

In the United States Bankruptcy Court

for the Northern District of Iowa

BOCKES BROTHERS FARMS, INC.
Debtor.

Bankruptcy No. 93-60881KW
Chapter 11

RULING ON MOTION REQUESTING RELIEF FROM AUTOMATIC STAY

On July 15, 1993, the above-captioned matter came on for hearing on a Motion Requesting Relief From Automatic Stay filed by Eileen L. Hager. Debtor, Bockes Brothers Farms, Inc., was represented by Attorney Dan Childers. Eileen Hager was present with her Attorney, Curtis Ward. Also present representing the U.S. Trustee was Attorney Janet Reasoner and representing the Unsecured Creditors Committee was Attorney Tom McCuskey.

Creditor Eileen Hager filed the pending Motion on June 10, 1993. Ms. Hager seeks to recover possession of real estate which she sold on contract to Bockes Brothers Farms, Inc. The property was originally sold by real estate contract dated December 29, 1988. The contract is recorded in Grundy County, Iowa. The Debtor defaulted on payments after which Ms. Hager began forfeiture proceedings by serving notice of forfeiture on August 9, 1992. She filed her affidavit in support of this forfeiture on November 20, 1992. As such, forfeiture was complete and the 30 day cure period allowed in Iowa Code sec. 656.4 expired in December of 1992, almost six months prior to the commencement of the Debtor's bankruptcy proceeding on May 19, 1993.

The record reflects that Ms. Hager has a State Court action pending in Grundy County in which she seeks to recover possession of this property from Bockes Brothers Farms, Inc. pursuant to Chapter 646 of the Iowa Code. Chapter 646 addresses eviction proceedings in this type of case. Ms. Hager requests relief from the automatic stay in order to proceed with her action for immediate possession. The Debtor asserts that it attempted to cure its default on the contract soon after receipt of notice of forfeiture by tendering payment to Ms. Hager's attorney. Debtor further asserts that although the first check tendered was returned for insufficient funds, Debtor then tendered a certified check to Ms. Hager's then Attorney Schmidt, who accepted the payment on behalf of Hager. Ms. Hager later discharged Attorney Schmidt and refused to accept the certified check.

Debtor argues that the property is its corporate headquarters and that it is essential that this property be retained for reorganization. It states that it has paid \$29,000 of the \$33,000 contract price prior to the forfeiture which is a substantial equity in the property. The allegation was raised in the responsive pleadings that the Debtor intended to make a motion in the State Court action to remove it to Bankruptcy Court. In fact, a Notice of Removal of State Court Action was filed on July 15, 1993.

It is now well established that after a real estate contract is forfeited, the Debtors/Vendee retains no interest in the real estate against which the automatic stay of 11 U.S.C. sec. 362 would operate. In re Byker, 64 B.R. 640, 641 (Bankr. N.D. Iowa 1986). The 8th Circuit Court of Appeals considered this issue in Johnson v. First Nat'l Bank, 719 F.2d 270 (8th Cir. 1983), cert. denied, 465 U.S. 1016 (1984). The issue was presented in the factual context of a debtor filing bankruptcy during the statutory

redemption period following mortgage foreclosure. The circuit court stated that only the right of redemption remaining after the foreclosure is property of the estate. The running of the statutory period of redemption is not an affirmative act told by sec. 362(a). Id. at 277. The major holding in Johnson v. First Nat'l Bank was followed in In re Vacation Village Ltd. Partnership, 49 B.R. 590, 593 (Bankr. N.D. Iowa 1984), which held that the running of the statutory period for cure following forfeiture of a real estate contract is not stayed by sec. 362(a). The foregoing cases have controlling presidential value in this circuit. The logic of these cases has been followed in other bankruptcy opinions which in essence hold that real estate contracts terminated prior to the filing of a bankruptcy petition are not property of the bankruptcy estate. These cases also hold that a bankruptcy court does not have the authority to resuscitate previously extinguished contractual rights. See In re Southold Dev. Corp., 134 B.R. 705, 710 (E.D.N.Y. 1991); In re Romberger, 150 B.R. 125, 127 (Bankr. M.D. Pa. 1992).

Courts, throughout the country, are almost unanimous in using legal analysis similar, if not identical, to that which the Court has used in the foregoing paragraph. However, some Courts have added an additional analysis which includes analysis of any residual possessory rights which a Debtor may retain after termination of the real property interests. Some Courts have held that a Debtor does retain possessory interests, even after completion of the forfeiture or foreclosure proceeding. In re Vee Jay, Inc., 104 B.R. 101, 104 (Bankr. W.D. Ark. 1987); In re Mumpfield, 140 B.R. 578, 580 (Bankr. N.D. Ala. 1991); In the Matter of Delex Management, W.L. 000143 (Bankr. W.D. Mich. 1993).

In the present case, the Debtor's responses to Ms. Hager's Motion largely seeks equitable relief from the Court by asserting substantial equity in the property as well as other equitable defenses. To the extent that any simple possessory interest exists in this property, the stay will be lifted if cause exists to do so under sec. 362(d)(1). As stated in Johnson v. First Nat'l. Bank, a Court is not free to fashion equitable remedies which lie outside of the clear dictates of the Bankruptcy Code and existing law. The uncontested record in this case establishes that the Debtor's interest in this property terminated almost six months prior to the commencement of these proceedings. There simply does not exist any real property interest in the Debtor at this time upon which the automatic stay under 11 U.S.C. sec. 362 could operate. As stated in The Matter of Delex Management;

"The Court holds that when a land contract relationship is extinguished after running of the statutory redemption period, and a Debtor- Vendee is holding over in possession by sufferance, cause exists to modify the stay."

This Court agrees with the analysis contained in The Matter of Delex Management. As the Debtor has no real property interests and has merely a possessory interest, the automatic stay must be lifted in order to allow Ms. Hager to proceed in State Court to enforce any legal remedies which she might have under State law.

WHEREFORE, for the reasons set forth herein, it is the determination of this Court that the Debtor, Bockes Brothers Farms, Inc., retains no real property interest in the real estate against which the automatic stay of sec. 362 would operate.

FURTHER, the Motion Requesting Relief From Automatic Stay filed by Eileen L. Hager on June 10, 1993, must be and is hereby granted for cause shown under 11 U.S.C. sec. 362(d)(1).

FURTHER, Eileen L. Hager is granted relief from the automatic stay of sec. 362 to the extent that she may proceed to seek possession of the real estate encompassed in the real estate contract recorded at Book 424, Pg. 540 of the Office of the Recorder of Grundy County, Iowa under Iowa Law.

FURTHER, the automatic stay, under sec. 362, is also lifted to the extent that Eileen L. Hager may proceed in the same action to seek a determination of the amount, if any, to which she is entitled for rents or damages based upon the use of this property by the Debtor after October 8, 1992.

FURTHER, Debtor is authorized to interpose any objections which are deemed appropriate by the Debtor to either the action for possession or the action for damages or rents.

SO ORDERED this 26th day of July, 1993.

Paul J. Kilburg, Judge
U.S. Bankruptcy Court