

In the United States Bankruptcy Court

for the Northern District of Iowa

BOCKES BROTHERS FARMS INC.
Debtor(s).

Bankruptcy No. 93-60881KW
Chapter 11

ORDER RE: MOTION TO ASSUME OR REJECT CONTRACT

This matter came on for hearing on March 31, 1994. Steve Pace appeared on behalf of movant Vera E. Martin. Dan Childers appeared on behalf of Debtor Bockes Brothers Farms, Inc. Other parties who asserted an interest in the proceedings include Farmland Financial Services Co. represented by Rod Kubat, and Margaret McBride, Marc McBride, Karen McBride and Marcia Brooks represented by Gregory Epping.

Ms. Martin as Seller entered into a real estate contract with Debtor for the purchase of 80 acres. Debtor is in default under the contract. Ms. Martin asserts that she is prejudiced by the continuing default because she relies on income from the contract for living expenses. She requests an order requiring Debtor to assume or reject the contract within a specified time period. Debtor resists the motion. It has taken the position that the contract is not an executory contract under § 365. It proposes to modify the contract in its Plan of Reorganization by extending its term to thirty years. Both parties have filed briefs.

The law in this district is well settled that, for purposes of treatment under § 365, a real estate contract in Iowa is an executory contract. In re Cochran, No. 92-12082LC, slip op. at 4 (Bankr. N.D. Iowa Mar. 30, 1993), relying on Brown v. First Nat'l Bank, 844 F.2d 580, 582 (8th Cir.), cert. denied, 487 U.S. 1260 (1988); see also In re Bolton, No. L-90-02181D, slip op. at 6 (Bankr. N.D. Iowa May 30, 1991); In re Hill, No. C 86-0115, slip op. at 3 (N.D. Iowa Jan. 14, 1987).

Debtors argue that Cameron v. Pfaff Plumbing & Heating, Inc., 966 F.2d 414 (8th Cir. 1992), questions the validity of these cases. Cameron holds that the question of whether a contract is an executory contract under § 365 is a question of federal law. Id. at 416. The court determined that the definition attributed to Prof. Vern Countryman is equivalent to the standard adopted by the Supreme Court in NLRB v. Bildisco & Bildisco, 465 U.S. 513, 522, 104 S. Ct. 1188, 1194 (1984). Thus, in this circuit, the Countryman/Bildisco standard applies in determining what contracts are executory contracts, which represents no change from prior law. This standard is set out as follows: an executory contract is "a contract under which the obligations of both the [debtor] and the other party to the contract are so unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other." Cameron, 966 F.2d at 416.

Cameron notes that the Eighth Circuit had previously relied on state law in deciding whether an installment land sale contract was an executory contract for purposes of § 365 in Brown, among other cases. Cameron, 966 F.2d at 416 n.1. The court states "[w]e do not question the results reached in these cases, and we acknowledge the relevance of state law which addresses whether a particular type of contract is executory." Id.

This Court concludes that Cameron does not mandate a reversal of this district's position that real estate contracts are executory contracts under § 365. Under Cameron, a two-step analysis appears appropriate. First, Iowa law should be considered in determining whether and to what extent the obligations of the parties to the contract remain unperformed. Then, the Countryman/Bildisco standard is applied to determine whether the contract is executory. Both Judge Hanson in Hill and Judge Jackwig in In re Scanlan, 80 B.R. 131 (Bankr. S.D. Iowa 1987), have undertaken this analysis.

Applying Professor Countryman's definition to Iowa real estate contracts, it is clear that the obligation of the real estate vendor to deliver legal title to the vendee upon final payment would be excused by the vendee's failure to complete the contract payments. Although in Iowa a real estate contract of this type enables the vendor to be secured until final payment is made, it is still an executory contract under Countryman's definition since ". . . the failure of either to complete performance would constitute a material breach excusing performance of the other."

Hill, slip op. at 3 (citations omitted). Scanlan also held that "a real estate contract under Iowa law falls squarely within Countryman's definition of an executory contract. 80 B.R. at 134.

The analysis articulated in Cameron is identical to that used in Hill and Scanlan. Debtor has not convinced this Court that it should depart from established law on this issue. The Court concludes that Debtor's real estate contract with Ms. Martin is an executory contract under § 365. Debtor must determine whether to assume or reject the contract under § 365(d)(2). The Court concludes that this determination should be made within 30 days.

WHEREFORE, Vera E. Martin's Motion to Require Debtor in Possession to Assume or Reject Real Estate Contract is GRANTED.

FURTHER, Debtor shall determine whether to assume or reject the contract on or before May 4, 1994.

SO ORDERED this 4th day of April, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge