

In the United States Bankruptcy Court

for the Northern District of Iowa

KARL J. ZWEIBAHMER
Debtor(s).

Bankruptcy No. 93-60650LW
Chapter 11

ORDER

This matter came on for hearing before the undersigned on May 17, 1993 on Motion for Relief from Automatic Stay filed by Farm Credit Bank of Omaha and Motion to Show Cause filed by the U.S. Trustee. Attorney David Hansen appeared for Farm Credit Bank of Omaha. Attorney Janet Reasoner represented the U.S. Trustee. Debtor Karl J. Zweibahmer appeared pro se. Having considered the record, the evidence presented and arguments of the parties, the Court makes the following rulings.

1. Motion to Show Cause

The U.S. Trustee asserts that Debtor has not filed full schedules and statement of financial affairs within the 15 day deadline as required by Bankruptcy Rule 1007(c). Debtor stated at the hearing that he understood that he had until May 20, 1993 to file the required schedules. The Court is aware that May 20 is the date which was originally set during the May 7, 1993 telephone conference for the hearing on the Motion to Show Cause. The hearing was thereafter reset for May 17, 1993 to avoid scheduling conflicts with the creditor's meeting set for May 20.

Rule 1007(c) allows extension of time to file schedules and statements only upon motion for cause shown. However, the Court finds that because of the confusion arising from the hearing dates, Debtor should be given a new deadline. Debtor is now required to file his schedules and statement of financial affairs on or before May 28, 1993. If Debtor fails to meet this deadline, this case shall automatically be dismissed without further notice or hearing.

The Court also notes that Debtor did not pay the filing fee installment of \$300.00 which was due on or before May 14, 1993. The Court will extend the time for payment until May 28, 1993. If Debtor fails to make the installment payment on or before that date, this case shall automatically be dismissed without further notice or hearing.

2. Motion to Lift Stay

Farm Credit Bank of Omaha requests relief from the automatic stay. As part of an arrangement to restructure debt, Farm Credit took title to Debtor's farm property and entered into a real estate contract with Debtor as purchaser, dated February 22, 1989. Debtor assigned all of his interest under this real estate contract to the IGWT Trust by an Assignment dated April 24, 1990. Debtor leased the property from IGWT Trust for a term of 10 years in a lease dated April 24, 1990. This lease does not include a sum to be paid as rent for the property. The record does not establish when Farm Credit became aware of this assignment and lease-back arrangement.

Farm Credit commenced forfeiture proceedings against both IGWT Trust and Debtor after they defaulted on the real estate contract. Farm Credit served a Notice of Forfeiture on Debtor and the Trust on December 19, 1992. Neither the Trust nor Debtor cured the default within 30 days as required by Iowa Code chapter 656. Farm Credit recorded an Affidavit in Support of Forfeiture and then commenced a forcible entry and detainer action in Winneshiek County Small Claims Court to recover possession of the farm property.

Judgment was entered in favor of Farm Credit on March 16, 1993. Debtor appealed. On April 14, 1993, Debtor filed his Chapter 11 petition. The next day, the Winneshiek County District Court filed its ruling on appeal affirming the FED judgment for Farm Credit. There is nothing in the record to indicate that Judge Bauch was aware of the bankruptcy filing.

The automatic stay applies to the continuation of judicial action, including appellate proceedings in state court, against the debtor commenced before the commencement of the debtor's bankruptcy case. In re Roxse Homes, Inc., 74 B.R. 810, 814 (Bankr. D. Mass 1987); 11 U.S.C. sec. 362(a)(1). Actions in violation of the automatic stay are void. Roxse Homes, 74 B.R. at 815. Thus, the state court's appellate ruling in the FED action is void as it applies to Debtor. See Ingersoll-Rand Financial Corp. v. Miller Mining Co., 817 F.2d 1424, 1427 (9th Cir. 1987) (automatic stay of appeal by debtor does not extend to non-bankrupt co-defendants).

The effect of the automatic stay is to freeze Debtor's interest in the farm property to that which existed prior to the appellate ruling. By the Assignment in April 1990, Debtor transferred all his ownership interest in the property to the IGWT Trust. After that transfer, he held no legal or equitable title to the property. The only interest Debtor held was as a tenant under the 10-year farm lease with the IGWT Trust.

Farm Credit's forfeiture of the real estate contract terminated IGWT Trust's interest in the property. Debtor and his wife, Jean, were individually named as defendants in the forfeiture action. If Debtor had retained any interest in the real estate contract, that interest would have been terminated by the forfeiture. The forfeiture was completed prior to the date this case was commenced. Debtor's interest as contract purchaser, therefore, would not have become part of the bankruptcy estate to which the automatic stay would apply. See In re Byker, 64 B.R. 640, 642 (Bankr. N.D. Iowa 1986). Upon completion of the forfeiture proceeding, Debtor was a party in possession under the lease with IGWT Trust and his standing to object is limited to that of a lessee under an existing farm lease.

Farm Credit requests that the automatic stay be lifted in order for the FED action to proceed to final judgment. It argues that Debtor has no interest in the property which is entitled to the protection of the automatic stay. This Court disagrees.

Debtor is a lessee under a lease with a term ending in April, 2000. A debtor's residual interest in a lease is property protected by the stay pursuant to sec. 362. In re 3220 Erie Blvd. East, Inc., 121 B.R. 684, 687 (Bankr. N.D. N.Y. 1990). Even a mere possessory interest in real property such as possession of a tenancy at sufferance, without any accompanying legal interest, is sufficient to trigger protection of the automatic stay. In re Atlantic Business and Community Corp., 901 F.2d 325, 328 (3rd Cir. 1990).

The issue, therefore, is whether the forfeiture proceeding also terminated the Debtor's leasehold interest. There appears to be no question that Farm Credit correctly gave notice to Debtor as provided in Iowa Code sec. 656.2. It is also clear that under common law the lessee of a terminated contract

vendee has no rights higher than the vendee. However, under Iowa law more is required to terminate Debtor's right to possession under his existing lease.

Iowa Code secs. 562.6 and 562.7 require that notice of termination of a farm lease must be served on or before September 1 in order to terminate the tenancy the following March 1. Ganzer v. Pfab, 360 N.W.2d 754, 756 (Iowa 1985), holds that a farm tenancy is not automatically terminated where the landlord's right in the premises is cut off by a forfeiture occurring after the statutory notice date for termination of farm tenancies. The court concluded that the common law rule must yield to the Chapter 562 provision for security of farm tenancies. Id. at 756. In this situation, the farm tenancy is extended through the crop year and may be terminated effective March 1 by notice given on or before September 1. Id. The vendor is entitled to rent payments due after completion of the contract forfeiture. Id.

Farm Credit failed to terminate Debtor's farm tenancy by giving notice prior to September 1, 1992. According to Ganzer and chapter 562, Debtor has a possessory interest in the farmland under his lease for at least the remainder of the current crop year. This Court recognizes the potential inequity in applying the rule in this case. Nevertheless, the Court is presented with a facially valid assignment and farm lease. No evidence is presented to establish the invalidity of these documents. See Graham v. Henry, 456 N.W.2d 364, 365 (Iowa 1990). There is likewise no evidence Debtor is in default under the lease. See Iowa Code sec. 562.6. As such, this Court must conclude the leasehold interest is valuable to the debtor's bankruptcy estate. Farm Credit has failed to show cause for relief from the automatic stay. Its motion for relief from stay must be denied.

ORDER

IT IS THEREFORE ORDERED that Debtor shall file full schedules and statement of financial affairs on or before May 28, 1993.

IT IS FURTHER ORDERED that Debtor shall pay the filing fee installment of \$300.00 on or before May 28, 1993.

IT IS FURTHER ORDERED that if Debtor fails to file his schedules and statement of affairs or to pay the filing fee installment of \$300.00 on or before May 28, 1993, this case shall automatically be dismissed without further notice or hearing.

IT IS FURTHER ORDERED that the Motion for Relief from Stay filed by Farm Credit Bank of Omaha is DENIED.

SO ORDERED this 20th day of May, 1993.

Paul J. Kilburg
U.S. Bankruptcy Judge