

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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In re)	Bankruptcy Case No. 82C-02454
)	
UNITED ROBERTS CORPORATION,)	
a Corporation,)	
)	
Debtor.)	
)	
WALDO CALVIN ROBERTS and)	Bankruptcy Case No. 82C-03098
BETTY JOAN ROBERTS,)	
)	
Debtors.)	
)	
RICHARD A. ROBERTS and)	Bankruptcy Case No. 82C-03099
S. PATRICIA ROBERTS,)	
)	
Debtors.)	
)	
FRANK W. ROBERTS and)	Bankruptcy Case No. 82C-03100
BONNIE JEAN ROBERTS,)	
)	
Debtors.)	

Unpublished

MEMORANDUM OPINION

CASE SUMMARY

The court is called upon to determine (1) whether an agreement to offset certain lease payments owed by the individual debtors against a debt owed by the corporation to the individuals formed part of or was a condition precedent to a contract of sale between the parties; (2) whether or not such an offset arrangement is void because it authorized the post-petition transfer of property of the estate; and (3) what amount, if any, should these

individuals and their wives be required to pay in order to cure any defaults under the leases and to assume them.

Appearances: Steven H. Gunn of Ray, Quinney & Nebeker, Salt Lake City, Utah, for Waldo Calvin Roberts, Betty Joan Roberts, Richard A. Roberts, S. Patricia Roberts, Frank W. Roberts and Bonnie Jean Roberts; Duane H. Gillman of Boulden & Gillman, Salt Lake City, Utah, for United Roberts Corporation, Duane H. Gillman, Trustee.

FACTS AND PROCEDURAL POSTURE

The six individual debtors are three brothers and their wives. United Roberts Corporation ("corporation") is a holding company.

On November 30, 1977, Waldo Calvin Roberts, Richard A. Roberts and Frank W. Roberts sold real property, consisting of their three homes, which they held as tenants-in-common, to United Roberts Corporation for \$881,300.00. That sum was not paid directly to the Roberts. Instead, payment, at least in part, took the form of a set off. The corporation assumed certain liabilities of the Roberts in the form of liens and encumbrances in the amount of \$309,011.50. It also paid them \$4,000.00 in cash at the time of sale and executed in favor of each of the brothers Roberts promissory notes for the balance of the purchase price in the amounts of \$131,939.04 and \$57,490.43.

These notes were secured by mortgages. Frank W. Roberts testified that this transaction was a part of the brothers' estate plan.

By a document dated January 1978, United Roberts Corporation entered into a separate lease with each of the three Roberts brothers. By this means each of the brothers leased back the particular home he had sold to the corporation. Each of these leases was for a one year term, from November 1, 1977 to November 30, 1978; and each lease also required the lessee to make monthly lease payments to the corporation in the amount of \$500.00. Frank W. Roberts testified that the leases were all signed on November 30, 1977, but no evidence was ever given to explain why each of the leases was dated January 1978.

On December 1, 1978, United Roberts Corporation entered into new lease agreements with each of the three brothers. This time the term of each lease was for 15 years, but in each case the lease payments remained at \$500.00 per month.

From the time of the sale of the property to the corporation to the present, the brothers and their families lived in the three homes. Based upon the evidence in the record before it, the court finds (1) that the Roberts brothers have never made the required lease payments and (2) that United Roberts Corporation has made some payments on the promissory notes to the Roberts brothers.

On October 15, 1981, each member of the Roberts triumverate completed three separate transactions.

First, each Roberts brother assigned to a family partnership, composed of his own immediate family, the promissory note he held (evidencing the debt due to him from the United Roberts Corporation for the sale of his home) as well as his security interest in his former residence (as evidenced by the mortgage executed in his favor by the corporation). Second, each partnership agreed in writing with the corporation to deduct from each respective assigned promissory note the value of the lease payments owed to the corporation by the Roberts brother who had assigned the note. And third, in consideration of these assignments, each partnership agreed in writing with its respective Roberts partner to make his lease payments to the corporation.

On October 15, 1981, as an incidental part of these transactions, the Roberts brothers also assigned all of their right, title, and interest in patents to their respective family partnerships.

On September 28, 1982, United Roberts Corporation filed a petition for relief under Chapter 11 of the Bankruptcy Code. Thereafter, each Roberts brother and his respective spouse filed a bankruptcy petition as well.

On January 26, 1983, Duane H. Gillman was appointed trustee to jointly administer the cases of United Roberts Corporation, Panelera Corporation, Panelera Utah, Inc., and Panelera

Manufacturing Corporation (collectively referred to as "Panelera"). The latter three of these entities are controlled by United Roberts Corporation which is, in turn, controlled by the Roberts brothers. The joint administration of these cases was ordered upon motion of the debtors.

On October 26, 1983, the trustee filed a motion for an order avoiding post-petition transfers of property of the estate and for an order requiring debtors-in-possession to assume or reject executory contracts. In short, the trustee sought to recover from the Roberts the lease payments due after the date of petition and to require them to continue making lease payments or reject the leases. The Roberts brothers objected.

ISSUES

The parties have raised the following issues: (1) Whether or not an agreement to offset certain lease payments owed by the Roberts brothers against a debt owed by the corporation to these individuals formed part of or was a condition precedent to a contract of sale between these parties; (2) whether or not such an offset arrangement is void because it authorizes post-petition transfers of property of the estate; and (3) what amount, if any, should the Roberts brothers and their wives be required to pay in order to cure any defaults under the leases and to assume them.

DISCUSSION

Over a strenuous objection from the trustee, the court permitted Frank Roberts to testify that, at the time of the November 30, 1977 sale of the real property by the Roberts brothers to United Roberts Corporation, it was the understanding of the parties that each brother would be permitted to lease his home as long as he wished and would be permitted to offset his lease payments against the payments due him from United Roberts Corporation on the promissory notes. This arrangement was, in his view, an essential part of the sale's transaction. The Roberts brothers contend that the fact that they remain in the homes without paying rent supports this view.

The November 30, 1977 transaction appears to have been thoroughly documented. On that day the following documents were executed: (1) a contract of sale with extensive exhibits, (2) eight quit claim deeds, (3) an assignment of contract, (4) six installment promissory notes, and (5) two mortgages. By document dated January 1978, the lease agreements were entered into for a period of one year. On December 1, 1978, the lease agreements for the 15 year period were entered into. The payments under each of these lease agreements were \$500.00 per month. The note payments, on the other hand, were annual and in the principal amounts of \$9,424.22 and \$5,749.04.

On October 15, 1981, each of the Roberts and their wives entered into agreements with their individual family partnerships which required each of those partnerships to make these lease payments to United Roberts Corporation. Only at that time, was an offset agreement with United Roberts Corporation memorialized by a writing.

From this evidence the court concludes that there was no offset arrangement in connection with the sale in November of 1977. Instead, the Roberts brothers, being in control of the corporation, intended at that time to treat the matter from time to time in whatever way appeared to be to their mutual benefit.

In light of this finding, there is no merit to the debtors' arguments that (1) the trustee may not accept the benefits of the contract of sale of the residences without assuming the offset obligation and (2) § 365(h) of the Bankruptcy Code permits post-petition offset by the Roberts.

Furthermore, § 549(a) of the Bankruptcy Code provides that the trustee may avoid any transfer of property of the estate not authorized by the Code or the court. The arrangement between United Roberts Corporation and the three family partnerships transferred the possessory interest in the property of United Roberts Corporation to the individual Roberts in exchange for a payment of a debt owed by United Roberts. Because this post-petition transfer was not authorized by the Code or the court, it may be avoided. Moreover, the leases in question are executory

contracts of the debtors, and to assume them the Roberts must cure any default arising thereunder.

The Roberts assert the right to offset certain post-petition obligations of the corporation to them against any rental payments due from them to cure the defaults under the leases.

As offsets the Roberts first allege that the corporation owes them \$4,000.00 in post-petition patent royalties. The assignments of those patents with retention of royalties are dated February 1, 1978 and June 29, 1981. On October 15, 1981, in connection with the assignment of their notes and mortgages from United Roberts, each of the Roberts brothers assigned all of his remaining right, title and interest in these patents to his respective family partnership. Having assigned away all rights to these royalties, the Roberts brothers are owed nothing by the corporation against which to offset the lease payments due to the corporation.

Second, the Roberts brothers assert that the trustee has used and sold certain assets of Roberts Investment, a separate partnership. For lack of mutuality, the court finds that this can result in no valid offset.

Third, the Roberts assert that they worked for the estate for four months and are entitled to offset the post-petition wages allegedly due to them. The court observes that United Roberts Corporation is a holding company. Insufficient evidence has been presented from which to determine (1) whether or not the


Roberts brothers are entitled to any such post-petition salary from United Roberts Corporation as a cost of administration and (2) whether or not there are sufficient assets to pay other creditors in the same class. Until those determinations have been made, this claim cannot be used to offset the post-petition claim of United Roberts Corporation against the Roberts brothers.

CONCLUSION

Since the Roberts brothers have no valid offset against the corporation, to cure the defaults in their leases, they must pay to the trustee in behalf of the Roberts Corporation, \$500.00 each for each month following the filing of the United Roberts Corporation petition under Chapter 11. The Roberts are further ordered to assume or reject their respective leases by June 20, 1984. This period may be extended to July 20, 1984 if the Roberts pay to the estate a full monthly lease payment on June 20, 1984. The extension may be gained separately by any of the Roberts. An order consistent with this opinion shall be entered.

DATED this 8 day of June, 1984.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE