IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	BK 85-1062
	)	CV 85-0-648
ROY NUTTLEMAN,	)	CV 85-0-661
	)	
Debtor.	)	ORDER

These matters are on appeal from final orders of the Bankruptcy Court for the District of Nebraska. The Bankruptcy Court held that the debtor had no interest in certain property and granted the creditor relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2). In addition, the Bankruptcy Court denied the debtor's motion for a stay pending an appeal. After a review of the record and the submitted briefs, the Court finds the decisions of the Bankruptcy Court should be affirmed.

FACTS

The Stromsburg Bank of York County, Nebraska, recovered a judgment against debtor Roy Nuttleman for $64,500.00 on May 17, 1982. On October 7, 1983, the creditor Stromsburg Bank obtained a judgment against Roy and Cecilia Nuttleman, husband and wife, and others. That judgment declared Roy and Cecilia Nuttleman's conveyance of the Northwest quarter of 9-12-1, York County, Nebraska, to be in fraud of the Stromsburg Bank and further declared that said real estate was subject to levy and execution in satisfaction of the bank's judgment. The sheriff of York County, Nebraska, sold the Northwest quarter of 9-12-1 to McClure Land Unlimited for $115,000.00 on February 4, 1985. The York County District Court confirmed the sale on March 18, 1985. The order was not appeal.

On May 7, 1985, the deed was delivered to McClure Land Unlimited and was recorded. On the same day, McClure conveyed the deed to Dennis Julch who also recorded. On May 9, 1985, the debtor filed a Chapter 7 bankruptcy petition. The debtor does not list any ownership interest in any real estate in the petition.

Thereafter, on June 24, 1985, the Bankruptcy Court sustained the creditor's motion for relief from the automatic stay.

ISSUE ON APPEAL

The issue raised on appeal is whether the finding of the Bankruptcy Court under 11 U.S.C. § 362(d)(2) that the debtor had no interest in the property was clearly erroneous.

DISCUSSION

Under Bankruptcy Rule 8013, this Court is bound by the clearly erroneous standard in reviewing findings of fact by the Bankruptcy Court. In re Hunter, 771 F.2d 1126 (8th Cir. 1985). "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the Bankruptcy court to judge the credibility of the witnesses." Bankr. Rule 8013. The Advisory Committee Note to Rule 8013 explains that the "clearly erroneous" standard "accords to the findings of a bankruptcy judge the same weight given the findings of a district judge under Rule 52 F.R.C.P." The Supreme Court in Anderson v. City of Bessemer City, 105 S.Ct. 1504 (1985) stated:

> '[A] finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed [citations omitted]. This standard plainly does not

> entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently. The reviewing court oversteps the bounds of its duty under Rule 52 if it undertakes to duplicate the role of the lower court. 'In applying the clearly erroneous standard to the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues de novo.' [Citations omitted.] If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous.

Id. at 1511-12. However, a review of conclusions of law is not subject to such a restricted standard.

In the case at bar the Bankruptcy Court properly determined that the debtor had no interest in the real estate at issue. The bankruptcy estate is essentially comprised of all legal or equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. § 541(a)(1). See also 124 Cong. Rec. 11 11096 (Sept. 28, 1978); S. 17,413 (Oct. 6, 1978) (to the extent an interest is limited in the hands of the debtor, it is equally limited in the hands of the estate).

The only interest that the debtor possibly could have claimed under the circumstances of this case would be an equity interest of redemption. See In re Loubier, 6 B.R. 298, 301 (Bankr. D. Conn. 1980). Any rights to equity redemption are determined by state law. State Bank of Hardinsburn v. Brown, 317 U.S. 135

(1942); In re Loubier, 6 B.R. at 301. Under Nebraska law an owner of real estate may only redeem prior to the confirmation of the sale. Neb. Rev. Stat. § 25-1530 (Reissue 1985). See also Madison County v. Crippen, 10 N.W.2d 260 (1943); Gosmont v. Gloe, 76 N.W. 424 (1898) (a right to redeem is purely statutory). The debtor failed to redeem prior to confirmation and, therefore, lost all interest in the property. Likewise, the estate could have no interest.

In addition, 11 U.S.C. § 550 prevents a trustee from avoiding this transaction as a preference. Section 550(b) prohibits a trustee from avoiding a transaction from a transferee, who took the property (1) for value, (2) in good faith and (3) without knowledge of the voidability of the transfer. The transferee, Julch, gave value and obviously had no knowledge of the voidability of the transaction since the Bankruptcy petition was not filed until two days after the transfer was made.

The good faith requirement has been defined as:

> solely a question of whether the grantee knew or should have known that he was not trading normally but that on the contrary, the purpose of the trade, so far as the debtor was concerned, was the defrauding of the creditors.

4 Collier on Bankruptcy, ¶ 550.03, at 550-8 n.3 (15th ed. 1981). It is obvious that since the only creditor the debtor listed on his petition was the Stromsburg Bank who executed on the property in question, the purpose of the execution and sale of the property

property in question was not to defraud the debtor's creditors. As a result of the Section 550(b) requirements being met, the sale of the property was not a preference subject to Section 547.[1]

The debtor's other arguments are frivolous and otherwise without merit. A party need not be a secured party to request relief under 11 U.S.C. § 362(d). In re Thayer, 38 B.R. 412, 418 (Bankr. D. Vt. 1984); In re Westwood Broadcasting, Inc., 35 B.R. 47 (Bankr. D. Hawaii 1983).

The debtor' due process rights were not violated. The debtor had notice and an opportunity to be heard and indeed was ne[illegible]y the Bankruptcy Court. The Bankruptcy Court had adequate information to make his determination. In addition to the extent the debtor attempts to attack the state court proceedings, this Court has no power. Any such issues should have been litigated in [illegible] state court proceedings and appealed in the state court system. A state court judgment is generally given preclusive

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[1]Even if the property were determined to be a part of the estate, 11 U.S.C. § 362(d) allows the Court to set aside the stay pursuant to either 11 U.S.C. § 362(1) or (2). See In re Loubier 6 B.R. at 303, (the court held relief from the stay was appropriate pursuant to 11 U.S.C. § 362(d)(2) because the debtor's rights to the property ceased due to the confirmation of the sheriff's sale before the bankruptcy petition was filed. This is not unlik[illegible] the situation in Nebraska.) Likewise, under 11 U.S.C. § 362(d)(1), granting relief from the stay was appropriate to Julch since the debtor had no interest or equity in the property at the time of the sheriff's sale, nor claimed an interest in the property in the petition. In addition, the debtor made no showing of the necessity of the property to reorganization as is required. In re Sparkman, 9 B.R. 359 (Bankr. E.D. Penn. 1981).

effect in federal court and may not be collaterally attacked in the federal courts. Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982); Allen v. McCurry, 449 U.S. 90 (1980).

In addition, the Bankruptcy Court did not error in denying the motion for stay pending appeal.

Accordingly,

IT IS ORDERED that the decisions of the Bankruptcy Court in CV 85-0-648 and CV 86-0-661 should be and hereby are affirmed.

DATED this 5th day of ~~May~~ June, 1986.

BY THE COURT:

C. ARLEN BEAM, CHIEF JUDGE
UNITED STATES DISTRICT COURT