

In the United States Bankruptcy Court

for the Northern District of Iowa

DAVID HEGG
ELAINE HEGG

Bankruptcy No. 95-62467KW

Debtor(s).

Chapter 13

DURWIN HEGG

Adversary No. 96-6034KW

Plaintiff(s)

vs.

CAROL DUNBAR DAVID R. HEGG
and ELAINE HEGG

Defendant(s)

ORDER

This Court entered its ruling on September 30, 1996, finding that Durwin Hegg ("Creditor Hegg") owns real estate in Winneshiek County as a result of his completion of forfeiture proceedings. Debtors David and Elaine Hegg ("Debtors") have filed a Motion to Amend Findings requesting that the Court reconsider its ruling on ownership. They assert that an injunction filed against Creditor Hegg in Winneshiek County District Court prohibited him from completing the forfeiture.

STATEMENT OF FACTS

Debtors were buyers under a contract for the purchase of land in Winneshiek County and Creditor Hegg was the vendor through an assignment. Creditor Hegg attempted forfeiture of the contract, but was temporarily enjoined by the Winneshiek County District Court in January, 1995. After a hearing, the court overruled Creditor Hegg's motion to dissolve the temporary injunction on February 21, 1995.

The order refusing to dissolve the temporary injunction stated that Creditor Hegg was required to initiate new mandatory mediation proceedings under Chapter 654A of the Iowa Code before he could proceed with forfeiture of the contract. The court refused to permit Creditor Hegg to use the previous owner's mediation release. A new mediation release was required because the previous owner had withdrawn her notice of forfeiture before assigning her interest in the contract to Creditor Hegg. The injunction stated that Creditor Hegg must comply with Chapter 654A by initiating new mediation proceedings before commencing forfeiture proceedings. The order referred to Creditor Hegg's proceeding as both a forfeiture and a foreclosure. Debtors admit to this confusion in their motion to amend findings.

Creditor Hegg did obtain a mediation release and proceeded to serve a Notice of Forfeiture to Debtors on April 21, 1995. Debtors did not object or seek State sanctions alleging a violation of the Winneshiek County District Court injunction after being served this Notice of Forfeiture. Debtors filed bankruptcy on May 18, 1995 (No. 95-20920KD).

After the Debtors' Chapter 13 petition was dismissed, the Winneshiek County District Court entered a forcible entry and detainer default judgment for Creditor Hegg against Debtors on December 13, 1995. Debtors filed an appeal of this judgment but did not attempt to enforce the February 21, 1995 injunction against Creditor Hegg. This matter was stayed pursuant to §362 after Debtors filed their second Chapter 13 petition (No. 95-62467KW) on December 21, 1995.

Debtors filed a Motion for Contempt in this Court against Creditor Hegg for alleged violations of the automatic stay. Creditor Hegg responded by requesting that this Court determine the property interests of the parties in regard to the real estate in the possession of the Debtors.

The Bankruptcy Court's ruling entered September 30, 1996, denied Debtors' Motion for Contempt and determined that Creditor Hegg was the owner of the real estate in this dispute based on completion of forfeiture proceedings. Debtors filed this Motion to Amend Findings on October 2, 1996. They argue that the February 21, 1995 injunction against Creditor Hegg remains in effect and that Creditor Hegg violated this injunction by completing forfeiture proceedings. Debtors request that the Court amend factual findings to state that this injunction was still in effect, and reconsider its decision regarding title to the real estate.

MOTION TO AMEND FINDINGS

The Bankruptcy Court may alter or amend a judgment under Bankruptcy Rule 9023. The court possesses broad discretion in determining whether to grant a motion to alter or amend judgment. Hagerman v. Yukon Energy Corp., 839 F.2d 407, 413 (8th Cir. 1988), cert. denied, 488 U.S. 820 (1988); In re Henning, Adv. No. 92-1269LC, slip op. at 2 (Bankr. N.D. Iowa February 8, 1994). A motion to alter or amend judgement serves two limited functions: (1) to correct manifest errors of law or fact; or (2) to present newly discovered evidence. Hagerman, 839 F.2d at 414. "Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of [trial]." Hagerman, 839 F.2d at 414.

A motion to alter or amend judgement is not an occasion to tender new legal theories for the first time. Hagerman, 839 F.2d at 414. Arguments which could have been raised prior to the issuance of judgment should not be initially raised in this motion. Federal Deposit Ins. Corp. v. Meyer, 781 F.2d 1260, 1268 (7th Cir. 1986). If evidence was available earlier, it should have been presented before initial judgment. L.B. Credit Corp. v. Resolution Trust Corp., 49 F.3d 1263, 1267 (7th Cir. 1995). The purpose of a motion to alter or amend "is not to give the moving party another 'bite at the apple' by permitting the arguing of issues and procedures that could and should have been raised prior to judgment." In re Stoecker, 151 B.R. 989, 1002 (Bankr. N.D. Ill. 1993).

As a general proposition, it is improper to refer to documents or matters occurring after the close of the record as if they were part of the record in the absence of a successful motion to reopen. In re Lease-A-Fleet, Inc., 151 B.R. 341, 347 (Bankr. E.D. Pa. 1993); In re KOOCR-TV, Inc., No. 95-11128KC, slip op. at 3 (Bankr. N.D. Iowa Sept. 19, 1995). Parties should not attach copies of, or argue from, documents which were not admitted into evidence at the time of hearing. In re Mirkin,

100 B.R. 221, 226 n.4 (Bankr. E.D. Pa. 1989). Matters raised in post-hearing briefs completely deviating from the record and bearing little resemblance to the evidence presented at hearing are also inappropriate. KOCR-TV, slip op. at 3.

Debtors claim that this Court erred by not stating in its findings of fact that the temporary injunction issued by the Winneshiek County District Court was still in effect. Debtors assert that this Court should amend its findings and reconsider the real estate ownership issue in light of this injunction. However, the argument that this temporary injunction was still in effect prohibiting Creditor Hegg from completing forfeiture was not pursued by Debtors prior to trial. Debtors inferred this argument at trial, but did not raise this as a major issue until their post-trial brief. The order which Debtors refer to as continuing the court's injunction was not offered as an exhibit at trial. Until their post-trial brief, the only defense raised by Debtors to Creditor Hegg's completion of forfeiture was that Creditor Hegg had elected another remedy precluding forfeiture.

The evidence that this temporary injunction might still be in effect was available earlier, and could have been raised prior to Creditor Hegg's completion of forfeiture proceedings. Debtors could have raised this claim in defense to the second forfeiture proceeding or to the forcible entry and detainer action. See Eubanks v. FDIC, 977 F.2d 166, 173 (5th Cir. 1992)(holding res judicata acts as a bar if the claimant could have or should have brought the claim in the former proceeding). In both actions, a determination of property interests was made regarding the property now in dispute and the injunction was not raised as a defense. Accordingly, the Court finds that Debtors' Motion to Amend Findings be overruled.

AMBIGUITY OF INJUNCTION

While the Court feels that the foregoing is dispositive of the Motion to Amend, even if the merits were addressed, Debtors would not prevail.

Neither party sought clarification of the injunction from the issuing Court. To interpret the Winneshiek County District Court's injunction, this Court must look to the "spirit and purpose" of the injunction. Chase Indus. v. Frommelt Indus., Inc., 806 F. Supp. 1381, 1386 (N.D. Iowa 1992). The Winneshiek County court order ambiguously states that the issue in dispute is whether the previous owner's mediation release may be used by Creditor Hegg to avoid the requirements of §654A.6. The order prohibits Creditor Hegg from seeking forfeiture without a new notice and the proper mediation proceedings. The order is silent regarding whether it expires upon Creditor Hegg's compliance with mediation proceedings.

The order contains a second ambiguity. It refers to the proceeding it is enjoining as both a forfeiture and a foreclosure. Creditor Hegg initiated both foreclosure and forfeiture proceedings against Debtors. Debtors' Motion to Amend Findings admits that this ambiguity exists.

The Court concludes that Creditor Hegg complied with the injunction order by completing the requirements for a mediation release under §654A.6 and serving a new notice of forfeiture. Since both parties proceeded on the basis that this injunction only prohibited action by Creditor Hegg without a mediation release, this Court rejects Debtors' contention which would construe the injunction to prohibit all actions by Creditor Hegg.

While this Court entertains serious questions whether it is the function of this Court to define the parameters of the State injunction and determine its enforceability, the Court feels that some comments are appropriate. It is axiomatic that an injunction can only be enforced when it is unambiguous on its

face. It is clear that there is a certain level of ambiguity in this injunction. This ambiguity caused the parties' uncertainty in ascertaining the scope of the injunction. Since the language of the injunction can reasonably be interpreted to be self-terminating, and since Debtors apparently accepted this interpretation by failing to act until recently, this Court can find no reason to substitute an alternative interpretation. Since the injunction is capable of two separate interpretations and since the record amply establishes that the parties chose to accept that the injunction was self-terminating, the Court does not feel that it would be appropriate to enforce the injunction differently now than it has been since the time that it was issued. As such, the Court can find no compelling reason to alter or amend its previously entered judgment under Bankruptcy Rule 9023. Nor does the Court conclude that oral arguments would be of any benefit in clarifying this Motion.

WHEREFORE, for all of the reasons set forth herein, the Motion to Amend Findings filed by Debtors on October 2, 1996 is **OVERRULED** in its entirety.

SO ORDERED this 15 day of October, 1996.

PAUL J. KILBURG

Paul J. Kilburg
U.S. Bankruptcy Judge