

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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ROBERT RAUSCH and  
MARY RAUSCH

*Debtor(s).*

Bankruptcy No. 94-60633KW

Chapter 7

Contested No.

4120.BothMotionsToLiftStayarebasedupon

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### **RULING ON MOTION TO LIFT STAY**

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On September 8, 1994, the above-captioned matter came on for hearing pursuant to assignment. The matter before the Court is a final hearing on a Motion to Lift Stay filed by Mr. Roger Wahl. Movant Roger Wahl appeared by Attorney Patrick Galles. Robert and Mary Rausch appeared without counsel. Evidence was presented after which the Court took the matter under advisement.

The Movant, Roger Wahl, has filed the Motion to Lift Stay in both the Chapter 11 and the Chapter 7 filings. The Motion in the Chapter 11 proceeding is denominated as Contested No. 4119 and the Motion in the Chapter 7 proceeding is denominated as Contested No. 4120. Both Motions to Lift Stay are based upon the same operative facts and the same applicable law. The result which is entered in one must, of necessity, be identical to that entered in the other proceeding.

### **FINDINGS OF FACT**

The background facts establish that Robert and Mary Rausch, as partners of Rausch Brothers Partnership, filed a Chapter 11 Bankruptcy petition denominated Rausch Brothers Partnership (L90-00151W). After several amendments to the proposed Plan of Reorganization, the Third Amended Plan of Reorganization was approved by this Court on April 25, 1991. This Plan provided that Robert and Mary Rausch would keep the real estate legally described in Exhibit "B". This property is located in Winneshiek County, Iowa. It was sold to Robert and Mary Rausch pursuant to a real estate contract which was originally executed in January of 1980. In this land sale contract, Mr. Roger Wahl and his then wife, Margaret E. Wahl, sold to Robert and Mary Rausch the real estate in question. This contract was addressed in the confirmed Plan of Reorganization. Mr. and Mrs. Rausch were to make payments pursuant to this real estate contract and its subsequent amendments.

Contract payments were made for a period of time. However, the payment due January 1, 1993 was not paid when due and a Notice of Forfeiture of Real Estate Contract was served upon Mr. and Mrs. Rausch. The affidavit in support of forfeiture of this real estate contract was filed of record in Chickasaw County on September 14, 1993. Physical possession of the property was not returned to Mr. Wahl until January of 1994.

This explanation of the land purchase and subsequent forfeiture proceedings forms a backdrop for the matters presently in controversy. At the time of the sale of the real estate, Mr. Wahl had irrigation

equipment located on this farm. This irrigation equipment, known as a Tri-Matic Irrigation System, was purchased by Mr. Wahl and placed on the real estate prior to the sale of the property to Mr. and Mrs. Rausch. At the time of the sale of the real estate, Mr. Wahl was still making payments to the irrigation system seller, Lease Plan, Inc. This equipment was purchased on a lease purchase agreement which commenced in November of 1976 for a period of 84 months. After all payments were made, the Tri-Matic Irrigation System would become the property of Mr. Wahl. The final payment was due November 1983. Even though the real estate sale occurred in January of 1980, Mr. Wahl continued to make the contract payments on the irrigation system. Payments were completed in March of 1983 at which time Mr. Wahl was provided title to this irrigation system. Mr. Wahl notified Mr. and Mrs. Rausch that he had completed these payments.

The sale of the real estate by contract from Mr. Wahl to Mr. and Mrs. Rausch was intended to and did in fact include the Tri-Matic Irrigation System. Specific reference is made in the land contract to this system and it was part of the negotiated terms of the sale. Paragraph 23 of the original real estate agreement (Exhibit "B") states as follows:

23. Sellers are conveying a Tri-Matic Irrigation System located on the premises and same is to be included in the purchase price. Sellers are presently purchasing said irrigation system under a lease plan from Lease Plan, Inc. and Sellers agree to advise Buyers within the next 30 days as to the status of their payments under said lease plan and to continue to keep Buyers advised during the duration of this contract as to payment of said irrigation system. In the event Sellers do not make their payments for said irrigation system, Buyers shall have the right to make said payments and to receive credit against the unpaid balance of this contract. Sellers agree to convey all of their right, title and interest in said irrigation system to Buyers.

The sale of this Tri-Matic Irrigation System was tied into the remainder of the land contract by operation of paragraph 18 of the original contract. This provision states:

18. PERSONAL PROPERTY. If this contract includes the sale of any personal property, then in the event of the forfeiture or foreclosure of this contract, such personalty shall be considered indivisible with the real estate above described; and any such termination of Buyers' rights in said real estate shall concurrently operate as the forfeiture or foreclosure hereof against all such personal property.

The controversy in this case relates to the effect of these two paragraphs upon ownership of the irrigation system. Between forfeiture of the land contract in September of 1993 and Mr. and Mrs. Rausch's removal from the property in January of 1994, the irrigation system was removed from the property. Mr. Rausch testified that the irrigation system is now dismantled, though it is complete, and is located on the farms of several neighbors.

Mr. Wahl takes the position that the contract terms are specific and make the irrigation system a part of the contract. In other words, if Mr. and Mrs. Rausch had completed the terms of the contract, the title to the real estate as well as the irrigation system would have passed to them. However, as forfeiture of the contract occurred pursuant to paragraph 14 of the real estate contract, any personal property which was made a part of this sale is also forfeited.

Mr. and Mrs. Rausch take a contrary interpretation. They allege that the last sentence of paragraph 23 of the contract states that "Sellers agree to convey all of their right, title and interest in said irrigation system to Buyers." They argue that the irrigation system is personal property and that it was the intent

of the parties involved in the creation of the original contract to relinquish ownership of the irrigation system to the Buyers at the time of the entry of the land contract.

The effect of the foregoing is obvious. If Mr. Wahl prevails, the property becomes part of the original land contract sale and was forfeited to him as of the time of the filing of the forfeiture affidavit in Chickasaw County in September of 1993. Complete title would rest with Mr. Wahl and the property would not be part of the bankruptcy estate. Mr. Wahl asks that the Court make this determination and lift the stay so he can complete any State action to regain possession of this irrigation system.

Mr. and Mrs. Rausch contend that the contract of sale provided them with clear title to this irrigation system. They assert, correctly, that payment for this irrigation system occurred in 1983 and that no payment is due to any third party for this irrigation system. They assert that they are the owners of this irrigation system pursuant to paragraph 23 of the original contract of sale which is previously set out herein. More specifically, they assert that the last sentence of that paragraph conveys to them complete clear title to this irrigation system. They conclude that this irrigation system is their property and is, therefore, part of the bankruptcy estate and that the Motion to Lift Stay should be denied.

The Chapter 7 Trustee did not take part in this hearing and has informed the Court, through counsel, that the Chapter 7 Trustee consents to and joins in the Motion of Mr. Wahl as it is the position of the Chapter 7 Trustee that this property is not part of the Chapter 7 estate.

While the foregoing facts and arguments are posed in the context of a Motion to Lift Stay pursuant to 11 U.S.C. § 362, the ultimate issue becomes one of contract interpretation. The application of contract principles to the original land contract will resolve the underlying issue of ownership and thereby resolve issues posed in the Motion to Lift Stay.

### CONCLUSIONS OF LAW

Interpretation of a contract involves ascertaining the meaning of the contractual words. Interpretation is ordinarily a question of law. Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22, 25 (Iowa 1978). As a general proposition, in interpreting a standardized contract, Courts attempt to effectuate the reasonable expectations of the parties as well as of the average member of the public who accepts it. C and J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169, 172 (Iowa 1975). Where there is no question as to the intent of the parties to a contract, the Court may not rewrite a contract or create new obligations by arbitrary judicial construction. See Spilman v. Board of Directors, 253 N.W.2d 593, 596 (Iowa 1977). An ambiguity only exists when, after application of pertinent rules of interpretation to the face of the contract, a genuine uncertainty exists as to which one of several meanings is the correct interpretation. Gendler Stone Prod. Co. v. Laub, 179 N.W.2d 628, 631 (Iowa 1970). Contracts are to be interpreted as a whole and, therefore, considered in such a manner that no part of a contract is rendered superfluous. Unless unavoidable, no portion of a contract should be read in such a manner that renders it unreasonable, unlawful or of no effect. Iowa Fuel and Minerals, Inc. v. Iowa State Bd. of Regents, 471 N.W.2d 859, 863 (Iowa 1991).

### ANALYSIS

The Court has considered the factual record made and has considered all of the contractual provisions contained in the land sale contract between Mr. and Mrs. Wahl and Mr. and Mrs. Rausch. The contractual terms clearly establish that the Tri-Matic Irrigation System was intended to be sold as a part of the land transaction. However, the irrigation system is personal property, and therefore, a specific provision was added to the contract (paragraph 23) which set out the terms under which it

would be sold. Paragraph 23 cannot be read in isolation. It must be read in conjunction with paragraph 18 which addresses the consequences of a forfeiture or foreclosure of the underlying land sale contract. When read together, as is required of an integrated contract, it is clear that the intent of the parties was to sell the Tri-Matic Irrigation System to Mr. and Mrs. Rausch. Mr. Wahl was required, under the contract, to continue to make payments to Lease Plan, Inc. until payment for the irrigation system was completed. The contract contained a provision that if Mr. Wahl, for any reason, failed to make these payments, Mr. and Mrs. Rausch could do so in order to protect their interest in the property. If they were required to make such payments, they would receive a credit against the unpaid balance on the underlying land contract. The final sentence of paragraph 23 asserts that the sellers agree to convey all of their right, title and interest in this irrigation system to the buyers.

The language in paragraph 23 does not address the forfeiture provisions which are contained in paragraph 18 of the contract. Paragraph 18 states that if the contract includes the sale of personal property, a forfeiture of the underlying contract would also operate as a forfeiture against the personal property. This provision is crystal clear and means exactly what the unambiguous language of this paragraph says. The irrigation system is personal property and was sold to the buyers as a part of the underlying transaction and included in the land sale. The underlying land contract was forfeited in September of 1993 and simultaneously, Mr. and Mrs. Rausch's rights to this irrigation system were forfeited.

Mr. and Mrs. Rausch's reply to this interpretation is that the last sentence of paragraph 23 states: "Sellers agree to convey all of their right, title and interest in said irrigation system to Buyers." Mr. and Mrs. Rausch assert that this was an unconditional sale and that because of this language, the sale of the irrigation system is independent of the contract forfeiture. Contract law provides that a contract interpretation must incorporate and give effect to all the language of the contract and not a single clause. It is true that if this clause could be read in isolation it would appear to support Mr. and Mrs. Rausch's position. However, this single sentence is but a small part of the entire transaction and when read in conjunction with the remaining clauses and in a manner consistent with the intent of the document, it is clear that this sentence was not intended to be an unconditional sale but was rather intended to be a conditional sale premised upon satisfactory completion of all terms of the underlying contract. When Mr. and Mrs. Rausch failed to comply with the underlying contractual terms, not only was the purchase of the land forfeited, but also those items of personal property which came within its orbit. The irrigation system was such an item of personalty.

### SUMMARY

It is the conclusion of this Court that Mr. and Mrs. Rausch entered into a real estate contract in which they agreed not only to purchase real estate but to purchase personal property (irrigation system). Completion of the transfer of ownership of the irrigation system was contingent upon successful completion of the terms of the real estate contract relating to purchase of the realty. When the buyers, Mr. and Mrs. Rausch, failed to satisfactorily meet their obligations under this contract, their rights were forfeited in September of 1993. Their rights and obligations relating to the irrigation system were identical to those relating to the real estate. Upon completion of the forfeiture of the land contract, Mr. and Mrs. Rausch's rights to the irrigation system were simultaneously forfeited. Mr. and Mrs. Rausch have no legal or equitable interest in this irrigation system as of September, 1993. This irrigation system is not a part of this bankruptcy estate and is not subject to the automatic stay. However, to avoid potential uncertainty by a State Court Judge addressing this issue, the Court finds that it is appropriate to lift the stay to the extent necessary under 11 U.S.C. § 362(a) to permit movant to pursue any and all remedies in State Court to recover this irrigation equipment.

**WHEREFORE**, for all of the reasons set forth herein, the Movant's Motion to Lift Stay pursuant to 11 U.S.C. § 362(a) is GRANTED.

**FURTHER**, Roger Wahl shall be granted permission to pursue any and all remedies granted to him by applicable non-bankruptcy law.

**SO ORDERED** this 14th day of September, 1994.

Paul J. Kilburg  
U.S. Bankruptcy Judge