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797 F.2d 516

15 Collier Bankr.Cas.2d 491, 14 Bankr.Ct.Dec. 1181,
Bankr. L. Rep. P 71,282

In re MEMORIAL ESTATES, INC., Debtor.
Appeal of CEMCO, INC.

No. 85-1196.

**United States Court of Appeals,
Seventh Circuit.**

Argued June 17, 1986.

Decided July 31, 1986.

As Amended on Denial of Rehearing Sept. 8, 1986.

William L. Needler, William L. Needler & Associates, Ltd., Chicago, Ill., for appellant.

Jeffrey R. Liebman, Arvey, Hodes, Costello & Burman, Chicago, Ill., for appellee.

Before WOOD, POSNER and FLAUM, Circuit Judges.

POSNER, Circuit Judge.

1 This appeal in a bankruptcy case requires us to decide two questions of surprising novelty: whether an order by a district judge appointing a receiver in a bankruptcy case is ever appealable even though it is not a final order, and, if so (for, if not, we cannot reach the issue on the merits), whether the law ever allows the appointment of a receiver in a bankruptcy case.

2 The principal asset of Memorial Estates, Inc. is a cemetery on which the Chicago Bank of Commerce has a mortgage for more than \$400,000. Memorial defaulted on the loan secured by the mortgage. The bank began a foreclosure action in an Illinois state court and asked the judge to appoint a receiver to operate the cemetery until the action was over. Memorial had (without the bank's consent) turned over the operation of the cemetery to Cemco, Inc., which was busy selling cemetery plots and was keeping the proceeds. Cemco took the position that the plots were not covered by the mortgage and hence that it owed the bank nothing. The bank vigorously disagreed, pointing out that if Cemco was right the only security for the mortgage was the part of the cemetery not actually usable for cemetery plots, mainly roads and paths, even though the mortgage instrument purported to secure the entire cemetery. The appointment of a receiver at the request of a creditor to prevent a waste of assets that secure the creditor's loan is a conventional application of receivership law, see 2 Story's Equity Jurisprudence Sec. 1145 (14th ed., Lyon, 1918); Kerr on the Law and Practice as to Receivers 26-27 (14th ed., Walton, 1972), and the state judge concluded that the bank was entitled to a receiver in the circumstances and announced he would appoint one. But before he got around to doing so Memorial filed a petition for bankruptcy and the foreclosure suit was removed to the bankruptcy court. See 28 U.S.C. Secs. 1334(b), (d).