UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of
ED SCANLAN,
Engaged in Farming,

Debtor.

Case No. 87-479-C

Chapter 12

MEMORANDUM OF DECISION AND ORDER

On April 16, 1987 a motion to terminate automatic stay and a motion to compel debtor to assume or reject executory contract filed on behalf of Maurine Helena Spring and resistances thereto filed on behalf of the debtor came on for telephonic hearing before the court in Des Moines, Iowa. Donald R. Clark appeared on behalf of Maurine Helena Spring and Marlyn S. Jensen appeared on behalf of the debtor. At the close of the hearing the parties were directed to brief both issues by May 8, 1987. The matters were considered fully submitted on that date. 1

BACKGROUND

The debtor and Maurine Helena Spring entered into a contract for the sale of real estate in 1978. The contract called for a down pavment of $14,500.00 and ten annual payments of $3,500.00 plus 8 percent interest on the unpaid

1 The court notes that on April 14, 1987 the debtor filed an objection to the claim of Maurine Spring. Since the debtor's objection involves the same issues presented in the pending motions, this decision and order likewise resolve the objection.

balances. Regular contract payments were made until 1984. The principal payments due on March 1, 1985, 1986 and 1987 were not made--leaving an outstanding balance to date of $21,000.00 plus interest. Ms. Spring sent debtor a notice to cure default and filed a request for mediation. According to Ms. Spring, the parties attended a mediation meeting on February 18, 1987. Thereafter, negotiations broke down and the debtor filed his Chapter 12 petition in bankruptcy on February 24, 1987. [2]

In her motion to terminate automatic stay filed on March 13, 1987, Ms. Spring asserts that the present value of the property is less than the amount owed on the contract. She also claims a lack of adequate protection for her interest in the property and no reasonable prospect of the debtor's reorganization. For her motion to compel debtor to assume or reject executory contract filed on March 30, 1987 Ms. Spring asserts that the real estate contract is executory and must be assumed or rejected by the debtor.

The debtor filed resistances to the above motions on Search 23, 198-11 and April 14, 1987. The debtor argues that the real estate contract in issue is not an executory contract under 11 U.S.C. section 365, but rather is a secured claim to the extent of the present value of the

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2 Ms. Spring notes in her brief that a mediation release was issued by the Iowa/Farmer/Creditor Mediation Service on March 13, 1987 authorizing the creditor to initiate a proceeding to forfeit the contract at issue.

property under 11 U.S.C. sections 502 and 506. The debtor has offered to pay reasonable rental for the use of the property or to pay interest on the principal sum to the extent of the value of the security until a plan is confirmed. On May 26, 1987 the debtor filed his Chapter 12 plan. The debtor treats the claim of Ms. Spring as a secured claim to the extent of $18,300.00, the fair market value of the property. The debtor then offers to pay $1,500.00 per year principal for 8 years plus interest at 8 percent.

DISCUSSION

The resolution of the issues in this case hinges upon whether a real estate contract is an executory contract. If the contract is executory and is assumed, the debtor must take the contract as written, with its benefits and burdens. See 11 U.S.C. S 365(b)(1) and 1222(b)(6). If the contract is equivalent to a mortgage, the debtor may "write-down" the contract to the fair market value of the property. See 11 U.S.C. 1222(b)(2) and 5 1225(a)(5).

"Executory contract" is not defined in 11 U.S.C. section 365 nor in any other section of the Bankruptcy Code. The legislative history of section 365 indicates, however, that Congress intended the term to be defined as a contract "on which performance remains due to some extent on both sides." S. Rep. No. 989, 95th Cong., 2d Sess., 58 and H. Rep. No. 595, 95th Cong., lst Sess. 347, reprinted in 1978 U.S. CODE CONG. & ADMIN.. NEWS 5787, 5844, 5963, 6303. This

description essentially tracks with the definition of an executory contract enunciated by Professor Vern Countryman in his oft quoted article, Executory Contracts in Bankruptcy: Part I, 57 Minn. L. Rev. 435 (1973). According to Countryman, an executory contract is:

> A contract under which the obligation of both the bankrupt and the other party are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.

Id. at 460.

The issue of whether a real estate contract falls within the definition of an executory contract has generated considerable litigation. Many courts have held that a land contract is an executory contract because substantial performance remains due on both sides--the obligation of the buyer to pay the purchase price and the obligation of the seller to deliver title. See, Matter of Dunes Casino Hotel, 63 B.R. 939 (D. N.J. 1986); Shaw v. Dawson, 48 B.R. 857 (D. N.M. 1985); In re Buchert, 69 B.R. 816 (Bankr. N.D. Ill. 1987); In re Waldron, 65 B.R. 169 (Bankr. N.D. Tex. 1986); In re Speck, 50 B.R. 307 (Bankr. D. S.D. 1985), aff'd, Speck v. First Nat. Bank of Sioux Falls, 62 B.R. 61 (D. S.D. 1985); In re McCallen, 49 B.R. 948 (Bankr. Or. 1985); In re Anderson, 36 B.R. 120 (Bankr. D. Hawaii 1983). Other courts have concluded that land contracts are not executory contracts, but are security devices similar to mortgages. See, In re Rehbein, 60 B.R. 436 (Bankr. 9th Cir. 1986); In re

Bertlelson, 65 B.R. 654 (Bankr. C.D. Ill. 1986); In re Britton, 43 B.R. 605 (Bankr. E.D. Mich. 1984); In re Adolphsen, 38 B.R. 776 (Bankr. D. Minn. 1983), aff'd 38 B.R. 780 (D. Minn. 1983); In re Booth, 19 B.R. 53 (Bankr. D. Utah 1982).

In this circuit the analysis begins with the decision of In re Speck, 798 F.2d 279, 280 (8th Cir. 1986), wherein the Eighth Circuit noted its adoption of the Countryman definition of an executory contract in In re Knutson, 563 F.2d 916, 917 (8th Cir. 1977). In Speck the Eighth Circuit held that under South Dakota law a contract for deed is an executory contract that must be assumed or rejected pursuant to 11 U.S.C. section 365. The court considered cases holding that a contract for deed should be deemed a secured debt but deferred to the South Dakota U.S. District Court's interpretation of South Dakota law.

The U.S. District Court for the Southern District of Iowa has not interpreted the relevant state law in a written decision. The U.S. District Court for the Northern District of Iowa, however, has ruled that under Iowa law real estate contracts are executory contracts within the meaning of Professor Countryman's definition. See In re Hill, No. C86-115, unpublished op. (N.D. Iowa, Jan. 14, 1987). [3] Judge

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3 The bankruptcy court order appealed from and affirmed in Hill was authored by U.S. Bankruptcy Judge Robert J. Kressel who also wrote In re Adolphsen, 38 B.R. 776 (Bankr. D. Minn. 1983) which held that under Minnesota law a debtor-vendee's interest in a contract for deed is not executory.

David R. Hansen stated in Hill:

> For purposes of Iowa real estate law, contracts for the sale of real estate, under which the vendee becomes the equitable owner of the real estate and the vendor retains legal title as security for the balance of the purchase price, have long been viewed as security agreements. See Harrington v. Feddersen, 226 N.W. 110, 111 (Iowa 1929). The Supreme Court of Iowa has repeatedly held to this view. See Fellmer v. Gruber, 261 N.W.2d 173, 174 Iowa 1978); H. L. Munn Lumber Co. v. City of Ames, 176 N.W.2d 813, 816, 817 (Iowa 1970); Junkin v. McClain, 265 N.W. 362, 365 (Iowa 1936); Hatch v. Commerce Ins. Co., 249 N.W. 164, 165 (Iowa 1933); Lake v. Bernstein, .239 N.W. 19, 20 (Iowa 1931). However, applying Professor Countryman's definition to Iowa real estate contracts, it is clear that the obligation of the real estate vendor to deliver legal title to the vendee upon final payment would be excused by the vendee's failure to complete the contract payments. Lake v. Bernstein, 239 N.W. at 20 (if purchaser abandons the contract, vendor may rescind). Although in Iowa a real estate contract of this type enables the vendor to be secured until final payment is made, it is still an executory contract under Countryman's definition since "...the failure of either to complete performance would constitute a material breach excusing performance of the other."

Id. at p. 2-3. The District Court's observation that Iowa law has long held that real estate contracts are security agreements arguably might have dictated a different result under the Speck decision. Yet, the subsequent comment about the Lake finding suggests that state law may be unsettled at this juncture in the development of commercial, contract

and real estate law. [4] Certainly, it is beyond dispute that a land contract, like a mortgage, serves as a security device used for the purchase of real estate. However, fundamental differences exist between these two instruments warranting disparate treatment under the Bankruptcy Code. See generally, Comment, 64 Iowa L. Rev. 158 (1978).

The South Dakota law under consideration in Speck is not significantly different from Iowa law regarding real estate contracts. [5] Under South Dakota law "the right of the vendor to receive payment and the right of the vendee to take merchantable title upon completion of those payments are dependent covenants." Walsh v. Bellamy, 68 S.D. 291, 294, 2 N.W. 102, 103 (1942). The failure of either party to perform is a material breach excusing the other's performance. Speck v. First Nat. Bank of Sioux Falls, 62 B.R. 61, 61-62(D. S.D. 1985).

Under Iowa law the obligations of the vendor and the

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4 Iowa Code Chapter 684A (Questions Of Law In Supreme Court Certified) does not appear to provide for direct certification by a U.S. bankruptcy court.

5 Both South Dakota and Iowa statutes treat mortgages and contracts for deed differently. Compare S.D.CL Chs. 43-26, 21-50 and S.D.CL Chs. 21-47; 21-48 with Iowa Code Ch. 656 and Ch. 654. For a thorough discussion distinguishing South Dakota and North Dakota statutes see In re Faiman, 70 B.R. 74 (Bankr. D. N.D. 1987) (finding that North Dakota laws grant contract vendors and vendees similar rights and remedies to those of mortgagors and mortgagees and therefore land contracts are not executory for purposes of 11 U.S.C. section 365.)

vendee are likewise dependent covenants. It is well settled that a vendee cannot be heard to complain of a defect in the vendor's title prior to the time he is entitled to performance under the contract. Weaner v. Long, 185 N.W.2d 243, 247 (Iowa 1971). The title which a vendor must furnish under a contract for the sale of land need only be good title as of the date when it is required by the contract--when payment is completed. Warren v. Yocum, 223 N.W.2d 258, 261-62 (Iowa 1974). Moreover, the obligation of the vendor to deliver title to the vendee upon final payment will be excused by the vendee's failure to complete the contract payments. Lake v. Bernstein, 239 N.W. 19, 20 (1931). Thus, like South Dakota law and as noted by the U.S. District Court for the Northern District of Iowa; a real estate contract under Iowa law falls squarely within Countryman's definition of an executory contract because "the failure of either to complete performance would constitute a material breach excusing performance of the other." In re Hill, No. C86-0115, unpublished op. at 3.

In addition to the argument that the real estate contract at issue is not an executory contract, the debtor notes that the warranty deed to be delivered pursuant to the contract had been placed in the hands of an escrow agent and therefore no performance remained due on the part of the vendor. Some courts have held that the contract is no longer executory when a deed has been placed in escrow. See

In re Rehbein, 60 B.R. 436, 440-41 (Bankr. 9th Cir. 1986); In re Cox, 28 B.R. 588, 590 (Bankr. D. Idaho 1983). Other courts and commentators have held that a seller placing the deed for land in escrow for delivery to the purchaser upon completion of payment does not constitute full performance by the seller so as to render the contract non-executory. See Shaw v. Dawson, 48 B.R. 857, 861 (D. N.M. 1985); In re Waldron, 65 B.R. 169, 172 (Bankr. N.D. Tex. 1986); Countryman, Executory Contracts in Bankruptcy: Part I, 57 Minn. L. Rev. 439, 469-70 (1973). This court agrees with the latter authorities. The mere placement of the formal documents necessary to effect a transfer of title does not alter the result where the vendee is not entitled to have the transfer effected until payments are completed.

Finally, with respect to the equities of the case, this court responds with the language used by the bankruptcy court for the District of South Dakota:

> Although it would undoubtedly be easier from a reorganization standpoint to allow the debtors to treat a contract for deed as an ordinary security device, that was clearly not the intention of the parties at the time of the making of the contracts and to so hold now would be contrary to the intent of Congress under the Bankruptcy Code and would fly in the face of generations who have bought and sold land in this manner. The contract for deed is one of the few alternatives to commercial financing available, and it is especially well-suited to the realities of agricultural land sales. To those who have always relied upon the intrinsic value of the land, holding the deed is more than a

> ministerial act, it is the ultimate protection. This Court can view it in no other way.

In re Speck, 50 B.R. 307, 308-09 (Bankr. D. S.D. 1985).

ORDER

WHEREFORE, based upon the foregoing analysis, the court finds that under Iowa law a contract for the sale of real estate is an executory contract and must be assumed or rejected by the debtor according to the requirements of the Bankruptcy Code.

THEREFORE, the motion to compel debtor to assume or reject executory contract filed on behalf of Maurine Helena Spring is hereby granted and the debtor is ordered to assume or reject the contract within 20 days.

IT IS FURTHER ORDERED that the debtor shall submit an amended plan within 10 days after an assumption or rejection of the contract.

Signed and filed this 18th day of November, 1987.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE

Bankruptcy decision from the bench. Similar to Scanlan written decision-- Case No. 87-479-C, No. 61 in decision book.

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

CENTRAL DIVISION

WALTER MARLIN BROWN and
BURDEAN RUTH BROWN,

Plaintiffs,

CIVIL NO. 87-80

ORDER

FIRST NATIONAL BANK IN LENOX,

Defendant.

The Court has before it debtor's appeal from the Bankruptcy Court's Order of September 8, 1987, and the bank's brief and argument in response. The Court held a hearing on a. related motion on December 21, 1987, and the matter is now fully submitted.

Standard of Review. Pursuant to Bankruptcy Rule 8013, a bankruptcy court's findings of fact, whether oral or based on documentary evidence, shall not be set aside unless clearly erroneous.

Facts. In 1982, debtors purchased 160 acres of farmland in Taylor County from Russell and Patricia Travis on a real estate contract. In April 1983, the Travises as vendors assigned their interest in the contract for security purposes to the bank. The Travises also entered into an agreement with the escrow agent directing the escrow agent upon receipt of payments from the Browns to forward them to

First National Bank in Lenox to credit against notes the Travises owed to the Bank.

Payments were made on the contract through the payment due March 1, 1985. No further payments were.made so that there is currently due on the contract from the Browns to the Travises the principal sum of $157,000 plus interest at 9% from and after March 1, 1985. The payments due March 1, 1986 and March 1, 1987 were not made and real estate taxes are delinquent.

The Bank filed a Proof of Claim with attachments on March 3, 1987. Debtors objected to the claim on March 17, 19871 and the Bank resisted the objection on March 4'0, 1987. The Browns filed their Chapter 12 plan on April 6, 1987, and to this they attached their appraisal showing the 160 acres in question to have a present market value of $36,800. The Bankruptcy Court held a hearing.on April 8, 1987. Briefs were later filed.

On May 13, 1987, the Bank filed an application for a time frame under which an executory contract should be assumed or rejected and for relief from stay. Debtors resisted this application on May 26, 1987. The substantive issues concerning the application overlapped with those involved in the proof of claim matters described above.

On August 26, 1987, Judge Jackwig filed an Order requiring the debtors to appear on September 8, 1987, to show cause why their Chapter 12 case should continue. Debtors asserted through counsel at the hearing that it was important to their case that the Court rule on the pending issues concerning the bank.

Judge Jackwig then ruled as follows:

1. The debtor's objection to the claim filed by the Bank was overruled based on the Court's findings that:

a. The Bank was a proper party to assert a claim as a transferee of a claim for security purposes prior to the filing of the claim, pursuant to Bankruptcy Rule 3001(e)(3); and

b. The Bank had properly received an assignment of the vendors' interest in the real estate contract.

2. The Bank's application for a time frame for the assumption or rejection of the real estate contract was granted giving the debtors ten days to assume or reject.

The debtors -filed this appeal on the tenth day following the above rulings. An application for a stay order filed by the debtors on September 17, 1987 was denied by the Bankruptcy Court on October 2, 1987.

Discussion. The first issue is whether the Bank is a proper claimholder. The debtor argues that the Bank is not a creditor of the debtor, but instead a creditor of a creditor of the debtor.

The bank argues that it filed its claim pursuant to Bankruptcy Rule 3001(e)(3). That rule sets forth a procedure under which proof of a claim may be filed when the claim has been transferred for security purposes before the proof is filed by the transferee, the transferor, or both. The proof of claim must be supported by a statement setting forth the terms of the transfer. If both the transferor and the transferee file proofs of the same claim the proofs are to be consolidated. The Travises have not filed a proof of claim.

The Court agrees that it is well established that a vendor may assign his or her rights under a contract for security purposes. In essence, it appears that the deed in this case has been placed in escrow, although delivery of the deed is conditioned upon the completion of payments and other terms and conditions set forth in the contract.

The debtors argue that an assignment for security purposes by a vendor somehow places a lien on real property. The Court agrees with the bank, however, that all the Travises have done with respect to the contract is to agree to pay over the sums due them to First National Bank in Lenox as security on notes the

Travises owe to the Bank. Nothing in the contract forbids the Travises from doing so.

Burden of Proof. Debtors argue that the Bankruptcy Court improperly placed the burden of proof on them in resolving their objection to the Bank's claim.

The Bank points out that Bankruptcy Rule 3001(f) states that a proof of claim executed and filed in accordance with the rules shall constitute prima facie evidence of the validity and amount of the claim. The debtors have the burden of coming forward with sufficient evidence to rebut the prima facie validity of the claim.

The Bankruptcy Court overruled the objection without even stating that the Bank's claim was given prima facie validity. The Bankruptcy Court found, and this Court agrees, that the debtors' objections had no merit.

Executory Contract or Lien. The heart of the debtors' appeal concerns the Bankruptcy Court's ruling that a real estate contract in Iowa is an executory contract which must be assumed or rejected pursuant to 11 U.S.C. 365.

The Bankruptcy Court's ruling was based primarilv on the definition of executory contract adopted by the Eighth Circuit in In re Speck, 798 F.2d 279 (8th Cir. 1986). The Eighth Circuit has adopted the often quoted Definition enunciated by Professor Countryman in Executory Contracts and Bankruptcy, 57 Minn. L.Rev. 435, 460 (1973) as follows:

> An executory contract is a contract under which the obligation of both the bankrupt and the other party are so far unperformed that the failure of either party to complete performance would constitute a material breach excusing performance of the other.

The debtor argues that the contract is not an executory contract but rather is a lien under 11 U.S.C. 502 and 506.

The resolution of the issues in this case hinges upon whether a real estate contract is an executory contract. If the contract is executory and is assumed, the debtor must take the contract as written, with its benefits and burdens. See 11 U.S.C. § 365(b)(1) and §1224(b)(6). If the contract is equivalent to a mortgage, the debtor may "writedown" the contract to the fair market value of the propertv. See 11 U.S.C. § 1222 (b) (2) and § 1225 (a) (5)

The Eighth Circuit adopted the executory contract approach in In re Speck, 798 F.2d 279, 280 (8th Cir. 1986). Interpreting South Dakota law, the Court held that under South Dakota law a contract for deed is an executory contract that must be assumed or rejected pursuant to 11 U.S.C. § 365.

The U.S. District Court for the Southern District of Iowa has not interpreted the relevant state law in a written decision. The U.S. District Court for the Northern District of Iowa, however, has ruled that under Iowa law real estate contracts are executory contracts under Professor Countryman's definition. See In re Hill, No. C86-115, unpublished op. (N.D. Iowa Jan. 14, 1987). Likewise, the U.S. Bankruptcy, Court for the Southern District of Iowa has held that real estate contract must be assumed or rejected by the debtor according to the requirements of the Bankruptcy Code. See In re Scanlan, 87-479-C (November 18, 1987).

The Court concludes that treating real estate contracts as executory contracts is the better approach, and thus follows Speck, Hill and Scanlan. The three opinions are well-reasoned and authoritative, and the Court sees no reason to depart from them. Accordingly,

IT IS THEREFORE ORDERED that the orders of the Bankruptcy Court in this matter are affirmed in all respects.

Signed this. 24th day of December, 1987.

W.C. STUART,JUDGE
SOUTHERN DISTRICT OF
IOWA.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 88-1168

Walter Marlin Brown and
Burdean Ruth Brown,
Appellants,

v.

First National Bank in Lenox,,

Appellee

On Appeal from the
United States District
For the Southern District
Of Iowa.

Submitted: April 11, 1988

Filed: April 21, 1988

Before ARNOLD, Circuit Judge, ROSS, Senior Circuit Judge, and WOLLMAN, Circuit Judge.

ARNOLD, Circuit Judge.

The appellants, Walter Marlin Brown and Burdean Ruth Brown, are the farmer-debtors in this proceeding under the newly enacted Chapter 12 of the Bankruptcy Code, 11 U.S.C. §§ 1201 et seq.. The appellee, First National Bank in Lenox, has a security interest in a contract for deed under which the debtors have been buying a piece of real property. The question presented is whether a contract for deed is to be classified for purposes of Chapter 12 as an executory contract, which the debtors must either reject or complete., or a, lien in which event the bank would be treated as

a secured creditor only to the extent of the fair market value of the property at the time of the filing of the bankruptcy proceeding.

The Bankruptcy Court 1/ held that the bank's interest was properly classified as an executory contract and gave the debtors ten days either to assume or reject it. The District Court 2/ affirmed, and the debtors brought this appeal.

In In re Speck, 798 F.2d 279 (8th Cir. 1986) (per curiam), a proceeding under Chapter 11, we held that whether a given interest was to be classified as a lien or an executory contract was to be determined by state law. In Speck the relevant law was that of South Dakota, and we held that under that law a-contract for deed was classified as an executory contract. Here, both the Bankruptcy Court and the District Court found to the same effect under Iowa law. The debtors have presented no solid reason why we should depart from our normal practice of deferring to the view of a district court on the law of its own state, and we accordingly accept this holding of Iowa law, concurred in by both of the courts below.

It follows, under Speck, that contracts for deed in Iowa, as in South Dakota, are executory contracts, rather than liens, for purposes of the Bankruptcy Code. The debtors suggest that because this is a Chapter 12 proceeding, a different result should follow, but it is impossible to square this argument with the statute itself, which expressly adopts the same executory contract provisions applicable to bankruptcy proceedings generally. See 11 U.S.C. §1222(b)(6), 365. It is true enough,

1/ The Hon. Lee Jackwig, United States Bankruptcy Judge for the Southern District of Iowa.

2/ The Hon. W.C. Stuart, Senior United States District Judge for the Southern District of Iowa.

as the debtors point out, that Chapter 12 was intended to be remedial and to relieve the situation of some farmer-debtors who were unable to obtain relief under pre-existing law. But this general purpose cannot prevail against explicit statutory language, such as that which faces us here.

Appellants' real argument, and their brief frankly concedes it, is that "[t]his appeal, is a request to this Court to review the position taken in In re Speck, 798 F. 2d 279 (8th C.A. 1986) , wherein this Court determined that State law determines whether or not a contract is executory pursuant to Section 365." Brief of Appellants p. 2. Unfortunately for appellants' position, one panel of this Courtis not at liberty to overrule an opinion filed by another panel. Only the Court en banc may take such a step. We are therefore bound by Speck, and we have no alternative but to affirm this judgment.

Affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH-CIRCUIT.

Place behind Dec. #61 in
Dec. Bk.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ED SCANLAN,

Plaintiff

vs.

MAURINE HELENA SPRING

Defendant.

CIVIL NOS.,.88 -150-A
88-1271-A
88-1272-A

RULING

On October 7, 1988, the court heard oral argument on the above-entitled consolidated appeals arising from the same bankruptcy proceeding, In re: Ed Scanlan, Engaged in Farming, Case No. 87-479-C, a Chapter 12 proceeding.

Although procedural matters are raised and defendant contends these appeals are moot, the court decides the merits. The central issue is whether the bankruptcy judge correctly held that the installment land contract by which the debtor purchased real estate in 1978 from Maurine Helena Spring was an "executory contract" or equivalent to a mortgage which may be written down to its fair market value.

The court adopts in its entirety the well-written and fully supported memorandum of decision and order entered by the bankruptcy judge on November 18, 1987.

The plaintiff's appeal from the bankruptcy order is denied and dismissed at the plaintiff's costs. This effects dismissal of all three consolidated actions filed in this court.

IT IS SO ORDERED.

Dated this ___day of November, 1988.

CHARLES R. WOLLE, JUDGE

UNITED STATES DISTRICT COURT