

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

REUBEN F. LEIMER, d/b/a  
LEIMER FARMS AND COMPANY,  
a/d/b/a R. F. LEIMER COMPANY,

DEBTOR

AETNA LIFE INSURANCE COMPANY,

Plaintiff

vs.

REUBEN F. LEIMER,

Defendant

CASE NO. BK82-1888

A83-149

Appearances: John C. Minahan, Jr.  
Suite 2145  
One First National Center  
Omaha, NE 68102  
Attorney for Plaintiff

Michael W. Heavey  
Suite 208, 8031 West Center Road  
Omaha, NE 68124  
Attorney for Defendant

MEMORANDUM

The matter currently before the Court appears on its face to be a complaint for relief from the automatic stay of 11 U.S. Code, Section 362.

In reality, the dispute turns on the threshold question of whether or not the automatic stay of 11 U.S. Code, Section 362, applies to the property here involved. More simply stated, the threshold question is whether the property in which the plaintiff claims a deed of trust is property of the estate under 11 U.S. Code, Section 541.

The subject property of this adversary proceeding is real estate, and more particularly, farm ground located in Nebraska. The plaintiff, Aetna Life Insurance Company (Aetna), claims and has a deed of trust on the ground which secures an indebtedness to Aetna. The defendant, Reuben Leimer, is a debtor in a proceeding for relief and claims that the real estate together with certain

personal property located thereon, is property of the estate under 11 U.S. Code, Section 541.

At the heart of the dispute is a trust agreement known as "The Ferdinand and Emelie Leimer Trust (Trust) which establishes a trust and provides that one of its primary purposes is to further the farming or ranching operations of Reuben F. Leimer, the defendant herein. In furtherance of that, Mr. Leimer acts as a manager of the property and in general can be said to treat the property--not necessarily as his own, but is permitted to act with great latitude in the use of the property under the trust agreement.

In general, the Trust authorizes the trustee to permit the defendant, Reuben Leimer, to use the real estate for his farm and ranching operations and also provides that upon the payment of all debts of the trust and upon the payment of \$150,000 to the other beneficiaries of the trust, the defendant, Reuben Leimer, could become the outright owner of the real estate.

11 U.S. Code, Section 541, brings into the debtor-relief proceeding all property in which the debtor has an interest, including all property in which the debtor has a legal or equitable interest. The drafters of the statute, according to the legislative history, selected that language to make the statutory section as encompassing as possible, it being their intent to bring to the debtor-relief proceeding all property in which the debtor had any legal or equitable interest, unless it was specifically excluded by other statutory provisions.

To all intents and purposes, Mr. Leimer has a beneficial interest in this property, clearly using it and being authorized by the trust to use it, and has a further right to have an outright legal interest in the property upon the occurrence of two conditions. To the average person, it would be clear that the defendant has, at the minimum, an equitable interest in this property.

Notwithstanding that, Aetna Life Insurance Company points to a so-called spendthrift provision of the trust, that being denominated Article VIII, which provides, and I quote, "The interest of any beneficiary in the principal or income of this trust shall not be subject to assignment, alienation, pledge, attachment or claims of creditors, and shall not otherwise, voluntarily or involuntarily, be alienated or encumbered by any such beneficiary."

Aetna Life Insurance Company suggests that, because of 11 U.S. Code, Section 541(c)(2), this so-called spendthrift provision means that the property does not become property of the estate under 11 U.S. Code, Section 541(a). In support of that, it cites cases so holding.

With due respect to those cases, I disagree. In my view, the statutory scheme of Section 541 is that under subpart (a), property in which the debtor has a legal or equitable interest becomes property of the estate and that is an all-encompassing concept. Section 541(c)(2), which provides that a restriction such as is here involved is enforceable in a debtor-relief proceeding if it is enforceable under non-bankruptcy law does not mean, in my view, that the property does not become property of the estate. Rather it means that the property does become property of the estate, but that the restriction is binding upon any representative of creditors in the bankruptcy or debtor-relief proceeding and thus would be binding on a trustee in bankruptcy. Less abstractly, a spendthrift trust provision valid under non-bankruptcy law, the property to which the spendthrift provisions apply becomes property of the estate if the debtor can be said to have a legal or equitable interest in the property. When it becomes property of the estate under 541(a), 541(c) says that the restriction on alienation is binding on the trustee in bankruptcy and that he may not acquire an interest in the property for the benefit of creditors that he represents.

It may be that, because of that restriction, the creditors will not benefit because of the spendthrift provisions of the trust instrument, but that does not mean that the property does not become part of the estate. It may simply mean that the property passes through the estate and that the spendthrift provision creates some kind of exemption from the claims of creditors, and thus the property would go out of the estate, not subject to the claims of creditors.

Nevertheless, I hold specifically that the spendthrift provision does not mean that the property does not become property of the estate. I hold specifically that it does, but that the spendthrift provision if valid under bankruptcy law is also valid in the debtor-relief proceeding.

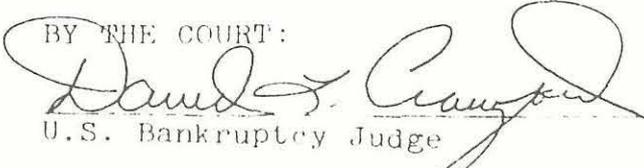
Having thus concluded that the stay is applicable, I find that there is equity in the property and that, according to the evidence before me, removal of the property from this debtor-relief proceeding would "cut the heart out," of the defendant's operation, and accordingly that this property is necessary to an effective reorganization.

I conclude, therefore, that under 11 U.S. Code, Section 362(d)(2), that relief is not warranted.

I hold further that under 362(d)(1) that, because of the equity of the property, the plaintiff is adequately protected. Relief is denied.

DATED: 3-30-83

BY THE COURT:

  
U.S. Bankruptcy Judge