

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
 :
VERNON ARMSTRONG, JR. and : Case No. 89-2904-W H
KRISTIE ARMSTRONG, a/k/a : Chapter 13
KRISTIE BUSH, :
 :
Debtors. :
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ORDER--MOTION FOR RELIEF FROM STAY

On February 9, 1990, a hearing was held on the motion for relief from stay. The following attorneys appeared on behalf of their respective clients: Casey J. Quinn for Debtors; Richard D. Crowl for Kenneth K. Hummell, Peggy B. Hummell and James B. Perry (hereinafter "Sellers"); and J. W. Warford as Trustee. At the conclusion of said hearing, the Court took the matter under advisement upon a briefing deadline. The Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(G). The Court, upon review of the motion, response, briefs submitted and arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. On March 30, 1989, Debtors entered into an installment real estate contract (hereinafter "Contract") with Sellers to purchase property located at 2405 4th Avenue in Council Bluffs, Iowa, legally described as: Lots 3 and 4, Block 9, Wrights Addition to Council Bluffs, Iowa (hereinafter "Council Bluffs Real Estate"). Pursuant to paragraph one (1)

of the Contract, Debtors were required to make payments to the Sellers in the amount of \$207.72 on the first day of each and every month until the full amount of the Contract was paid. In addition, paragraph 11(a) of the Contract provides that if buyer fails to perform timely on the Contract, upon expiration of a thirty-day curing period, the buyer forfeits the Contract.

2. Debtors failed to make the October 1, 1989 payment when due under said Contract.

3. A Notice of Cancellation and Forfeiture was served upon Debtors on October 25, 1989.

4. Debtors forfeited their interest in said Contract on November 26, 1989.

5. An Affidavit in Support of Forfeiture of Real Estate Contract was filed December 15, 1989, in the office of the Pottawattamie County Recorder, Pottawattamie County, Iowa.

6. Debtors then filed a petition in this forum under Chapter 13 of the United States Bankruptcy Code on December 21, 1989, and scheduled the premises as their homestead.

7. Sellers brought an action for forcible entry and detainer in the District Court of Pottawattamie County, Iowa on December 21, 1989, naming Debtors as defendants. It was the decision of the District Court that the matter should be stayed until a relief from stay is obtained.

8. On March 7, 1990, the Court advised counsel for

Sellers

that he could be subjecting himself, as well as his clients, to the contempt powers of the court if Sellers continued in their efforts to evict Debtors from the premises.

DISCUSSION

The determination of whether or not real property is included in debtor's bankruptcy estate is a question of federal law to be determined in accordance with 11 U.S.C. §541. However, the nature and extent of debtor's right is determined by state law. The Crossings Inc. v. Scharnberg, (Matter of the Crossings, Inc.), No. 86-2140, slip op. (Bankr. S.D. Iowa December 22, 1987); In re Vassilowitch, 72 B.R. 803, 805 (Bankr. D. Mass. 1987); In re Baquet, 61 B.R. 495, 498 (Bankr. D. Mont. 1986); In re Turner, 29 B.R. 628, 630 (Bankr. D. Me. 1983). Thus, Debtors' rights to the Council Bluffs Real Estate are determined under Iowa law.

Chapter 656 of the Iowa Code provides for forfeiture of a vendee's interest in a real estate contract. However, the party seeking the right of forfeiture must meet certain preconditions. First, the contract between the parties must contain a clause permitting or providing for forfeiture. Crossings; Westercamp v. Smith, 329 Iowa 705, _____, 32 N.W.2d 347, 352 (1948); Iowa Code §651.1 (1985). Second, the vendee must have defaulted in terms of the contract. Id.

In the matter *sub judice*, paragraph 11(a) of the Contract

provides that forfeiture is a remedy if buyer defaults. Paragraph 1 of the Contract obligated buyer to make payments in the amount of \$207.72 commencing May 1, 1989, and terminating when the full amount of the Contract was paid. Buyer/Debtors defaulted under said Contract by failing to make the October 1, 1989 payment in the amount of \$207.72. Therefore, Sellers' forfeiture action was in accordance with the terms of the Contract and Iowa law.

Under §656.2 of the Iowa Code, forfeiture is effective only if certain designated parties receive written notice of the forfeiture. Crossings; Fulton v. Chase, 240 Iowa 771, ____, 37 N.W.2d 920, 921 (1941); Iowa Code §656.2(2). In the matter *sub judice*, Sellers complied with the law when they served notice upon Debtors on October 25, 1989. The Iowa Code also states in §656.2(1)(c) that the vendee may cure the default within a 30-day curing period after the completed service of notice. Thus, Debtors had until November 25, 1989, by which to cure the default of the Contract by submitting payment to Sellers. However, Debtors failed to make said payment, the Contract was forfeited and Sellers filed an Affidavit in Support of Forfeiture of Real Estate Contract on December 15, 1989.

When a contract vendee forfeits under a real estate contract, the contract vendor is revested with both the legal and equitable titles to the real estate. In re Vacation

Village Limited Partnership, 49 B.R. 590, 592 (Bankr. N.D. Iowa 1985); Hunt Hardware Company v. Herzoff, 196 Iowa 715, 195 N.W. 264, 265 (1923). As stated supra, Debtors forfeited under the Contract. Therefore, on November 26, 1989, Sellers were revested with legal and equitable title to the Council Bluffs Real Estate. The Council Bluffs Real Estate therefore did not become property of Debtors' estate under §541 when Debtors filed their Chapter 13 petition on December 21, 1989.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that the Council Bluffs Real Estate is not property of Debtors' estate under §541 and is not subject to the §362 automatic stay.

IT IS ACCORDINGLY ORDERED that Sellers' motion for relief from stay is granted.

Dated this 23rd day of March, 1990.

Russell J. Hill
U.S. Bankruptcy Judge