

Testimony on SB2223, Senate Political Subdivisions Committee

Submitted by Jim Dotzenrod, January 28, 2020

Chairman Burckhard and members of the committee. I want to begin by thanking Senator Hogan for introducing this bill on behalf of Mr. Finstad and his interest to see if there is a way to correct a problem that he had in maintaining his ownership of the farmland and farmstead that he and his wife had owned and operated East of Lisbon in Ransom County since 1986.

The reason this bill is here today is to try to assure any debtor who ends up in Federal Bankruptcy Court that all the evidence, that bears on the question of their clear title to and ownership of subject property, is available to and can be considered by the court in making that decision. Mr. Finstad was in Federal Bankruptcy Court when he had provided a deed in lieu of foreclosure to a lender in exchange for a contract for deed that spelled out the terms for him to pay off the property. He made good progress on paying off that contract for deed. At some point he ended up in District Court and later on in the ND Supreme Court where the decision was made by the court that the deed in lieu of foreclosure was a "stand alone document", that they(the court) were not allowed to consider any information or documents that were "outside the 4 corners of the deed", given the parole evidence rule. The Finstads and their lender had developed a Confirmed Bankruptcy Plan which included this property and terms negotiated to give Mr. Finstad an additional five years to regain financial stability and pay off the lender. The Federal Bankruptcy court had all the documents, made it clear that they disagreed with the state courts decision, but they did not have the authority to overrule the state court.

It does appear that the ND District Courts and the Federal Bankruptcy Courts do not coordinate or talk to each other. It also seems wrong not to look at all the evidence that the courts have available to try to arrive at a decision that is fair and reasonable. That is why SB2223 is here.

There are amendments to this bill and it is my hope that the committee would adopt these amendments independent of how you choose to act on the bill. The original bill was too general and affected too many other deeds and title transfers. The amendment confines itself to Federal Bankruptcy Court and Confirmed Bankruptcy Plans. The amendment sets up guardrails and clear lines of jurisdictional authority in this limited number of cases where all the evidence and all the parties need to be involved in resolving questions of property ownership and debt.