

11 USC § 363(m)

Orders (enforcement)

In Re I.F. and Lorraine Rodgers

Dist. Ct. # 98-6271

In Re Rodgers & Sons

Bank. Case # 696-62478-aer11

11/5/98

District Ct.- Hogan

Unpublished\*

Dismissing Appeal as Moot

and in the affirmative, affirming

Radcliffe

No underlying written bankruptcy court

opinion

Debtors' confirmed Chapter 11 plan provided that if they were compelled to accept an offer to buy certain parcels of real estate, the sale would be noticed and closed pursuant to 11 USC § 363.

On motion by a creditor, the Bankruptcy court compelled Debtors to accept an offer. (the original sale Order). Debtors appealed the original sale Order. Both the Bankruptcy Court and the District Court denied Debtors' motion for stay pending appeal and the sale was completed.<sup>1</sup>

Debtors then refused to execute the documents necessary to carry out the original sale Order. The Bankruptcy Court entered further orders requiring Debtors to execute particular documents to complete the sale. (the further orders). Debtors appealed the further orders.

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

In the alternative, the District Court affirmed, holding the Bankruptcy Court was within its authority in ordering the execution of particular documents in furtherance of the original sale order. Also, the further orders were valid despite the running of the "close" date in the earnest money agreement between the parties. The original sale Order was entered before the "close" date. Debtors could not nullify that order merely by refusing to sign the documents. (It was such refusal which compelled the Bankruptcy Court to issue its further orders.) To hold otherwise would be contrary to the District's Court's denial

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<sup>1</sup>See Op. E98-10 for related opinion dismissing the appeal of the original sale Order.

of a stay pending appeal of the original sale Order, as Debtors' refusal to execute the documents would essentially create either a retroactive stay or a complete reversal of the Bankruptcy Court's original sale Order.

\*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.

**E98-16(6)**

FILED

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U.S. DISTRICT COURT

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*Rec'd by Bankr. Clerk  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

|                               |   |                         |
|-------------------------------|---|-------------------------|
| In re:                        | ) |                         |
|                               | ) | <i>96-62478 case 11</i> |
| I.F. and LORRAINE RODGERS and | ) | Case No. 98-6271        |
| I.F. RODGERS & SONS,          | ) |                         |
|                               | ) | ORDER                   |
| Debtors,                      | ) |                         |
| _____                         | ) |                         |

This is an appeal of the United States bankruptcy court's April 10, 1998 order granting the United States' (appellee's) motion to appoint Chapter 11 trustee, or for other relief, and denying debtors' (appellants') objections to the closing of the sale; and April 17, 1998 order requiring debtors to sign and execute closing documents.

FACTS

Debtors' Chapter 11 bankruptcy plan was confirmed September 12, 1997. The plan provided that if debtors are "compelled by this Plan or the court to accept an offer,

said sale [of certain real property] shall be noticed and closed pursuant to the requirements and provisions of 11 U.S.C. § 363."<sup>1</sup> On December 19, 1997, the bankruptcy court compelled the sale of the property and ordered debtors to execute the necessary documents. On January 26, 1998, the bankruptcy court denied debtors' motion to amend the judgment, or in the alternative, motion for relief from judgment. In addition, because debtors had refused to execute the documents necessary to carry out the court's December 19, 1997 order, on April 10, 1998 and April 17, 1998, the bankruptcy court entered further orders compelling debtors to execute the documents.

Debtors thereafter appealed the bankruptcy court's December 19, 1997, and January 26, 1998 orders, and requested a stay of the sale. Both the bankruptcy court and District Judge Ann Aiken denied debtors' request for a stay, and the sale was completed April 27, 1998.

This court subsequently denied appeals of the December 19, 1997, and January 26, 1998, orders as moot pursuant to section 363(m) of Title 11 of the bankruptcy code. See Order, July 1, 1998.

Now before the court is debtors' appeal of the bankruptcy court's April 10, 1998, and April 17, 1998,

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<sup>1</sup> The facts stated herein are taken from this court's July 1, 1998, order and the Appellants' Excerpt of Record.

orders compelling debtors to execute the sale documents.

#### 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 and in this court's July 1, 1998 order, debtors agreed in the plan that the requirements of section 363 would apply to a judicially compelled sale. Because the parties agreed that the sale of the real property to a good faith purchaser shall be final, this court lacks the authority to redress debtors' alleged injury.<sup>2</sup> Accordingly, this appeal, like the appeal ruled upon by order of this court dated July 1, 1998, is moot pursuant to section 363 of Title 11 of the bankruptcy code.

Moreover, even if this appeal was not moot, debtors' appeal would be denied. Debtors argument is twofold: (1) the bankruptcy court was without jurisdiction to issue its April 10 and April 17, 1998 orders because debtors had already filed an appeal of the bankruptcy court's December 19, 1997 order; and (2) the bankruptcy court erred in

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<sup>2</sup> Debtors do not contend the real property purchaser is not a good faith purchaser. The purchaser is not a party to this appeal.

compelling the sale of the property because the sale was not completed by the deadline specified in the earnest money agreement. Debtors arguments are unpersuasive.

First, the bankruptcy court acted within its authority to enforce its prior order when it issued the April 10 and April 17, 1998 orders. See In re Thorp, 655 F.2d 997-998 (9th Cir. 1981) (lower court retains authority to issue orders "in aid of execution of a judgment that has not been superseded, until the mandate has been issued by the Court of Appeals"); Stein v. Wood, 127 F.3d 1187-88 (9th Cir. 1997); Hagel v. Drummond, 184 B.R. 793, 797 (B.A.P. 9th Cir. 1995).

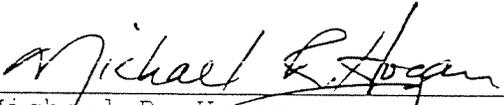
Secondly, the bankruptcy court did not err by issuing the April orders notwithstanding that the sale had not closed by December 31, 1997, as stated in the earnest money agreement. Rather, debtors' continued refusal to sign the appropriate documents by December 31, 1997, compelled the bankruptcy court to issue further orders to enforce its earlier December 19, 1997 order. Debtors cannot now nullify the bankruptcy court's December 19, 1997, order merely because the appropriate documents were not signed by the date specified in the earnest money agreement. To decide otherwise would be contrary to Judge Aiken's earlier denial of stay, as debtors' refusal would essentially create either a retroactive stay or a complete reversal of the bankruptcy

court's December 19, 1997 order. Thus, the bankruptcy court did not err by taking steps to enforce its prior order of sale of the property.

CONCLUSION

This appeal is dismissed as moot. The April 10 and April 17, 1998 orders of the bankruptcy court are affirmed on the ground that the bankruptcy court was authorized to issue further orders to enforce its December 19, 1997 order.

DATED this 5<sup>th</sup> day of Nov., 1998.

  
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Michael R. Hogan  
United States District Judge

FILED

✓ Entered

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CLERK OF DISTRICT COURT  
DISTRICT OF OREGON

*[Signature]*

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12-10-98 *[Signature]*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

I.F. RODGERS & SONS, et al

Appellants,

v.

Civil No. 98-6271-HO

UNITED STATES OF AMERICA

Appellee.

**JUDGMENT**

This action is dismissed as moot.

Dated: November 5, 1998.

Donald M. Cinnamond, Clerk

by *[Signature]*

Lea Force, Deputy

JUDGMENT

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

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