

IN THE UNITED STATES BANKRUPTCY COURT

82

FOR THE DISTRICT OF UTAH

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In re)	Bankruptcy Case No. 81C-02970
)	
CONTRACTORS REALTY AND)	
DEVELOPMENT, INC., a Utah)	Civil Proceeding No. 83PC-0405
corporation,)	
)	
Debtor.)	
)	
COMMERCIAL SECURITY BANK,)	
a Utah banking corporation,)	
)	
Plaintiff.)	
)	
-vs-)	
)	
CONTRACTORS REALTY AND)	
DEVELOPMENT, INC., a Utah)	
corporation, and DUANE H.)	
GILLMAN, as Trustee,)	
)	
Defendants.)	MEMORANDUM OPINION

The parties to this automatic stay litigation, all of whom stipulate that the stay may be terminated, ask whether an order terminating the automatic stay with respect to property of the estate also terminates the estate's interest in the property.

Commercial Security Bank (Bank) filed a complaint against Contractors Realty and Development, Inc., a Chapter 7 debtor and against the trustee of the debtor's estate seeking termination of the automatic stay to permit enforcement of Bank's deed of trust against debtor's real property. At trial, the debtor and the trustee stipulated to terminating the stay. Bank then submitted an order which included this provision:

By reason of the termination of the automatic stay, Trustee is divested of any interest in the Property even though Trustee did not complete a formal abandonment proceeding with respect to the Property prior to the above hearing, and Trustee need not complete such a proceeding before plaintiff exercises its rights with respect to the Property.

The trustee objects to this provision. He has given notice to creditors of his intent to abandon the estate's interest in the property but the time for objections to the proposed abandonment has not yet expired. The trustee argues that the estate's interest in the property should not lapse until after he has abandoned the property after notice and a hearing as provided in 11 U.S.C. § 554(a).

Resolution of the trustee's objection requires an understanding of how and when property enters and exits a bankruptcy estate.

A bankruptcy case is commenced by the filing with the bankruptcy court of a petition for relief under one of the chapters of Title 11, United States Code. See 11 U.S.C. §§ 301, 302, 303. The commencement of a case under Chapter 7 creates an estate comprised, with certain exceptions, of all legal or equitable interests of the debtor in property as of the commencement of the case and of other specified interests in property. See 11 U.S.C. § 541.

Property of a Chapter 7 estate may leave the estate in several ways, including the following: by a valid claim of an

exemption under Section 522(b), by a sale of the property under Section 363, by dismissal of the case unless the Court orders otherwise under Section 394(b)(3), by order of the Court permitting a distribution to creditors or the payment of an administrative claim, by disposition by the trustee under Section 725, and by abandonment under Section 554.

Section 362(d) provides that for cause shown, the bankruptcy court must grant relief from the stay "such as by terminating, annulling, modifying, or conditioning such stay." In this case, Bank asks for termination of the stay so that it may give notice of a trustee's sale of the property and otherwise exercise its state law remedies to enforce its lien against the property and foreclose debtor's interest in the property.

Nothing in the bankruptcy code provides that an order terminating the stay automatically removes property from the estate. After the stay has been terminated with respect to a creditor with a lien on property, that creditor may foreclose the estate's interest in the property. But until that interest is foreclosed or until abandonment, "unless the court orders otherwise, property of the estate that is not abandoned under section (a) or (b) of [Section 554] and that is not administered in the case remains property of the estate." Section 554(d). Sound reasons underlie the trustee's objection in this case. After the stay is lifted to permit Bank to foreclose its lien against the property, the estate will retain important interests.

Among these are the estate's interest in redeeming the property within the time provided by law, purchasing the property at a sale, recovering surplus proceeds, if any, and objecting as provided by state law to the manner in which the foreclosure and sale are conducted. In the trustee's judgment, although he is willing to abandon these interests, they should not leave the bankruptcy estate without notice and a hearing. Creditors, for example, may desire to fund a redemption or purchase of the property if they believe one of those alternatives is in their best interest. Alternatively, creditors might move to convert the case to a case under Chapter 11 and attempt, before Bank forecloses, to sell the property under a creditors' plan.

In some cases where the trustee intends to stipulate to relief from the automatic stay and in addition desires to abandon the property protected by the stay, notice and a hearing on the trustee's proposed abandonment can be coordinated to coincide with the time for terminating the stay. For cause shown the time for objections to a proposed abandonment may be shortened. In other cases orders terminating the automatic stay may be mailed to creditors with notice that the property will be abandoned absent objection within a specified time. There is, however, no requirement that the trustee seek an order of abandonment whenever relief from the stay is granted.

In this case the time for objections to abandonment has not expired and the property remains property of the estate. The

estate may continue to exercise its rights relative to the property as provided by law. Naturally, even after abandonment in this case the estate's interest in the property will return to the debtor, who may in turn exercise its legal rights relative to the property.

DATED this 13 day of May, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE