

11 USC §1322(b) (3)
11 USC §541
ORS 312.120(2)
Comity

In re Ivory

Case No. 391-32714-H13 HLH

10-8-92

Before the chapter 13 petition was filed, Multnomah County foreclosed on the debtor's real property for failure to pay the property taxes when due. The debtor's plan treated Multnomah County as the holder of a secured claim and proposed to cure the default in the payment of the property taxes over the life of the plan. The plan was confirmed without objection from the County.

The debtor filed a modified plan that proposed the same treatment to the County. This plan was not objected to by the County. Later, the County refused to accept payments from the trustee under the plan and the debtor filed a motion to compel the County to accept payments. The County resisted the motion on the ground it was not a creditor of the estate and the debtor could only redeem the property by payment in full of the amount due within 2 years of the foreclosure in accordance with ORS 312.120(2).

The court granted the debtor's motion on the ground the County was bound by the terms of the confirmed plan and could not now raise an objection that could have been raised at confirmation. The court stated that even if the County had objected to confirmation, the court would have overruled the objection on the ground that §1322(b) (3) gives a chapter 13 debtor the right to cure "any" default. The only limit on this right is found, as a logical matter, in §541 which describes property of the estate. In this case, the debtor had an interest in the realty at the time she filed the petition by virtue of her statutory right of redemption. That interest became part of the estate. This fact and the fact that §1322(b) (3) allows a cure of any default, gave the debtor the right to cure the default in the payment of the tax debt by paying the taxes over the life of the plan notwithstanding the state law time limits on redemption.

P92-27(4)

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7 UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF OREGON
9

10 Re)
11) Case No. 391-32714-H13
12 GREGORY IVORY)
13) SUPPLEMENTAL OPINION
14)
15 Debtor.)
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18 This matter came before the court upon the debtor's motion
19 to compel Multnomah County to accept payments under the debtor's
20 confirmed plan. The County is represented by Sandra Duffy and
21 the debtor by Willis Anderson, both of Portland, Oregon.

22 In this case, the debtor's schedules show that he owed the
23 County \$2,070 in past due real property taxes at the time he
24 filed his petition in bankruptcy and that the property was worth
25 \$18,000. The County foreclosed on the debtor's property before
26 the petition was filed but the petition was filed before the
27 redemption period expired. The debtors' redemption period
28 expired on May 15, 1991. See O.R.S. 312.120(2). The petition
29 in bankruptcy was filed on April 23, 1991.

30 The debtors' first plan dated April 22, 1991 proposed to
31 pay the County \$73 monthly plus interest at 16%. At this rate,
32 the past due taxes will be paid in full in about 3 years. The

1 County did not object to the plan and did not appear at the
2 confirmation hearing. The plan was confirmed on September 11,
3 1991.

4 The debtor filed a modified plan dated October 14, 1991
5 that did not change the treatment provided for the County. The
6 County did not object to the modified plan and it was approved.

7 The County resists the debtor's motion to compel it to
8 accept payments on the ground it is not a creditor of the estate
9 and that both plans failed to provide for payment in full of the
10 amount due within the two year redemption period provided by
11 state law.

12 The facts in this case are nearly identical to those that
13 resulted in this court's published opinion in Re O'Neal, 142
14 B.R. 411 (Bankr. Or. 1992). In O'Neal, the County failed to
15 object to confirmation and the court held that this failure was
16 fatal to the County's case.

17 The court went on to write, however, that even if the
18 County had objected on the basis presently asserted by it, the
19 objection would have been overruled.

20 The basic flaw in the County's position is that it fails to
21 recognize that federal law controls this issue pursuant to the
22 Supremacy Clause of the U.S. Constitution. It is axiomatic that
23 when the Constitution grants the federal government the power to
24 enact legislation and Congress does, in fact do so, such

1 legislation controls over any state law to the contrary. To
2 request a federal court to ignore this principle and, under the
3 rhetoric of "comity" enforce state law which is contrary to
4 statutes constitutionally enacted by Congress, is to ask that
5 court to engage in judicial legislation by overruling the
6 federal statute. This, the court cannot do.

7 The term "comity" is defined as:

8 Courtesy; complaisance; respect; a
9 willingness to grant a privilege, not as a
10 matter of right, but out of deference and
11 good will. Black's Law Dictionary, Revised
12 Fourth Edition.

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14 It has also been said that:

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16 "The term 'comity' *** is open to the
17 charge of implying that the judge, when he
18 applies foreign law to a particular case,
19 does so as a matter of caprice or favor."
20 Black's Law Dictionary, Third Edition.

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22 A litigant who should prevail under a federal statute which
23 constitutionally preempts a contrary state law, would be
24 justified in criticizing a ruling against him or her simply
25 because the judge or judges of the federal court wished to defer
26 to state law as a matter of good will between the federal and
27 state systems.

28 In this case, for example, if "comity" were applied to
29 overrule federal bankruptcy law, the debtor would lose property
30 worth \$18,000 because he owes taxes of \$2,070. The County
31 would receive a \$16,000 windfall at the debtor's expense even

