

11 U.S.C. § 108(a)
11 U.S.C. § 362
11 U.S.C. § 541
Property of the Estate
Willful Violation

Hill v. Bergey, Adv. No. 96-3647, Civ No. 98-944-FR
In re Hill, 396-36608-rld13

10/15/98 Judge Frye, Unpublished
 aff'g DDS

In 1993 the debtors and the defendants entered into various documents which related to the debtors' occupancy of certain residential real property. The parties disputed the nature of the relationship which arose from those documents. Thereafter, in July 1996, the parties entered into a stipulated judgment with covenant not to execute which was intended to settle the dispute. Under the stipulated judgment, debtors were to pay \$13,617.35 to defendants, and defendants were thereafter to record the parties' land sale contract to close debtors' purchase of the property. The majority of this sum was to come from debtors' pending sale of another property. The other property did not sell as anticipated. Debtors obtained two extensions of time to make the payment under the stipulated judgment. The final extension required debtors to make the required payment by September 3, 1996. Debtors filed a chapter 13 petition on August 30, 1996.

Defendants were notified of the bankruptcy filing. However, defendants concluded that because they had revoked their payment extension on August 28, 1996, debtors had no interest in the property. Defendants proceeded to evict debtors' tenant, re-rent the premises and collect the rent from the property. Debtors brought an adversary proceeding seeking possession of the property and damages for willful violation of the automatic stay. Defendants did not move for relief from stay until January 9, 1998, after the court had issued its oral ruling in the adversary proceeding.

In his oral ruling, Judge Sullivan held that the attempted revocation of the extension of time was ineffective where debtors' counsel was unavailable to receive the revocation and communicate the revocation to his clients. Therefore, on the petition date the debtors' right to perform under the stipulated judgment constituted an equitable interest in the property. Debtors also had a possessory interest in the property which was held through their tenant on the petition date. The option period continued after September 3, 1996 pursuant to the terms of 11 U.S.C. § 108(a).

Judge Sullivan found that the defendants had violated the automatic stay by filing the stipulated judgment in Washington County Circuit Court and removing debtors' tenants from the property. Defendants continued to exercise control over the property in willful violation of the automatic stay at all times through the trial of the matter, approximately 16 months. It did not matter that defendants may have believed in good faith that debtors had no interest in the property or that they in good faith relied upon the advice of counsel. Judge Sullivan noted "with some dismay" that defendants proceeded defiantly in spite of the existence of the complaint and stated that the simple filing of a precautionary motion for relief from stay could have provided defendants with guidance, minimized their exposure to damages, and provided them with adequate protection of their own interest in the property.

Finally, Judge Sullivan held that debtors were entitled to the following damages as a result of the willful violation of the automatic stay: (1) possession of the property as property of debtors' chapter 13 estate, (2) judgment for deprivation of post-petition rents in the amount of \$1,650 for 15 months (\$24,750), and (3) attorneys fees. Judge Sullivan ruled that debtors had not carried their burden of proof with respect to establishing the value of personal property which they claim was damaged or missing as a result of defendants' actions. Debtors' request for punitive damages was denied because defendants had relied on the advice of counsel in taking their actions against the property.

Defendants appealed the subsequent judgment to the extent it awarded costs and attorneys fees to the debtors and to the extent it awarded possession of the property to the debtors. Judge Frye issued an opinion and order adopting Judge Sullivan's decision and affirming Judge Sullivan's order awarding possession of the property to debtors and allowing costs and attorneys fees for debtors.

P98-14(5)

Note: Motions for reconsideration were filed by both parties; both motions were denied. See 1999 WL 39551.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In Re:

Frank James Hill and Sally Ann Hill,
Debtors.

Bank. No. 396-36608-dds13

Adversary Proceeding
No. 96-3647

Frank James Hill and Sally Ann Hill,
Plaintiffs-Respondents,

Civil No. 98-944-FR

v.

J U D G M E N T

Bruce Bergey and Corey Bergey,
Defendants-Appellants.

Based on the record,

IT IS ORDERED AND ADJUDGED that this action is dismissed.

DATED this 14 day of October, 1998.

HELEN J. FRYE
United States District Judge

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copy of original filed in my office.

Date: 10-15-98

Donald M. Cinnamon, Clerk

By: J. Bartloff, Deputy

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IN THE UNITED STATES DISTRICT COURT
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In Re:)
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Debtors.)

Bank. No. 396-36608-dds13

Adversary Proceeding
No. 96-3647

Frank James Hill and Sally Ann Hill,)
Plaintiffs-Respondents,)

Civil No. 98-944-FR

v.)

OPINION AND ORDER

Bruce Bergey and Corey Bergey,)
Defendants-Appellants.)

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Certified to be a true and correct
copy of original filed in my office.

Date: 10-15-98

Donald M. Cinnamond, Clerk

By: J. Bartruff, Deputy

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1 FRYE, Judge:

2 The matter before the court is the appeal from the decision of the United States
3 Bankruptcy Court for the District of Oregon entered January 22, 1998 allowing costs and
4 attorney fees for the debtors/plaintiffs-respondents and awarding possession of real pro-
5 perty to the debtors/plaintiffs-respondents.

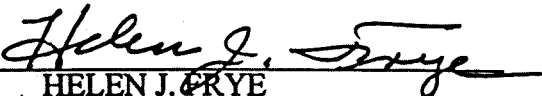
6 The district court acts as an appeals court from decisions of the bankruptcy court.
7 The district court reviews the findings of fact of the bankruptcy court under a clearly
8 erroneous standard; conclusions of law are reviewed de novo. Daniels-Head & Assocs.
9 v. William M. Mercer, Inc. (In re Daniels-Head & Assocs.), 819 F.2d 914, 918 (9th Cir.
10 1987).

11 **RULING OF THE COURT**

12 This court ADOPTS the decision of the Honorable Donal D. Sullivan, United
13 States Bankruptcy Judge, which was filed with the bankruptcy court on January 22, 1998.
14 Further, this court AFFIRMS the order of Judge Sullivan allowing costs and attorney fees
15 for the debtors/plaintiffs-respondents. The request of the debtors/plaintiffs-respondents
16 for attorney fees related to the appeal is DENIED. This court AFFIRMS the order of
17 Judge Sullivan awarding possession of the Chesterfield property to the debtors/plaintiffs-
18 respondents.

19 IT IS SO ORDERED.

20 DATED this 14 day of October, 1998.

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22 HELEN J. FRYE
23 United States District Judge
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