

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 13
ROOSEVELT PEABODY, and)
BARBARA PEABODY,) BK No. 92-30451
)
Debtors.)

OPINION

The Secretary of Veterans' Affairs (the VA) filed a motion for relief from the automatic stay on May 14, 1992, and an objection to confirmation of the debtors' chapter 13 plan on May 19, 1992. Both matters are before the Court for disposition.

The following facts are not in dispute. The debtors entered into an installment contract on June 4, 1986, for the purchase of residential real estate from the VA. The debtors agreed to pay the VA \$57,000.00 for the property, with an initial down payment of \$2,000.00, and monthly payments of \$462.47 for thirty years. During the life of the contract, the debtors would remain in possession of the property. Once the debtors fulfilled their obligations under the contract, the VA would convey to the debtors a warranty deed to the property.

The debtors failed to make the monthly payments as required by the terms of the contract. On November 27, 1991, pursuant to the terms of the contract, the VA sent the debtors a Final Notice to Comply with Contract in which the VA informed the debtors that they were \$4,823.76 in arrears on their payments; that the VA had accelerated the entire unpaid balance due, pursuant to the terms of the contract; and that if the debtors did not pay the balance,

\$55,464.18, with interest, within thirty-five days of the date of the notice, the VA would forfeit the contract and all the debtors' rights in the contract, and demand immediate possession of the property. The debtors subsequently failed to comply with the terms of the notice. On January 14, 1992, the VA served a Declaration of Forfeiture on the debtors.

The VA then filed a complaint in state court under the Illinois Forcible Entry and Detainer Act (FEDA), Ill. Rev. Stat. ch. 110, ¶ 9-101 et seq. (1992), on February 6, 1992, seeking possession of the property. On April 30, 1992, the state court awarded possession of the real estate and \$74.90 in costs to the VA, but stayed execution of the judgment for seven days. The debtors filed a petition seeking relief under Chapter 13 of the Bankruptcy Code on May 7, 1992, the last day the stay was in effect. In their plan, also filed May 7, 1992, the debtors propose to pay the VA \$606.00 per month pursuant to the contract, with the arrearage to be paid in full.¹

The VA contends that when it declared the contract forfeited prior to bankruptcy, the contract was terminated. Accordingly, because the debtors had no interest in the contract or the real estate when they filed their bankruptcy petition, no such interest passed into their bankruptcy estate. Thus, no contract exists which the debtors can reinstate and no default exists which the debtors can cure. The VA concludes that the Court should deny confirmation of the plan and grant

¹The plan also proposes to pay both secured and unsecured creditors 100% of their allowed claims. On June 15, 1992, the trustee filed a recommendation indicating he had no objection to confirmation of the plan.

relief from the stay because neither the debtors nor the bankruptcy estate have any interest in the contract or the real estate.

The Bankruptcy Code defines property of the estate broadly. Section 541 of the Bankruptcy Code states that property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1)(1992). "The debtor's interest in a land sales contract is property of the estate unless the debtor's rights have been Permanently terminated prior to the commencement of the case." In Re Vee Jay, Inc., 104 B.R. 101, 104 (Bankr. W.D. Ark. 1987) (emphasis added). The automatic stay only enjoins certain acts taken against property of the estate or property of the debtor. 11 U.S.C. § 362 (1992). If the debtors had no interest in the contract or the property at the time they commenced their bankruptcy case, no interest passed into their bankruptcy estate, and nothing exists on which the automatic stay can attach. Moreover, the debtors cannot pay through their plan on a contract in which neither they nor their estate have any rights or interest.

If a contract for the sale of real estate provides that the seller may declare a forfeiture upon default of the contract by the purchaser, and if the forfeiture is executed according to the contract terms, "a declaration of forfeiture after such default will put an end to the interest of the purchaser," Brown v. Jurczak, 397 Ill. 532, 540, 74 N.E.2d 821, 825 (1947); Forest Preserve Real Estate Improvement Corp. v. Miller, 379 Ill. 375, 381-82, 41 N.E.2d 526, 529 (1942); Lanski v. Chicago Title & Trust Co., 324 Ill. 367, 374, 155 N.E. 296, 299 (1927), and terminate the contract. Lang v. Parks, 19 Ill.2d 223, 226, 166

N.E.2d 10, 12 (1960); Forest Preserve, 379 Ill. at 381, 41 N.E.2d at 529. Forfeitures are not favored by the courts and purchasers will be protected against forfeiture to prevent wrong or injustice, but a court will give effect to a forfeiture provision in a contract as long as the forfeiture procedures actually used strictly conform to the requirements of the contract. Eade v. Brownlee, 29 Ill.2d 214, 219, 193 N.E.2d 786, 789 (1963); Forest Preserve, 379 Ill. at 386, 41 N.E.2d at 531; Ferrara v. Collins, 119 Ill.App.3d 819, 823-24, 457 N.E.2d 109, 112 (1983).

Under paragraph 9-110 of the FEDA, however, if a judgment for possession is entered in favor of the seller upon a breach of a contract for the purchase of real estate, the court may stay enforcement of the judgment for a period not to exceed sixty days from the date of entry of the judgment. Ill. Rev. Stat. ch. 110, 1 9-110 (1992). Paragraph 9-110 provides further that if, during the period of the stay, the purchaser cures the default by paying to the seller the arrearage that has accrued, the contract remains in force the same as if no default had occurred. Id. If the default is cured, the purchaser may then move to vacate the judgment. Id.

In In re Rivera, No. 92-30340 (Bankr. S.D. Ill. Oct. 5, 1992), this Court held that even if a real estate sales contract is terminated upon a declaration of forfeiture, paragraph 9-110 gives a purchaser a period of time to remain in possession of the property, cure the default and reinstate the contract. The Court further held that these statutory rights constitute "legal or equitable interests of the debtors and, therefore, are property of the estate under § 541 of the

Bankruptcy Code." Rivera, slip op. at 8.

In this case, the state court stayed execution of the judgment in the forcible entry and detainer action for seven days.² On the seventh day of the stay, the debtors filed their bankruptcy petition and chapter 13 plan. Therefore, at the time of filing, debtors had the right to possession of the property, the right to cure the default, and the right to reinstate the contract. Under Rivera, these rights constitute legal or equitable interests of the debtors that became property of their estate when they filed for bankruptcy protection.³

Under section 1322(b)(5) of the Bankruptcy Code, debtors may cure their default through their chapter 13 plan, provided they cure within a reasonable time and maintain payments while the bankruptcy case is pending. That section provides as follows:

(b) Subject to subsections (a) and (c) of this

²This Court's jurisdiction to review the propriety of the state court's application of paragraph 9-110 is circumscribed by 2 res judicata. Although this Court has the authority to make the determination as to what is property of the estate under section 541, it is problematic whether this Court, in the process of making its section 541 determination, can alter the state court's determination that paragraph 9-110 applies to forfeited contracts. Thus, the Court must conclude that the property of the estate, if any, is the interest that existed in the forfeited contract to which paragraph 9-110 necessarily applies because of the state court's decision.

³The VA cites In re Jones, 99 B.R. 877 (N.D. Ill. 1989) for the proposition that once a forfeiture is declared, the contract is terminated and the contract purchaser loses all interest in the property. In Jones, however, it is unclear whether paragraph 9-110 was even applicable. It appears from the facts that the seller had not yet obtained a judgment for possession in state court, and thus, that no stay had yet been imposed by the state court. Debtors were not, at that point, entitled to invoke the rights granted by paragraph 9-110. Accordingly, the Court is not persuaded by the holding in Jones.

section, the plan may....

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence....

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any ... secured claim on which the last payment is due after the date on which the final payment under the plan is due....

11 U.S.C. §1322(b)(2) & (5) (1992).⁴ Thus, while paragraph 9-110 allows debtors an opportunity to cure their default and reinstate their contract, the effect of section 1322(b)(5) is simply to extend that right by allowing debtors to cure the default in their chapter 13 plan. The debtors have not proposed to reduce the amount of the monthly payments under the contract, to extend the length of the contract, or to change any other term of the contract. Rather, they only seek to cure the arrearage through their plan and maintain the regular monthly contract payments. Section 1322(b)(5) allows them do to so.

The VA does not allege any other grounds under section 362(d) for relief from the stay, nor does the VA raise any other objections to confirmation. Consequently, the motion for relief from the automatic stay filed by the VA is DENIED, and the objection to confirmation is OVERRULED.

⁴"The right to cure defaults on long term contracts applies to all long term debt and thus covers contracts such as land installment sale agreements as well as mortgages." 5 Collier on Bankruptcy, ¶ 1322.09 at 1322-20.

_____/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: January 21, 1993