

11 USC § 363(m)  
Chapter 11 Plan

In Re I.F. and Lorraine Rodgers, and  
I.F. Rodgers & Sons

Dist. Ct. # 98-6174-HO  
Main Case # 696-62477-aer11

7/1/98

District Court (Hogan)

Unpublished\*

Dismissing appeal as moot,  
and in the alternative affirming Radcliffe  
(no underlying written opinion by Radcliffe)

Debtor's confirmed plan required Debtors to accept any cash offer in the plan's first year which was 90% or greater than the property's fair market value, such fair market value being designated in the plan. In the same section of the plan, there was a provision specifically allowing secured creditors to move after the first year to compel acceptance of offers between 80-90% of the FMV. The plan also provided that if Debtors were compelled to accept an offer, the sale would be noticed and closed pursuant to 11 USC § 363.

On motion by a creditor in the plan's first year, the Bankruptcy court compelled the Debtors to accept an offer which was more than the fair market value as designated. Debtors appealed the Order but did not obtain a stay pending appeal.

The District Court dismissed the appeal as moot under 11 USC § 363(m) because no stay was obtained and Debtors had incorporated the requirements of 11 USC § 363 in the plan.

In the alternative, the District Court affirmed, holding the Bankruptcy Court correctly construed the plan to allow a creditor to move for, and the bankruptcy court to compel, acceptance of an offer greater than 90% of the FMV, even if in the plan's first year.

\*On occasion the Court will decide to publish an opinion after its initial entry (and after submission of this summary). Please check for possible publication in WESTLAW, West's Bankruptcy Reporter, etc.

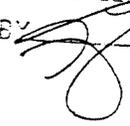
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DISTRICT OF OREGON  
EUGENE, OREGON

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In re:	)	
	)	
I.F. and LORRAINE RODGERS and	)	Case No. 98-6174
I.F. RODGERS & SONS,	)	
	)	ORDER
Debtors,	)	
	)	

This is an appeal of the United States bankruptcy court's Order granting the United States' (appellee's) Motion to Compel the sale of certain real property.

FACTS

Debtors' chapter 11 bankruptcy plan was confirmed September 12, 1997. The plan required debtors to list certain real properties at 115% of the stipulated fair market values. The plan further provided:

The reorganized debtors shall accept any cash offer which is 90% or greater of the fair market value. . . . If after the first anniversary date of confirmation a cash offer is received which is



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80% to 90% of the fair market value of the property . . . , secured creditors with an interest in the property may request the court to require the debtor in possession accept [sic] the offer and close the sale.

Appellants' ER (#184) at 34.

The plan also provided that if debtors are "compelled by this Plan or the court to accept an offer, said sale shall be noticed and closed pursuant to the requirements and provisions of 11 U.S.C. § 363." Id. at 13. At the plan confirmation hearing, the attorney for one of the creditors stated, without objection, that there is "a provision . . . that provides that in the event that the debtors receive a bona fide cash offer, they must accept and close that sale." Id. at 42.

The plan sets a fair market value for Campbell/Park, one parcel of debtors' ranch, at \$600,000. Id. at 36. On October 8, 1997, debtors received an offer to purchase Campbell/Park for \$625,000. Id. at 51; Appellee's E.R. (#192) (earnest money agreement signed by buyer October 24, 1997). On November 5, 1997, the Farm Services Agency filed a motion with the bankruptcy court to compel debtors to accept the Campbell/Park offer. Appellants' E.R. (#184) at 51. The bankruptcy court granted the motion on December 19, 1997. Id. at 59. On January 26, 1998, the bankruptcy court denied debtors' Motion to Amend the Judgment, or in the alternative, Motion for Relief from Judgment. Id. at 72.

This court denied debtors' motion to stay the Campbell/Park sale, and the sale was completed April 27, 1998. Appellee's E.R. (#192) at 428-33.

#### DISCUSSION

Section 363(m) of Title 11 of the bankruptcy code provides:

Unless an order approving the sale of property . . . is stayed pending appeal, the sale to a good faith purchaser . . . shall not be affected by the reversal or modification of such order on appeal, whether or not the purchaser . . . knows of the pendency of the appeal.

As noted above, debtors agreed in the plan that the requirements of section 363 would apply to judicially compelled sales. Because the parties agreed that the sale of real property to a good faith purchaser shall be final, this court lacks the authority to redress debtors' alleged injury.<sup>1</sup> Accordingly, this appeal is moot.

Debtors also agreed to "accept any cash offer which is 90% or greater of the fair market value." Appellants' E.R. (#184) at 34. This language, as well as the statements made at the confirmation hearing, unambiguously manifests the parties' understanding that debtors would be required to accept offers within 90% of fair market value. The bankruptcy court did not err in compelling acceptance of the

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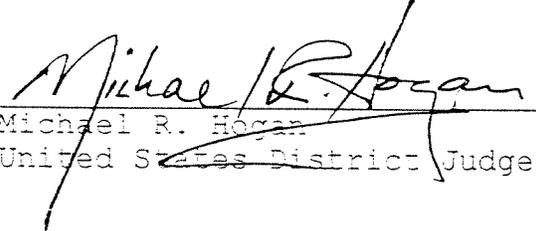
<sup>1</sup> Debtors do not contend the Campbell/Park purchaser is not a good faith purchaser. The Campbell/Park purchaser is not a party to this appeal.

Campbell/Park offer, which was in excess of the stipulated fair market value.

CONCLUSION

This appeal is dismissed as moot. Alternatively, the Order of the bankruptcy court is affirmed on the ground that the plan required debtors to accept the Campbell/Park offer.

DATED this 1st day of July, 1998.

  
Michael R. Hogan  
United States District Judge

a- "Muhlheim  
Sutherland  
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DISTRICT OF OREGON  
EUGENE, OREGON

BY [Signature]

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

I.F. and LORRAINE ROGERS  
and IF ROGERS & SONS

**Appellants,**

v.

**Civil No. 98-6174-HO  
96-62478-aerll**

SECRETARY, US DEPARTMENT  
OF AGRICULTURE

**Appellee.**

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**JUDGMENT**

This appeal is dismissed as moot. Alternatively, the order of the bankruptcy court is affirmed on the ground that the plan required debtors to accept the Campbell/Park offer.

Dated: July 2, 1998.

Donald M. Cinnamond, Clerk

by [Signature]

Lea Force, Deputy

**JUDGMENT**

**DOCUMENT NO: \_\_\_\_\_**