In the United States Bankruptcy Court

for the Northern District of Iowa

DENNIS R. WEYMILLER
Debtor(s).

Bankruptcy No. 94-20350KD
Chapter 7

ERIC W. LAM Trustee
Plaintiff(s)

vs.

GREG BOSSOM
Defendant(s)

Adversary No. 95-2039KD

ORDER

On September 6, 1995, the above-captioned matter came on for trial in Dubuque pursuant to assignment. Plaintiff appeared by Attorney James O'Brien. Defendant appeared with Attorney Matthew Erickson. Evidence was presented after which the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (E), (F).

STATEMENT OF THE CASE

This adversary proceeding arises out of a rental arrangement between Debtor Dennis R. Weymiller and Defendant Greg Bossom. Defendant was a tenant on agricultural real estate owned by Debtor in Allamakee County. Defendant and Debtor attempted to enter into a contractual landlord-tenant relationship. They began discussions and partially filled out a standard form farm lease agreement. However, the document was never executed by the parties nor were the specific terms of the lease completely negotiated. The parties had discussed a lease for three years expiring in March of 1996.

Defendant took possession of the farm and began paying the agreed upon rent of $2,000 per month on April 1, 1993. Defendant operated dairy facilities and raised crops on the tillable acres. He used the dairy barn, the heifer shed, the machine shed, the barns and various silos. Lease payments were made through a milk check assignment. The payments were made in the amount of $1,000 twice monthly. Defendant continued to make these payments until September of 1994.

Debtor Dennis Weymiller filed his Chapter 7 petition on March 8, 1994. Debtor gave Defendant the impression that Debtor had filed a Chapter 11 bankruptcy and that the land and buildings which Bossom leased would not be affected. Defendant planted crops in the spring of 1994 and continued to occupy the land until September. In August, Defendant told Debtor that other farm land was available to rent. Without permission or knowledge of Trustee, Debtor gave Defendant permission to leave the premises as of September 1, 1994. Defendant moved from Debtor's premises on September 1. The day before moving to the new farm, Defendant learned for the first time that a Trustee was involved in Debtor's bankruptcy and that he might need Trustee's approval to terminate any existing lease.

At the time Defendant left the premises, seventy acres of corn remained in the fields. Additionally, Defendant had haylage in silos as well as baled hay in various barns on the premises. Defendant subsequently returned to pick the corn. Defendant left 170 tons of haylage which continues to be stored on the premises. Additionally, 3,000 bales of hay were left on the property. Some hay has been removed by Defendant since that time and between 1,000 and 1,200 bales of hay remained on the farm at the time of trial.

NATURE OF THE LEASE

The first issue is to define the nature of the lease existing between the parties. The parties made a futile attempt to enter into a written farm lease. This incomplete and unsigned document was attached to the initial complaint. At trial, the parties agreed that this document is not an enforceable farm lease under Iowa's Statute of Frauds, Iowa Code sec. 622.32(3)(1995). The relevant portion of the statute provides that no evidence of a contract for the creation of any interest in land is competent unless it is in writing and is signed by the party charged. Id. The statute explicitly exempts leases for less than one year from its coverage. Id.

The document attached to the complaint purports to be a three year lease and is not signed by Defendant, the party being charged with its enforcement. Therefore, this document and any parole evidence purporting to establish the existence of a lease arrangement for more than one year is not competent. Iowa courts are hostile to the Statute of Frauds, and will broadly construe the statutory exceptions to take a contract or lease out from under the Statute of Frauds whenever possible. See David A. Hacker, Note, The Admission Exception to the Iowa Statute of Frauds, 67 Iowa L. Rev. 551 (1982). Even so, Iowa case law provides that taking possession of property and paying rent under an oral lease having a term of more than one year does not take the lease out of the Statute of Frauds under the "part performance" exception provided in Iowa Code sec. 622.32(3)(1995). Snater v. Walters, 98 N.W.2d 302, 308 (Iowa 1959).

Regardless of the Court's inability to use the incomplete document or parole evidence to establish the terms of a lease, there is a statutory presumption under Iowa Code sec. 562.4 that a person in possession of real estate, with the assent of the owner, is a tenant at will. Normally, such a tenancy can be terminated by either party or successor of the party on thirty days notice. Id. Where the tenant occupies and cultivates a leased farm however, the effective date of the termination of the tenancy must be fixed in the notice as March 1, Iowa Code § 562.5, and the notice must be in writing and given prior to September 1 preceding the termination date. Iowa Code §§ 562.6, 562.7. Thus, an agricultural tenancy at will, such as the one between Debtor and Defendant, could only be terminated by Defendant as of the March 1 following a written notice of the termination given prior to September 1. Notwithstanding this general presumption regarding the termination date of agricultural tenancies at will, sec. 562.6 permits the parties to agree, either in writing or orally, to terminate a tenancy at whatever time they may agree to, without the necessity of giving each other notice.

VALIDITY OF POST-PETITION TERMINATION AGREEMENT

The oral agreement between Debtor and Defendant to terminate the lease as of September 1, 1994 presumably would have been effective but for Debtor's filing of the Chapter 7 bankruptcy petition. Upon filing that petition on March 8, 1994, Trustee effectively became Debtor's successor in interest as to all of the property of the bankruptcy estate. Stumpf v. Albracht, 982 F.2d 275, 277 (8th Cir. 1992). At that time, Debtor's contractual right to receive rents from Defendant under the agricultural tenancy at will lease was property of the estate under 11 U.S.C. § 541(a)(6). In re Ridgemont Apartment Assocs., 105 B.R. 738, 740 (Bankr. N.D. Ga. 1989).

Since Trustee had succeeded to Debtor's interest in the lease as of March 8, 1994, Debtor was incapable of entering into a lease termination agreement in August, 1994. It was only the Trustee, as representative of the estate, 11 U.S.C. § 323(a), who had the authority to enter into such an agreement. Therefore, the August, 1994 termination agreement between Debtor and Defendant was ineffective to release Defendant from the March 1 termination date provision of Iowa Code sec. 562.5.

REJECTION OF LEASE BY TRUSTEE

If a chapter 7 trustee does not assume an unexpired lease of real property within 60 days of the order for relief, or within such additional time as the court fixes, the lease is deemed rejected. 11 U.S.C. § 365(d)(1), (4). The Chapter 7 Trustee requested and was granted several extensions of time in which to assume or reject, among other contracts, the lease in question. The final extension order gave Trustee fifteen days, commencing from the date on which the Court filed its ruling in a related adversary proceeding (94-2055KD), in which to assume or reject certain contracts and the lease in question. That ruling was filed on September 14, 1994, triggering the running of the fifteen day extension.

Seven days later, on September 21, Trustee filed a Motion to Assume Executory Contract, in which he specifically details his desire to assume a certain Real Estate Installment Contract Dated April 1, 1988. Trustee's Motion to Assume, however, omitted any reference to the lease in question although the lease had been referred to in each of Trustee's motions for extension of time to assume or reject contracts.

The final extension period lapsed on September 29, 1994. No motion to assume the lease was ever filed. Even though this may have been a mere oversight, the inclusion of the lease in the motions for extensions and its absence in Trustee's motion to assume requires the Court to conclude that Trustee rejected the lease between Debtor and Defendant on September 29, 1994, by failing to assume it within the allowed period.

REJECTION OF LEASE AS A TERMINATION OF THE LEASE

The rejection of an unexpired lease constitutes a breach of that lease by the debtor. 11 U.S.C. § 365(g). Where a debtor is the lessor and the trustee rejects a lease, § 365(h)(1)(A)(i) and (ii) give the lessee two choices. The option relevant to this case is that the lessee may treat the lease as having been terminated by the rejection, if the rejection amounts to such a breach as would allow the lessee to treat the lease as terminated by virtue of its own terms, applicable nonbankruptcy law, or any agreement made by the lessee. Id. at (i).

This oral lease did not contain a rejection-constitutes-termination provision and Trustee's rejection of the lease did not constitute grounds for termination of the lease under its own terms. Likewise, based in part upon the Court's finding regarding the invalidity of the post-petition termination agreement between Debtor and Defendant, this Court concludes that there was no agreement which would allow the Defendant to terminate the lease based on Trustee's rejection.

Thus, the only basis upon which Defendant-Lessee may treat the rejection-breach as grounds for termination of the lease is nonbankruptcy law. While no recorded case discussing the nonbankruptcy law grounds issue has been found, at least one court and all of the treatises assert, without discussing the grounds for the entitlement, that if a trustee rejects an unexpired lease in which the debtor was the lessor, the lessee simply has the option of treating the lease as terminated and walking away from further obligation under it. See In re Carlton Restaurant, 151 B.R. 353, 356 (Bankr. E.D.Pa. 1993); Robert J. D'Agostino et al., Collier Bankruptcy Manual, at 365.06[1] (3rd ed. 1995); David G. Epstein et al.., Bankruptcy vol. 1, at 452 (1992); Randy Rogers & Lawrence P. King, Collier Farm Bankruptcy Guide § 2.10, at 2-161 (1994); George M. Treister et al., Fundamentals of Bankruptcy Law § 5.04(j), at 279 (1993).

This presumption of the lessee's absolute entitlement to treat the rejected lease as terminated results from the inherent conclusion that Trustee's refusal to assume any obligation under the lease constitutes a repudiation of the lease or, at least, such a breach as would substantially defeat the lease's purpose. Such a breach is deemed to be a material breach under Iowa contract law and excuses further performance on the part of the non-breaching party. See Maytag Co. v. Alward, 112 N.W.2d 654, 659-660 (Iowa 1962). The relief from further performance results from the non-breaching party exercising the right to rescind the contract, based upon the other party's repudiation of the contract. See Id. at 660. Applying these contract principles to this case, Trustee's rejection of the lease on September 29, 1994 constitutes a repudiation of the lease, thereby excusing Defendant from further performance of the lease.

TERMINATION DATE

Since Defendant was exercising his right to rescission, rather than affirmatively attempting to unilaterally terminate the lease, the Court believes that Defendant is not bound by the normal March 1 notice of termination provisions of Iowa Code sec. 562.5 which would have prevented the lease from terminating prior to March 1, 1995. Even if the March 1 termination date provision of sec. 562.5 does apply, when the Trustee repudiated the lease, that action authorized Defendant to disaffirm the lease. Defendant vacated the premises on September 1, 1994, manifesting his intent to no longer occupy the farm or remain bound by the lease. His absence at the time of Trustee's rejection effectively served notice of his disaffirmation of the lease. These actions represent the manifestation of both parties to terminate the lease. 17A Am Jur 2d, Contracts § 570 (1991). This mutual manifestation of agreement to terminate the lease satisfies the termination agreement provision of Iowa Code sec. 562.6, which allows the parties to avoid, by agreement, the notice and March 1 termination date provision of sec. 562.5.

Based upon Trustee's repudiation of the lease by his rejection thereof and Defendant's manifestation of his intent to disaffirm the lease by his vacation of the premises, the Court finds that as of September 29, 1994, Defendant elected to treat Trustee's rejection of the lease as a termination of the lease under 11 U.S.C. § 365(h)(1)(A)(i) and Iowa contract law.

DAMAGES

Based upon the foregoing, the Court finds as damages that Defendant is responsible for twenty-nine days of rent during the month of September, 1994. Rent under a lease is presumed fair rental value unless the evidence establishes that the lease rent is unreasonable. In re Bio-Med Labs., 131 B.R. 72, 74 (Bankr. N.D. Ohio 1991); In re Cregar's Autowerks, Inc., No. L-92-00872-C, slip op. at 4 (Bankr. N.D. Iowa Dec. 10, 1993). >Trustee has not contested the reasonableness of the parties' orally agreed upon rental rate of $2,000 per month. Therefore, the Court will use that amount to compute the amount due from September 1 to September 29, 1994 as $1,933.33.

Additionally, Defendant is responsible for the cost of storage of the 170 tons of haylage which continued from the effective date of termination of the lease on September 29, 1994, through the time of trial. This is an eleven-month period with average storage being $2.93 per ton per month (Defendant's Exhibit A). This computes to a total sum through August 31, 1995 of $5,479.10. Likewise, Defendant continued to store hay bales on the farm. The average rental for hay bales is $.12 per bale per month (Defendant's Exhibit A). Defendant continues to have approximately 1,200 bales on the premises for a period of eleven months after the effective termination date. The rent due for the hay is $1,584.00.

The remaining element of damages relates to use of the cornfield after September 29 until the crop was picked. This figure is difficult to compute. At that time of year, the field would not rent effectively under any circumstances. Nevertheless, Defendant did use the land until such time as the corn was picked. The Court concludes that the fair rental value for the seventy acres used for that brief period is $300.00. Therefore, the total damages under the existing arrangement is $9,296.43.

WHEREFORE, under the lease arrangement through September 29, 1994, the subsequent rental of the cornfield through harvest and the storage of the haylage and hay from September 29, 1994 through August 31, 1995, the amount owing from Defendant is $9,296.43.

FURTHER, judgment shall enter in favor of the Trustee accordingly.

SO ORDERED this 26th day of September, 1995.

Paul J. Kilburg
U.S. Bankruptcy Judge