

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

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In re  
LETTUCE ENTERTAIN YOU, INC.  
Debtor.

) Bankruptcy Case No. 83C-03014  
)  
) *Unpublished*  
)  
) MEMORANDUM OPINION

CASE SUMMARY

In this case the court is called upon to decide whether or not certain money, deposited into state court as part of a civil action stayed by § 362 of the Code, is property of the bankruptcy estate.

FACTS AND PROCEDURAL POSTURE

Lettuce Entertain You, Inc., a debtor in possession in this Chapter 11 case, filed a petition in bankruptcy on November 14, 1983.

On or about March 25, 1981, two years prior to filing, the debtor leased from Crossroads Plaza Associates and the Equitable Life Assurance Company of New York ("Crossroads") the premises located in the Crossroads Plaza Shopping Mall ("the premises"). Prior to filing its petition, the debtor defaulted on its obligation under this lease by failing to make several required monthly rental payments.

On or about September 24, 1982, Crossroads sued the debtor in a Utah state district court, alleging unlawful detainer, seeking money damages and other relief, and later, by amended

complaint, electing to terminate the lease. Debtor made certain rental payments on the premises into the state court. Those funds, approximately \$33,000.00, are being held by the clerk of the state court, pending the adjudication of the issues raised in those proceedings.

The debtor counterclaimed against Crossroads on issues "related to the leasehold and alleging improper acts" by the lessor. Debtor also stated that its tender of money to the state court was not a tender of rent, but an offer of judgment made pursuant to Rule 68 of the Utah Rules of Civil Procedure. The offer of judgment was never accepted by Crossroads.

The debtor has paid no rent into the court since May of 1983. Crossroads claims that the deposit with the court falls short of Crossroads rent claim by \$27,000.00 and that the shortfall increases every month by \$3,495.64.

On November 3, 1983, the state court ordered the debtor either (1) to try the case on November 7, 1983 or (2) to pay into that court an additional \$20,000.00 by November 14, 1983 and to make additional monthly payments into court of \$3,495.64 beginning in November of 1983. Absent such payments, the state court directed that a Writ of Restitution would enter in favor of Crossroads.

On November 14, 1983, debtor did not pay further funds into state court, but filed its Chapter 11 petition instead.

On January 20 and again on January 24 of 1984 hearings were held in this court on a motion of Crossroads to modify the § 362 stay, or in the alternative to set a date by which the debtor in possession must assume or reject a lease under § 365, and for an order to show cause why the money paid into state court should not be paid over to Crossroads.

At the hearing on January 20, Crossroads and the debtor in possession stipulated that the debtor in possession should have 15 days (until February 8, 1984) in which to assume or reject the lease. On February 8, 1984, Crossroads renewed its motions on grounds that the debtor in possession had failed to abide by the terms of the stipulation. Crossroads also sought an order directing the debtor in possession to vacate the leased premises. The renewed motions were scheduled for hearing on February 24. This hearing was continued to March 7, 1984. At that time, the parties stipulated that the debtor in possession would reject the lease as of March 7, 1984 and would vacate the premises as of March 31, 1984.

The only question remaining for disposition is whether or not the \$33,000.00 deposited into state court is property of the bankruptcy estate.

#### ARGUMENTS

Crossroads argues that the funds in question are rental payments and that the debtor in possession has no legal or equitable interest in them and, further, that this court should

lift the automatic stay so Crossroads may recover the money, which is now being held by the state court clerk. In the alternative, Crossroads requested the court to order the debtor to show cause why the funds in state court should not be paid to Crossroads.

The debtor argued that Crossroads is an unsecured creditor and that the funds deposited with the state court are the property of the "debtor's estate" under § 541 of the Code. The debtor also argued that it has the right to use these funds for rehabilitation purposes. Debtor seeks an order of the court directing the state court to turn over the funds it is now holding.

#### DECISION

There exists no state court order determining title to the funds in question. This court concludes, therefore, that the debtor in possession has a legal or equitable interest in these funds, at least equivalent to that claimed by Crossroads, based upon the debtor in possession's counterclaim, asserted in the state court action. Upon the filing of its petition under Chapter 11, the debtor's interest in these funds, even though disputed, became the property of the bankruptcy estate, pursuant to § 541 of the Code. The parties' claims, asserted in state court, may be further adjudicated either by removal to this court, by a new proceeding instituted here, or by obtaining an order lifting the automatic stay so an adjudication could be made

in the state court where a civil action was pending. Notwithstanding this adjudication, the debtor in possession has, unless otherwise ordered by the court, a right to use these funds for rehabilitation purposes, pursuant to §§ 1107 and 1108 of the Code. The purpose of these sections, when taken together with the automatic stay provisions of § 362, is to give the debtor in possession breathing room from his creditors and to permit him to rehabilitate, to operate his business, and to attempt a repayment of his debts in a manner best suited to insure the success of his business and the ultimate success of his reorganization plan.

Accordingly, pursuant to § 542 of the Code, debtor in possession's motion for turnover is granted, and the parties are ordered to cause the clerk of the state court to pay over to the debtor in possession the funds the clerk is now holding and which are in dispute here.

DATED this 9 day of April, 1984.

BY THE COURT:

  
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GLEN E. CLARK  
UNITED STATES BANKRUPTCY JUDGE