

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of  
VYTAUTAS TALANDIS,  
Debtor.

Case No. 86-1640-D  
Chapter 11

**ORDER - MOTION TO SHOW CAUSE**

On January 13, 1988, Debtor's motion for order to show cause and for contempt judgment against the United States of America, acting through the Farmers Home Administration (hereinafter "FmHA"), and the FmHA Iowa State Director, Robert Pimm, came on for hearing. R. Fred Dumbaugh appeared on behalf of Debtor, and Kevin R. Query appeared on behalf of FmHA. At the conclusion of said hearing, the Court took this matter under advisement and now considers it fully submitted.

Debtor prays that FmHA and its director, Robert Pimm, be held in contempt of court for willfully violating the automatic stay provisions contained in 11 U.S.C. §362.

This is a core proceeding under 28 U.S.C. §157(b)(2). The Court having reviewed the pleadings, briefs, and arguments of counsel, now makes its findings and conclusions pursuant to FED.R. BANKR. p. 7052.

### FINDINGS OF FACT

1. The Debtor filed his voluntary Chapter 11 petition on June 5, 1986.

2. FmHA was one of the scheduled creditors, and the United States Attorney for the Southern District of Iowa entered an appearance for FmHA.

3. Robert Pimm is the State Director of the FmHA.

4. On March 14, 1975, Debtor's predecessors in interest, Helen Hawbaker, Angela Parker, and Elena Abramikas, entered into a real estate contract for the purchase of real estate from D. L. Stevens and Alverta Stevens. The installment real estate contract provided for annual payments until March 1, 1987, when the balance, a balloon payment, was due and payable in full.

5. On June 3, 1975, Helen Hawbaker and Angela Parker conveyed their interest in the property to Elena Abramikas by separate quit claim deeds.

6. On May 24, 1979, Elena Abramikas borrowed \$197,500.00 from FmHA. FmHA received a mortgage on the real estate as security for the loan.

7. On June 8, 1983, Elena Abramikas died, and Debtor succeeded to the interest in real estate.

8. On March 1, 1987, the balloon payment on the real estate contract came due and Debtor was unable to make the payment.

9. On March 30, 1987, D. L. Stevens and Alverta Stevens filed their motion for relief from automatic stay. Debtor did not resist this motion.

10. On April 22, 1987, the order on motion for relief from automatic stay was filed. The order provided as follows:

"IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion for Relief from Automatic Stay, filed by D. L. Stevens and Alverta Stevens, is granted as to that real estate contract referred to in said Motion, and that they may pursue their legal remedies for default on said Contract."

11. On June 18, 1987, a mediation hearing was held pursuant to Iowa Code Chapter 654A (1987). Debtor, his attorney, and the Stevenses were present.

12. At the mediation hearing it was agreed by all parties that they would pursue the first option with FmHA to pay off the Stevenses according to the phone conversation during mediation with FmHA. Both parties agreed to contact FmHA and expedite the proceedings, if possible. It was further agreed that in the event the FmHA option did not occur, the Stevens would pursue forfeiture and the Debtor would pursue the possibility of purchasing the farm back after forfeiture.

13. On or about June 18, 1987, FmHA purchased the Stevenses interest in the installment contract. FmHA received a quit claim deed from the Stevenses for the real estate.

14. Debtor's present counsel entered an appearance on September 28, 1987.

15. On or about the 7th day of November, 1987, FmHA caused a notice of forfeiture of real estate contract to be served upon Debtor, the Administrator of the Estate of Elena Abramikas, deceased, and other persons. Debtor was notified that the real estate contract of March 14, 1975, was being forfeited unless the parties in default performed within 30 days.

16. FmHA has not applied to the court for relief from stay pursuant to 11 U.S.C. §362(d).

#### DISCUSSION

Debtor prays that FmHA and Robert Primm be held in contempt of court for willfully violating the automatic stay provisions of 11 U.S.C. § 362 by commencing forfeiture proceedings against the property.

The filing of a petition automatically invokes a stay against lawsuits and lien enforcement. 11 U.S.C. §362(a). The automatic stay continues, in case of an act against property of the estate, until such property is no longer property of the estate; and the stay of any other act under 362(a) continues until the case is closed, the case is dismissed, or a discharge is granted or denied, whichever occurs the earliest. 11 U.S.C. §362(c).

11 U.S.C. §362(h) provides that "[a]n individual injured by any willful violation of a stay provided by this

section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

A violation of the stay provisions may result in being held in contempt, both civil and criminal. In re Hubbard, 70 B.R. 122 (Bankr. E.D. Ark. 1985), affd. Hubbard v. Fleet Mortg. Co., 810 F.2d 778 (8th Cir. 1987). However, contempt is a severe remedy, and should not be resorted to where there is a fair ground of doubt as to the wrongfulness of the conduct. MAC Corp. of America v. Williams Patent Crusher & Pulverizer Co., 767 F.2d 882, 885 (D.C.Cir. 1985).

The standard for contempt is a high one and a party should not be held in contempt unless the court first gives fair warning that certain acts are forbidden. Any ambiguity in the law should be resolved in favor of the party charged with contempt. In re Wall, 60 B.R. 512, 516 (Bankr. W.D. Ky. 1986).

Once the stay is lifted, the property is no longer property of the estate. In re Griggs, 82 B.R. 532, 533 (Bankr. W.D. Mo. 1988); Matter of Ricks, 26 B.R. 134, 137 (Bankr. Idaho 1983). The parties are restored to those legal relationships which existed before the automatic stay became operative upon the lifting of the stay. Matter of Winslow, 39 B.R. 869, 871 (Bankr. N.D. Ga. 1984). The nonbankruptcy law which governed prior to the inception of

the automatic stay controls the conduct of the parties once the stay is lifted. Id.

In the case at bar, the automatic stay with respect to the real estate contract was lifted by Order of April 22, 1987. Debtor did not resist this motion, and the property was no longer property of the estate.

Debtor had notice that there were negotiations by and between the Stevenses and FmHA as to the real estate contract, and agreed to participate in these negotiations. The Debtor elected not to come back to this Court for any possible relief at the time.

#### CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that Debtor has failed to show that FmHA and Robert Primm have engaged in wrongful conduct. Consequently, Debtor's motion for order to show cause must be denied and dismissed.

IT IS ACCORDINGLY ORDERED that Debtors's motion for order to show cause and for contempt judgment against United States of America, acting through the Farmers Home Administration, and Robert Pimm, is denied and dismissed.

Dated this 27<sup>TH</sup> day of May, 1988.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE