Opinion Title: 02/23/2007 UNPUBLISHED In re Birch, 06-23273, Judge Thurman.
Body: The Court determined that under Utah law, the Debtor who was the purchaser under a real estate purchase contract obtained equitable ownership of the real property under the doctrine of equitable conversion, while the seller retained bare legal title. The Court further determined that forfeiture provisions in real property contracts should be enforced so long as the seller strictly complies with its terms. Where a forfeiture provision is not automatic and gives the seller the right to declare a forfeiture, the buyer retains rights in the property until the seller specifically declares a forfeiture. In this case, the Court determined that the Debtor still held an interest in the property because, although the seller had declared a default, the seller failed to declare a pre-petition forfeiture of the buyer's (Debtor's) interest.Debtor executed a real estate purchase contract pre-petition to purchase real property in installment payments. The contract contained a forfeiture provision which could be exercised at the election of the seller upon the Debtor's breach. The Debtor breached the contract and the seller sent the Debtor a letter demanding cure. The seller did not declare a forfeiture of the Debtor's interest in the property pre-petition. The Debtor's chapter 13 plan proposed to fund the plan in principle part by selling the real property. The seller objected to confirmation, arguing that he owns the property because of the forfeiture provision and the notice he had sent. The Court overruled the objection and at a later date, confirmed the plan.
File: 512.pdf [1]
Judge: Judge William T. Thurman [2]
Date: Friday, February 23, 2007

Source URL: https://www.utb.uscourts.gov/opinions/opinion-512#comment-0

Links
[1] https://www.utb.uscourts.gov/sites/default/files/opinions/512.pdf
[2] https://www.utb.uscourts.gov/content/judge-william-t-thurman