

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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DONALD PAUL SCRIBNER, JR., KARI LYNN  
SCRIBNER

Bankruptcy No. 96-61972KW

Debtors.

Chapter 7

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### ORDER RE MOTION FOR RELIEF FROM AUTOMATIC STAY

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This matter came on for hearing before the undersigned on Motion for Relief from Automatic Stay filed by Creditor Alice B. Cook. After the preliminary hearing on the motion, the Court allowed the parties time to file briefs on this matter, addressing the issue of whether Debtors possess any defenses which would require evidentiary hearing and would preclude judgment as a matter of law. At the preliminary hearing, Creditor Alice B. Cook was represented by Charles Augustine. Debtors Donald and Kari Scribner were represented by Carter Stevens. The time for filing briefs has now passed. The Court concludes, as set out below, that no unresolved issues remain and this matter is now ready for resolution. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(G).

#### STATEMENT OF THE CASE

Ms. Cook seeks relief from stay in order to continue her forcible entry and detainer action against Debtors in Iowa District Court. She states that forfeiture of her real estate contract with Debtors was completed prior to the date they filed their Chapter 7 petition. She therefore asserts that Debtors have no interest in the property and should be evicted.

Debtors admit they were in default in contract payments. They assert, however, an ownership and equity interest in the real estate. They argue that their retention of the property is necessary to effectuate the purposes of bankruptcy. Debtors assert that Ms. Cook is adequately secured.

#### FINDINGS OF FACT

Ms. Cook as vendor entered into a real estate contract with Debtors as buyers on July 14, 1995. After Debtors defaulted on installment payments, insurance and real estate taxes due under the contract, Ms. Cook served them with a Notice of Forfeiture on April 18, 1996. Debtors failed to cure the default within 30 days after service of the Notice. Ms. Cook filed an Affidavit in Support of Forfeiture in Black Hawk County District Court on July 8, 1996.

On August 6, 1996, Ms. Cook served Debtors with a Notice to Quit. She filed a petition for forcible entry and detainer on August 12, 1996. Debtors filed their Chapter 7 petition on August 8, 1996. Ms. Cook did not receive notice of the petition until after filing her F.E.D. action. She now seeks relief from the automatic stay to continue this action and regain control of the real estate. Debtors do not

seriously dispute this rendition of the underlying facts. They do, however, request the Court to rule that their possession of the real estate should remain protected by the automatic stay in these circumstances.

The only defense Debtors raised at the time of the preliminary hearing was that Ms. Cook's first F.E.D. action was deficient for failure to serve a Notice to Quit. Ms. Cook cured this problem by filing a second F.E.D. action and serving the correct Notice to Quit as set out above. Debtors do not challenge the sufficiency of this second F.E.D. action or of the contract forfeiture itself. Both parties were given the opportunity to file briefs by September 19, 1996 setting out their positions. Neither party has taken advantage of this opportunity. Debtor has not raised any specific defense or argument which would require an evidentiary hearing. The Court concludes that this matter is ready for resolution as a matter of law on the record as it currently stands.

### CONCLUSIONS OF LAW

In Iowa, forfeiture is completed by compliance with Chapter 656 and the passage of thirty days after service of notice. Iowa Code 656.2, .4; Gottschalk v. Simpson, 422 N.W.2d 181, 184 (Iowa 1988); Lett v. Grummer, 300 N.W.2d 147, 149 (Iowa 1981). It is now well established that after a real estate contract is forfeited in Iowa, the debtors/buyers retain no interest in the real estate against which the automatic stay of 11 U.S.C. 362 would operate. In re Byker, 64 B.R. 640, 641 (Bankr. N.D. Iowa 1986); Johnson v. First Nat'l Bank, 719 F.2d 270 (8th Cir. 1983), cert. denied, 465 U.S. 1016 (1984); In re Vacation Village Ltd. Partnership, 49 B.R. 590, 593 (Bankr. N.D. Iowa 1984). Courts in other jurisdictions have similarly held that real estate contracts terminated prior to the filing of a bankruptcy petition are not property of the bankruptcy estate. 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). These cases stress that a bankruptcy court does not have the authority to resuscitate previously extinguished contractual rights.

Some courts have proceeded to consider whether a forfeited debtor/buyer retains any residual possessory rights after termination of the real property interests. The court in In re Delex Management, 155 B.R. 161, 167 (Bankr. W.D. Mich. 1993), compared a forfeited debtor's interest in the property to a tenancy by sufferance, which constitutes a property interest in bankruptcy protected by the automatic stay. Any equitable defense for avoidance of the forfeiture which the debtor could raise in an action for ejectment is an interest in property which is property of the estate. In re Vee Jay, Inc., 104 B.R. 101, 104 (Bankr. W.D. Ark. 1987).

To the extent that Debtors retain any simple possessory interest in this property, the stay should be lifted if cause exists to do so under sec. 362(d)(1). The uncontested record in this case establishes that Debtors' real property interest terminated prior to the commencement of these proceedings. There simply does not exist any real property interest in Debtors at this time to be protected by the Court on behalf of Debtors or the estate. As stated in Delex Management, "[t]he 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." 155 B.R. at 168. As the Debtors have no real property interest except a mere possessory interest and have no viable defenses to ejectment, the automatic stay must be lifted in order to allow Ms. Cook to proceed in Iowa

District Court to enforce her legal remedies under Iowa law.

**WHEREFORE**, based on the uncontested record, this matter may be resolved as a matter of law.

**FURTHER**, Creditor Alice B. Cook's Motion for Relief from Automatic Stay is GRANTED.

**FURTHER**, Alice B. Cook is allowed to proceed to enforce her legal remedies against the property, which was subject to the forfeited real estate contract with Debtors, under Iowa law.

**SO ORDERED**, this 7th day of October, 1996.

Paul J. Kilburg  
U.S. Bankruptcy Judge