UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

DONALD E. TUINSTRA, Case No. 86-2694-C J

Debtor. Chapter 7

ORDER DENYING DEBTORIS MOTION TO RECONSIDER ORDER OVERRULING DEBTOR'S OBJECTION TO SALE OF ESTATE PROPERTY

The above-named debtor filed a voluntary Chapter 7 petition on October 7, 1986. On the same date, he filed Schedule B-1, the statement of real property of debtor, which listed the following real estate:

> N 1/2 of N 1/2 of SE 1/4 and N 1/2 of NE 1/4 of SW 1/4, and SE 1/4 of NW 1/4, and W 1/2 of SW 1/4, 35-78-21 Jasper Co.
>
> Owned 1/2 by Francis Nugteren and other 1/2 as follows:
>
> N 1/2 of N 1/2 of SE 1/4 = 1/2 Debtor
>
> Rest = farmers coop bought at sheriffs sale with Debtor having redemption right until - 2/11/86

The debtor claimed "Homestead - N 1/2 N 1/2 SE 1/4, 35-78-21 Jasper Co." exempt on Schedule B-4.

The Chapter 7 trustee subsequently leased the nonhomestead portion of the real property described above to a third party. According to its terms, the lease commenced on April 13, 1987 and terminated automatically on March 1, 1988. On February 27, 1987, the debtor offered to enter

into a U.S. Department of Agriculture Conservation Reserve Program Contract (CRP), whereby he agreed to designate 149.8 acres as a conservation district for 10 years for a rental rate of $85.00 per acre or an annual payment of $12,733.00. Although the contract does not contain a legal description of the land placed into the program, the parties indicated that all debtor's property--homestead and nonhomestead--was included in the agreement. On May 5, 1987, the offer was accepted. On May 6, 1987, the third party lessees assigned all "right, title and interest in and to the lease with Robert Taha, Trustee" to the debtor.

On August 9, 1988, the trustee filed a notice and report of sale of property over $1,500.00. The sale was to take place on September 7, 1988. The property legally described in the notice was the nonhomestead portion and included all crops and CRP payments for 1988 and subsequent years. On September 6, 1988 the debtor filed an objection to the sale. He alleged that: (1) the homestead property included within the CRP contract could not be transferred to any buyer; (2) the trustee should not be able to sell the property including 1988 CRP payments without giving notice that the debtor was entitled to such payments under the contract; and (3) as lease assignee, he acquired all right, title and interest of the third party lessees and his interest was not terminated by September 1, 1988 under state law.

The objection to the sale came on for telephonic

hearing on October 11, 1988. Robert D. Taha, the Chapter 7 trustee, was present. John Matthias appeared on behalf of the debtor. During the hearing, the trustee clarified that the notice and report of sale of property did not include homestead property. He also emphasized that the lease terminated automatically on March 1, 1988. Additionally, the trustee questioned the debtor's right to enter the CRP contract since the acres in issue were property of the estate being administered by the trustee. At the conclusion of the arguments, the court overruled the debtor's objection. The court found the trustee's clarification that only nonexempt property was sold and his professional statement regarding the lease termination without notice dispositive of the issue. A formal order overruling the objection was entered on October 14, 1988.

The debtor timely filed a motion to reconsider the order on October 20, 1988.[1] Debtor alleges that the lease in question violates Iowa Code section 562.6[2] insofar as the

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[1] The motion for reconsideration is signed by Reta Noblett-Feld and Nestor Lobodiak. The file does not contain a motion by Mr. Matthias to withdraw as counsel for the debtor.

[2] Iowa Code section 562.6 provides:

> If an agreement is made fixing the time of the termination of the tenancy, whether in writing or not, the tenancy shall cease at the time agreed upon, without notice. In the case of farm tenants, except mere croppers, occupying and cultivating an acreage of forty acres or more, the tenancy shall continue 'beyond the agreed term for the following (continued on p. 4)

automatic termination agreement was not executed subsequent to the original terms. On October 26, 1988 the trustee filed a summary response to the pending motion and attached a copy of the lease in question.

DISCUSSION

11 U.S.C. 363(b)(1) allows the trustee "after notice and hearing" to use, sell or lease, other than in the ordinary course of business, property of the estate. "By filing the bankruptcy petition, the debtor relinquishes his rights and interests in his property, including his title to his property and his right to sell or transfer his property." In re Robison, 74 B.R. 646, 647 (Bankr. E.D. Mo. 1987). "It is within the discretion of the bankruptcy court to approve a trustee's proposed sale of property of the estate". In re J.R. McConnell, 82 B.R. 43, 44-45 (Bankr. S.D. Tex. 1987).

Presumably, the motion to reconsider is brought pursuant to Bankruptcy Rule 9023 since it alleges an error of law. Rule 9023 incorporates Federal Rule of Civil Procedure 59 which provides in part:

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[2] (continued from p. 3)

> crop year and otherwise upon the same terms and conditions as the original lease unless written notice for termination is served upon either party or a successor of the party in the manner provided in section 562.7, whereupon the tenancy shall terminate March I following. However, the tenancy shall not continue because of absence of notice if there is default in the performance of 'the existing rental agreement. (continued on p. 5.)

> (a) A new trial may be granted to all or any of the parties and on all or part of the issues ... in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

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[2] (continued from p. 4)

Iowa Code section 562.7 states:

> Written notice shall be served upon either party or a successor of the party by using one of the following methods:
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> 1. By delivery of the notice, on or before September 1, with acceptance of service to be signed by the party to the lease or a successor of the party, receiving the notice.
>
> 2. By serving the notice, on or before September 1, personally, or if personal service has been tried and cannot be achieved, by publication, on the same conditions and in the same manner as is provided for the service of original notices, except that when the notice is served by publication no affidavit is required. Service by publication is completed on the day of the last publication.
>
> 3. By mailing the notice before September 1 by certified mail. Notice served by certified mail is made and completed when the notice is enclosed in a sealed envelope, with the proper postage on the envelope, addressed to the party or a successor of the party at the last known mailing address and 'deposited in a mail receptacle provided by the United States postal service.

In law or at equity the three most common grounds to amend a judgment under Rule 59 are for manifest error of law or of fact or for newly discovered evidence. In re Crozier Bros., Inc., 60 B.R. 683, 688 (Bankr. S.D. N.Y. 1986).

Debtor contends that he did not have any notice of the automatic termination clause until the trustee proposed to sell the property. Debtor appears to argue that his interest as lease assignee was not terminated by operation of the lease waiver and, therefore, his interest in the lease and alleged interest in the CRP benefits should have been made known to potential buyers in the trustee's notice of sale. Debtor relies upon Schmitz v. Sondag, 334 N.W.2d 362 (Iowa App. 1983), wherein the Iowa Court of Appeals ruled that 562.7 contemplated that any provision waiving notice of termination must be executed subsequent to the original lease. The court reasoned:

> [I]n the cases cited by defendant, the statutory notice requirement was held to have been contracted away by an agreement which was entered into or by conduct which occurred subsequent to the entering into of the original lease. These authorities do not support defendant's conclusion that such waiver or contracting away of the statutory notice requirement can be accomplished by including a provision purporting to do so in the original lease. Such a provision would negate the very purpose of section 562.7, which is to provide some measure of stability in farm tenancies yet allow their termination by a known and certain statutory method that gives both landlord and tenant sufficient time to make new arrangements for the next crop year.

Id. at 365. (Emphasis in the original.)

Under the facts of this case, the purpose of section 562.7 is not negated by denying the motion to reconsider. As noted by the special concurrence of Judge Donielson, "...it is clear that statutory notice is not an absolute prerequisite to the termination of a farm lease in every case Id. at 365. Indeed, the third party lessees' action in assigning the lease to the debtor can hardly be viewed as providing stability to the tenancy arrangement which was part and parcel of the bankruptcy estate. This is especially true when the debtor's unilateral action in attempting to enroll estate property into the CRP program, without the trustee's authorization, is taken into consideration. Accordingly, the court concludes that the lease did terminate as of March 1, 1988.

Even if the court found otherwise, the trustee's third argument at the time of the phone hearing would mandate the same result. That is, the debtor was not the owner nor the operator of the nonexempt acres that were enrolled in the government program. The present record reveals that the property belonged to the estate on May 5, 1987 and that the lease had not been assigned as of May 5, 1987.[3] Parenthetically, the court notes that the trustee clearly identified the CRP contract number on the sale notice. Hence, any prospective buyer would have had ample notice and opportunity to

[3] No request to put on specific evidence was made at the time of the phone hearing nor in the motion to reconsider.

review the appropriate documents.

CONCLUSION

WHEREFORE, based on the foregoing discussion the court hereby finds that the lease terminated as of March 1, 1988.

ORDER

THEREFORE, the debtor's motion to reconsider the prior order overruling the objection to sale is denied.

Signed and filed this 9th day of January, 1989.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE