. 87-01421C of CHARLES W. GRUSCHOW and LAURA L. GRUSCHOW,

debtor(s), have been compared with the original thereof and that it is a complete and correct copy of such original as it appears of record and on file in the office of the Clerk of this Court.

In testimony whereof I have hereunto set my hand this 14th day of March, 1991.

Clerk of Bankruptcy Court
Northern District of Iowa
By: Marie L. Richards
Deputy Clerk

(Seal of the U.S. Bankruptcy Court)

FILE No. 80-2115
RECORDING FEE $ 30.00
TRANSFER FEE $

FILED FOR RECORD THE 15 DAY OF March, 1991 AT 10:23 O'CLOCK A. M. BOOK 2 PAGE 155

STATE OF IOWA, DELAWARE COUNTY
Joan Sheppard, Recorder
Misc.

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

JUN 27 1988

BARBARA A. EVERLY, CLERK

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:
CHARLES W. GRUSCHOW
LAURA L. GRUSCHOW

Debtors.

BANKRUPTCY NO.
87-01421C

CONTESTED NO. 71484

ORDER Re: Motion to Avoid Lien

Debtors' Motion to Avoid Lien came on for hearing before the Court on June 22, 1988. Appearing for the Debtors was Attorney Guy Booth.

This motion is made pursuant to § 506(d) of the Bankruptcy Code. The Debtors move to avoid any lien in excess of the fair market value of the property which secures a debt owed to Peoples Federal Savings & Loan Association and Federal Deposit Insurance Company (FDIC) as successor in interest to Dyersville National Bank. The FDIC which holds a second mortgage lien on the property which is the subject of the dispute acknowledges that there is no equity for its second mortgage. FDIC consents to this Court entering an Order avoiding the second mortgage of FDIC.

The dispute involves the debt owed to Peoples Federal Savings & Loan. That debt clearly is in excess of any of the appraisals which have been done on Debtors' real estate. However, the parties have been unable to agree as to the fair market value of the real estate. The parties stipulated that this matter can be submitted to the Court on the basis of the written appraisals, which were introduced into evidence as Plaintiff's Exhibits "A", "B", and "C".

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Rev. 8/82)

FINDINGS OF FACT

1. Peoples Federal Savings and Loan has a valid first mortgage against the real estate which secures the debt owed by Debtors to Peoples Federal Savings and Loan.

2. The FDIC has a valid second mortgage which secures the debt owed to the FDIC by the Debtors.

3. The fair market value of the property does not exceed the debt owed to Peoples Federal Savings and Loan and therefore, there is no equity for the second mortgage which secures the debt owed to FDIC.

4. The fair market value of the property which secures the debt owed to Peoples Federal Savings and Loan is in the sum of $110,000. This figure is arrived at by comparing the three appraisals.

This Court found the appraisal performed by C. Lee Fox (Exhibit C) to be particularly persuasive. The comparables used by Mr. Fox were located quite close to the subject property. The comparable numbers one and two appear to be particularly relevant comparables to this property. Given the analysis set forth by Mr. Fox, this Court was persuaded that that appraisal most closely approximated the fair market value of the property. This Court did make a downward adjustment from Mr. Fox's appraisal for some of the factors set forth in the other two appraisals.

The appraisal prepared by Robert B. Sparts (Exhibit A) contained extensive detailed information. However, all of the

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comparables were some distance from the subject property. This calls into question the validity of the appraisal given the fact that at least one of the comparables on the Fox appraisal had been sold prior to the date of the appraisal identified as Exhibit A. In general, this Court had serious reservation concerning the comparables used in Exhibit A given the distance from the subject property, as well as, the fact that the appraiser acknowledges that all of the comparables are not of a caliber, quality or location of the subject site.

This Court gave very little weight to the Norman Fiddelke appraisal (Exhibit B) given the fact that there was no analysis in the appraisal nor any way this Court can determine how Mr. Fiddelke arrived at his conclusion.

In conclusion, this Court finds that the fair market value of the property is $110,000.

5. The legal description of the property which is the subject of the Motion to Avoid Liens is as follows:

> Lot Seven (7), Block Three (3), in "Oakway Subdivision" in Milo Township, Delaware County, Iowa according to plat recorded in Book 3 Plats, Page 16; same being part of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section Four (4) and of the Northeast Quarter (NE 1/4) of Section Five (5), Township Eighty Eight (88) North, Range Five (5) West of the Fifth P.M. Delaware County, Iowa.

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CONCLUSIONS OF LAW

1. The debtors may avoid a lien on debtors' residence to the extent the amount of the debt which is secured by the mortgage exceeds the fair market value of debtors' property. 11 U.S.C. § 506(d); In re Cleveringa, 52 B.R. (Bankr. N.D. 1985), aff'd, slip op., U.S. D.C. No. C85-4215, February 12, 1987.

2. That to the extent the mortgage which secures the debt owed to Peoples Federal Savings and Loan by the Debtors is in excess of $110,000, that mortgage lien should be avoided.

O R D E R

IT IS THEREFORE ORDERED that the mortgage to Federal Deposit Insurance Corporation is avoided.

IT IS FURTHER ORDERED that Peoples Federal Savings and Loan is allowed a secured claim in the sum of $110,000. To the extent that the mortgage which secures the debt owed to Peoples Federal Savings and Loan exceeds the sum of $110,000, that mortgage is avoided as to any amounts in excess of $110,000.

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ORDERED June 27, 1988

MICHAEL J. MELLOY
Bankruptcy Judge

Copy w/Judgment to:
Guy P. Booth,
Atty for Debtors;
William D. Martin,
Trustee;
Charles Hinton,
Stuart Hoover,
Attys for Peoples
Federal Savings & Loan Assoc.;
Robert Schell,
Atty for FDIC;
U.S. Trustee;
this June 27, 1988

Deputy Clerk
P.O. Box 74890
Cedar Rapids, IA 52407

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