

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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CHARLES A. JACKSON and  
CLAUDIA L. JACKSON

*Debtors.*

Bankruptcy No. 93-40140XM

Chapter 12

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HYLTON DENNIS JACKSON and DONNLEE  
JANNETTE JACKSON

*Debtors.*

Bankruptcy No. 93-40139XM

Chapter 12

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### ORDER RE: MOTION FOR RELIEF FROM AUTOMATIC STAY

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The matter before the court is the motion of Farm Credit Bank of Omaha (BANK) for relief from the automatic stay in order to pursue its remedies against Ila Mae Jackson and the estate of Dallas Jackson. Hearing was held May 19, 1993, in Fort Dodge, Iowa. The court now issues its findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(G).

#### Findings of Fact

Charles Jackson and Hylton Jackson are brothers engaged in farming. They began their operation on land located in Hardin County titled to their parents, Dallas Jackson and Ila Mae Jackson. Hylton Jackson began operating the farm in 1976.

On April 18, 1980, Dallas Jackson, Ila Mae Jackson, Charles Jackson and Hylton Jackson made and executed a promissory note and mortgage to the Bank. Exhibits 1, 3. The note was in the amount of \$590,000.00. The mortgage gave the Bank a security interest in real estate owned by Dallas Jackson and Ila Mae Jackson in Hardin County.

On or about May 6, 1988, the parties executed an agreement to restructure their debt with the Bank. Exhibit 2. As part of the agreement, Dallas Jackson and Ila Mae Jackson executed a supplemental mortgage to the Bank giving a security interest in additional real estate in Hardin County. In addition, the parties pledged personal property as security. In 1988, Dallas Jackson was essentially retired, and the farm operation was run by Charles Jackson and Hylton Jackson.

On July 15, 1989, Dallas Jackson died at the age of 82. Exhibit 6. Dallas Jackson's will was admitted to probate on September 8, 1989. Hylton Jackson and Charles Jackson are the executors of Dallas Jackson's estate. Exhibit 5, page 3. At the time of his death, Dallas Jackson owned certain real estate with Ila Mae Jackson as tenants in common. Exhibit 6, page 2. Dallas Jackson's will gave one-third of his real property and a life estate in the remaining two-thirds to Ila Mae Jackson, with the remainder interest to his children. Exhibit 5. The probate estate is still open.

The debtors were unable to make the mortgage payment due in March, 1992. They applied for an FmHA disaster loan for the 1991 crop year. The loan was denied. The debtors' appeal of this decision is pending.

On August 26, 1992, the Bank filed suit to foreclose the real estate mortgage. Charles Jackson and Hylton Jackson were named as defendants individually and as executors of Dallas Jackson's estate. Answer, Exhibit 7. The action was listed on the Hardin County lis pendens docket.

On January 18, 1993 and January 28, 1993, while the Bank's action was pending, Hylton Jackson and Charles Jackson

received quit claim deeds to the land mortgaged to the Bank from their brother, Wallen Jackson, and his spouse and from Ila Mae Jackson. Exhibits 8, 9. The deeds were not recorded.

On February 1, 1993, the debtors filed chapter 12 bankruptcy petitions. Their debt to the Bank at that time was approximately \$560,535.00. In each case, the debtors listed the property mortgaged to the Bank as real estate in which they have an interest.

### Discussion

A petition filed in bankruptcy operates as a stay of acts against the debtor or property of the estate as enumerated in 11 U.S.C. § 362(a). Determination of the debtors' interests which are property of the chapter 12 estate is made with reference to state law. Johnson v. First National Bank of Montevideo, 719 F.2d 270, 273 (8th Cir. 1983), cert. denied 465 U.S. 1012 (1984).

Although the Bank has styled its motion "Motion for Relief from Automatic Stay", the Bank claims it does not seek to proceed against the debtors or property of the estate. The Bank seeks to pursue its rights in the real estate only against the nondebtors, Ila Mae Jackson and the estate of Dallas Jackson. The Bank asks for declaratory judgment that this action does not violate the automatic stay under 11 U.S.C. § 362(a).

Bankruptcy Code § 1201 extends the stay to prevent acts to collect consumer debt against a co-debtor. The parties agree that § 1201 is not applicable in this case. Generally, the automatic stay does not prohibit a creditor from pursuing legal rights against nondebtor third parties. Croyden Associates v. Alleco, Inc., 969 F.2d 675, 677 (8th Cir. 1992), cert. denied 113 S.Ct. 1251 (1993).

The Bank's foreclosure action is a claim against the probate estate of Dallas Jackson for the amount due under the note and restructure agreement. See Iowa Code § § 633.415, 633.423. The Bank argues that the debtors' claimed interests in the farm land are subject to the rights and duties of the executor to collect the decedent's assets and pay debts of the estate. The Bank argues that under the Probate Code, the Bank could compel payment of its claim by requiring the executor to convey the real estate or sell the property to third parties to satisfy the mortgage obligation. The executor could not avoid payment of the estate's debts simply by distributing assets to the beneficiaries. The debtors' interests which are property of the estate are subject to the same limitations which existed prior to bankruptcy. The Bank concludes that the action against the probate estate is not an action against property of the bankruptcy estate.

Title to a decedent's property passes immediately to the beneficiaries under the will or the intestate successors upon the death of the decedent. Iowa Code § 633.350. Such property shall be subject to:

control of the court for the purposes of administration, sale, or other disposition under the provisions of law, and such property, except homestead and other exempt property, shall be chargeable with the payment of debts and charges against the estate. There shall be no priority as between real and personal property, except as provided in this Code or by the will of the decedent.

Iowa Code § 633.350. Title to property passes instantly to beneficiaries or heirs immediately upon the death of the decedent, subject to defeasance or diminution for the payment of debts of the estate. In re Smith's Estate, 240 Iowa 499, 36 N.W.2d 815, 822 (Iowa 1949). Because title passes directly to the heirs or beneficiaries, those parties are indispensable parties in an action affecting title to real estate. Brown v. Vonnahme, 343 N.W.2d 445 (Iowa 1984).

Immediately upon the death of Dallas Jackson on July 15, 1989, Charles Jackson and Hylton Jackson each had a remainder interest in two-thirds of the real estate Dallas Jackson owned at the time of his death. The Bank's foreclosure action and the lis pendens notice did not extinguish that interest. Noyes v. Crawford, 118 Iowa 15, 91 N.W. 799, 800 (1902) ("Lis pendens has no application to a third person, whose interest existed before the suit was commenced, and who might have been an original party.") The remainder interest became property of the estate upon the filing of the chapter 12 petitions.

Absent bankruptcy, the Bank would be able to enforce its claim in a foreclosure action against the executors of the

probate estate and the beneficiaries under the will. The Bank could then force sale of the real estate in order to pay its mortgage claim. Iowa Code § § 633.415, 633.430. However, the remainder interest became property of the bankruptcy estates when the debtors filed their Chapter 12 petitions. The continuation of the foreclosure proceeding as a claim against the estate of Dallas Jackson would be a violation of the automatic stay under 11 U.S.C. § § 362(a)(1) and 362(a)(3). Therefore, the Bank's motion requesting that it be allowed to proceed against the estate of Dallas Jackson is denied.

The Bank also seeks to enforce its rights by foreclosing against the real estate owned by Ila Mae Jackson as of August 26, 1992, the date the Bank filed its foreclosure action. The probate inventory filed in the estate of Dallas Jackson indicates that Ila Mae Jackson held an undivided one-half interest with Dallas Jackson in some of the property. Exhibit 6, page 2. Dallas Jackson's will gave Ila Mae Jackson one-third of all his real estate and a life estate in two-thirds of the real estate which Dallas Jackson owned at the time of his death. Exhibit 5. A portion of the real estate mortgaged to the Bank was titled solely in Ila Mae Jackson's name prior to the foreclosure suit. Debtors' Brief, Document No. 46.

On August 26, 1992, the Bank's foreclosure action was listed on the lis pendens docket in Hardin County. On January 28, 1993, while the Bank's action was pending, Ila Mae Jackson gave a quit claim deed to the property mortgaged to the Bank to Charles Jackson and Hylton Jackson. Iowa's lis pendens statute provides:

When so indexed, [an action affecting real estate] shall be considered pending so as to charge all third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiffs' rights.

Iowa Code § 617.11.

From the time of such indexing, the pendency of the action shall be constructive notice to subsequent purchasers or encumbrancers thereof, who shall be bound by all the proceedings taken after the filing of such notice, to the same extent as if parties to the action.

Iowa Code § 617.14.

The purpose of the lis pendens notice is to preserve the rights of a plaintiff in land which might be lost by subsequent transfers of the property, to warn a prospective purchaser of the pending lawsuit, and "to insure that a court retains its ability to effect justice by preserving its power over the property regardless of whether a purchaser had any notice of the pending suit." In re American Motor Club, Inc., 109 B.R. 595, 597 (Bankr. E.D. N.Y. 1990); 51 Am.Jur.2d Lis Pendens § 1, 3.

Notice of an action affecting title to real estate by entry in the lis pendens docket does not prevent a transfer of the property. Iowa Code § 617.14 recognizes that there may be transfers. Lis pendens notice merely allows the plaintiff to prosecute its lawsuit to the execution of a judgment. In re American Motor Club, Inc., 109 B.R. at 597. The lis pendens doctrine provides a mechanism to protect a plaintiff's interest in land without having to join transferees to the litigation. Anyone acquiring an interest in land during the litigation is bound by the judgment as though made a party to the action. Moser v. Thorp Sales Corp., 256 N.W.2d 900, 911 (Iowa 1977). A foreclosure plaintiff may enforce its rights in real estate without joining a party who takes an interest in the property with notice of the pending litigation. See Walsh v. Griffith, 61 Iowa 754, 16 N.W. 588 (1883); Eckert v. Sloan, 209 Iowa 1040, 229 N.W. 714 (1930).

Iowa's lis pendens statute says that while the action is pending "no interest can be acquired . . . as against the plaintiff's rights." Iowa Code § 617.11. Iowa cases do not treat a transferee's interest as void. Cf. In re Wilkerson Enterprises, Inc., 95 B.R. 213 (Bankr. N.D. Okla. 1989). The transferee obtains a property interest, but cannot acquire an interest superior to the plaintiff's claim. The transferee stands in the same position as the defendant transferor and is bound by the outcome of the litigation. Gardner v. Gardner, 454 N.W.2d 361, 364 (Iowa 1990); Wagner v. Wagner, 249 Iowa 1310, 90 N.W.2d 758, 763 (1958). See also Wuorinen v. City Federal Savings & Loan Ass'n., 191 N.W.2d 27, 29 (Wis. 1971) (transferees assumed position of mortgagors subject to foreclosure).

An unrecorded deed is valid as between the parties. Davis v. Lutkiewicz, 72 Iowa 254, 33 N.W. 670 (1887). On January 28, 1992, the debtors acquired an interest in the real estate by the quit claim deed from Ila Mae Jackson. The property interest was subject to the Bank's rights in the foreclosure action. However, under the broad definition of property of the

estate in 11 U.S.C. § 541, the interest became property of the bankruptcy estate. If the debtors had not filed bankruptcy petitions, the Bank could have foreclosed against Ila Mae Jackson's interests without joining Charles Jackson and Hylton Jackson, despite the intervening transfer. Moreover, the Bank could proceed similarly notwithstanding bankruptcy if it shows grounds for relief from the stay under 11 U.S.C. § 362(d). However, since the debtors acquired an interest in Ila Mae Jackson's property that became property of the estate, the Bank's foreclosure proceeding against her is stayed because by it, Bank seeks to enforce its lien against property of the estate. 11 U.S.C. § 362(a)(4).

### **ORDER**

IT IS ORDERED that Farm Credit Bank of Omaha's Motion for Relief from the Automatic Stay is denied. Judgment shall be entered accordingly.

SO ORDERED ON THIS 18th DAY OF JUNE, 1993.

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order and a judgment by U. S. mail to: Richard Hansen, Michael Cross and U. S. Trustee.