IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE BELARAMINO PERALTA	:	**Civ. No. 20-2380**
	:	**Bky. No. 18-16661**

O R D E R

Creditor-Appellant Recon International, Inc. challenges the Bankruptcy Court's confirmation of Debtor-Appellee Belarminio Peralta's Chapter 13 Plan. (Doc. No. 5, Mem. at 1.) Recon contends that the Bankruptcy Court erred in permitting the Debtor to retain an Aramingo Avenue Property under the Plan. (Id.) I agree and will reverse.

I. BACKGROUND

I have relied on the Parties' recitations of the facts in their submissions and on the Memorandum Opinion of Chief Judge Coleman. (Doc. No.'s 4, 5, 8, 9, 10.)

On November 17, 2011, Peralta and Recon entered into an Installment Sales Contract for the purchase by Peralta of a Property located at 2971-73 Aramingo Avenue. (Mem. at 1-2.) Total payment of $140,000 was due to Recon by May 2019. (Id. at 2.) In 2015, Peralta defaulted on the Contract, leading Recon to file suit against Peralta in the Philadelphia Common Pleas Court. (Doc. No. 4, Recon Br. at 4.) In 2016, Recon and Peralta entered into a Stipulation of Settlement, providing that in the event of Peralta's default: (1) a default judgment could be entered against him, terminating any rights he had under the Contract; (2) he would voluntarily vacate the Property; and (3) entry of a judgment for possession and the issuance of a writ of possession for the Property in Recon's favor would follow. (Mem. at 2.)

On July 26, 2018, Recon filed a "Praecipe to Enter Default Judgment" with the Common Pleas Court Prothonotary, alleging that Peralta had defaulted on the Stipulation by failing to pay

real estate taxes on the Property. (Id. at 3.) (See Doc. No. 6, at 8) The next day, a $41,151.70 Default Judgment was entered against Peralta, along with Judgment for Possession. (Mem. at 3; Doc. No 6. at 17.) On July 30, Recon filed a "Praecipe for Writ of Possession," which was issued that same day. (Mem. at 3.) Peralta twice unsuccessfully petitioned for the Default Judgment to be reopened. (Id.) On October 4, 2018, he appealed both the Common Pleas Court's decisions and filed a Chapter 13 bankruptcy petition. (Id.) On that date, Peralta was in possession of the Property. (Id.)

After Recon objected to his original Chapter 13 Plan, Peralta filed a Second Amended Plan with the Bankruptcy Court on June 12, 2019. (Recon Br. at 6.) This Plan provided that Peralta would retain possession of the Property; he would pay off the amount of the Default Judgment over the Plan's life, and ultimately obtain ownership free of Recon's interest. (Mem. at 6-7.) On May 7, 2020, Chief Judge Coleman entered an Order confirming the Second Amended Plan. (Doc. No. 5.) On May 20, 2020, Recon filed this Appeal from the Bankruptcy Court's Order. (Doc. No. 1.)

II. JURISDICTION

I have jurisdiction over this appeal pursuant to 28 U.S.C. § 158(a)(1). I may affirm, modify, or reverse the Bankruptcy's Court's order, or remand with instructions for further proceedings. Fed. R. Bankr. P. Rule 8013.

III. STANDARD OF REVIEW

"As a general matter, a district court reviews a bankruptcy court's legal determinations *de novo*, its factual findings for clear error, and its exercise of discretion for abuse." In re Sheckard, 94 B.R. 56, 61 (E.D. Pa. 2008) (citing In re Martin's Aquarium, Inc., 98 F. App'x 911, 913 (3d Cir. 2004)). A bankruptcy court's exercise of subject matter jurisdiction over a particular claim or party

is a legal conclusion that is reviewed *de novo*. Id. at 61 (citing In re RFE Industries, Inc., 283 F.3d 159, 163 (3d Cir. 2002)).

IV. DISCUSSION

Recon raises two objections to the Plan confirmed by the Bankruptcy Court: (1) that it violated the Rooker-Feldman doctrine; and (2) that it improperly included the Property in Peralta's bankruptcy estate. (Recon Br. at 7-8.) I agree with the second contention.

Rooker-Feldman

Rooker-Feldman controls in "limited circumstances": where "state-court losers complain[] of injuries caused by state-court judgments rendered before the district court proceedings commenced and invit[e] district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284, 291 (2005); see also In re Knapper, 407 F.3d 573, 581 (3d Cir. 2005) (the doctrine applies to bankruptcy courts). Rooker-Feldman thus applies only if four requirements are met:

> (1) the federal plaintiff lost in state court, (2) the plaintiff complains of injuries caused by the state-court judgment, (3) that judgment issued before the federal suit was filed, and (4) the plaintiff invites the [federal] court to review and reject the state-court judgment.

In re Philadelphia Entertainment & Development Partners, 879 F.3d 492, 500 (3d Cir. 2019) (citing Great Western Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 166 (3d Cir. 2010)). "The 'review and reject' requirement concerns whether the federal court must conduct 'prohibited appellate review' of state-court decisions. 'Prohibited appellate review' means 'a review of the proceedings already conducted by the 'lower' tribunal to determine whether it reached its result in accordance with law." Id. (internal citations omitted).

Here, the 'review and reject' requirement is not met. Recon argues that "Debtor's bankruptcy plan invites the [Bankruptcy] court to invalidate a significant portion of the state court

judgment." (Recon Br. At 11.) That contention is beside the point, because the Bankruptcy Court did not engage in the functional equivalent of appellate review, which is all Rooker-Feldman forbids. The Bankruptcy Court did not take issue with the "bona fides of the prior [state court] judgment;" it simply shaped the Plan to allow Peralta to discharge a prior, state-court-imposed obligation. See Great Western, 615 F.3d at 169 (citing Bolden v. City of Topeka, Kan., 441 F.3d 1129, 1143 (10th Cir. 2006) (Court did not violate Rooker-Feldman simply because "compliance with [its] judgment would make it impossible to comply with [an earlier state court] judgment.")

Accordingly, Rooker-Feldman does not invalidate the Bankruptcy Court's confirmation of the Chapter 13 Plan.

The Property's Inclusion in the Bankruptcy Estate

The Bankruptcy Court concluded that "the Debtor [] entered bankruptcy with a possessory interest in the Property" sufficient to bring the Property into the estate and permit its treatment under the Plan, pursuant to 11 U.S.C. § 1322(a)(1). (Mem. at 10.) I disagree.

In a Chapter 13 bankruptcy, the "property of the estate" includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 1306; 11 U.S.C. § 541(a)(1); see also In re St. Clair, 251 B.R. 660, 664 (D. N.J. 2000) ("Section 541 of the Bankruptcy Code enumerates the types of property interests that are included in 'property of the estate' and thus the property that is protected by the automatic stay of section 362."). Nonbankruptcy law determines the extent of both debtor and creditor interests in property, but "whether the debtor's interests constitute property of the estate [] is exclusively a federal question." Norton Bankr. L. & Prac. 3d § 61:5 (2020) (citing Segal v. Rochelle, 382 U.S. 375, 379 (1966)).

Pennsylvania Courts agree that an installment land contract is a security device, rather than an executory contract. See In re Belmonte, 240 B.R. 843, 850 (Bankr. E.D. Pa. 1990) reversed in

part on unrelated grounds (collecting cases). Under such a contract, the vendee acquires an equitable interest in the subject property. See Anderson Contracting Co. v. Daugherty, 274 Pa. Super. 13, 22 n. 6 (1979). The "cutoff point for curing a breach of an installment land contract under section 1322(c) is the entry of a judgment terminating the debtor's rights in the property." Belmonte, 240 B.R. at 852; In re Rowe, 110 B.R. 712, 722 (Bankr. E.D. Pa. 1990) (". . . the right to cure an installment land sale contract presumably extends until one hour before the vendee's interests are cut off. This would not occur, in our view, until there is a court judgment terminating the vendee's rights in the property."); see also In re Butko, 617 B.R. 532, 536 (Bankr. W.D. Pa. 2020) ("[a] bare possessory interest on the petition date without a colorable legal or equitable claim" is inadequate to sustain the automatic stay). Continued *possession alone* of the property by the debtor post-judgment will not extend the cutoff point, because the debtor no longer has what is necessary for inclusion within the scope of § 541: "a good-faith, colorable *claim* to possession." St. Claire, 251 B.R. at 666-67 (citing California Sec. Management Corp. v. Kennedy, 39 B.R. 995, 997 (C.D. Cal. 1984)).

The Parties agree that the Stipulation between Peralta and Recon was an installment sales contract for land under Pennsylvania law. (Mem. at 2, Peralta Br. at 4, Recon Reply Br. at 2.) The Stipulation was thus a security device that vested Peralta with an equitable interest in the Property during the Stipulation's existence. This interest was terminated, at the latest, on the date the Common Pleas Court entered a judgment for possession in favor of Recon: July 26, 2018.

Accordingly, Peralta had only a bare possessory interest in the Property when he filed his Petition on October 4, 2018. I am convinced by the reasoning of Rowe and Belmonte that this possessory interest did not become property of Peralta's bankruptcy estate. Peralta thus had no ability to cure his default under § 1322.

At the time Peralta filed his Petition with the Bankruptcy Court, he had no viable claim to rightful possession of the Property, as the Judgment for Possession in Recon's favor had already been issued by the Common Pleas Court, along with a Writ of Possession, pursuant to the Parties' Stipulation. Peralta should not be able to evade that Judgment simply because he filed his Petition before physical eviction.

The Bankruptcy Court reached a different conclusion, relying upon In re Grove., 208 B.R. 845 (Bankr. W.D. Pa. 1997). Grove was based in part on In re Atlantic Business and Community Corp., where the Third Circuit held "that a debtor's possession of a tenancy at sufferance creates a property interest as defined under Section 541." 901 F.2d 325, 328 (3d Cir. 1990). Applying this principle to the instant case, the Bankruptcy Court ruled that Peralta's continued possession of the Property post-Judgment (but pre-Petition) sustained an interest sufficient to come within the Estate. (Mem. at 8-10.)

This authority is inapposite. Atlantic Business concerned a tenancy at sufferance, not an installment contract for the purchase of land; the Third Circuit relied primarily on a decision respecting a tenancy agreement. 901 F.2d 325 at 327-28 (citing In Re 48th St. Steakhouse, Inc., 835 F.2d 427, 430 (2d Cir. 1987)). Further, in holding that the lessor's actions to obtain possession of the property were stayed, the Atlantic Business Court "stressed the fact that the debtor was effectively in possession of the property *with the lessor's permission* when the debtor's bankruptcy action commenced." The Atlantic Business debtor thus had at least an equitable interest in the property. St. Claire, 251 B.R. at 667 (internal citations omitted) (citing Atlantic Bus., 901 F.2d at 328). That is plainly not so here, as Recon was actively seeking to oust Peralta from the Property.

As I have discussed, more recent authority suggests that Grove's application of Atlantic Bus. to an installment contract dispute was mistaken. See Belmonte, 240 B.R. at 854. I agree.

Indeed, under the Bankruptcy Court's expansive reading of Atlantic Bus. even a "squatter" on an unexpired leasehold could claim a protected property interest therein, simply by virtue of his possessory 'interest'. See In re Turner, 326 B.R. 563, 572-73 (Bankr. W.D. Pa. 2005) (indicating that Atlantic Business protects only continued possessors in *un*expired leases).

In sum, because the Property never should have been included within the scope of Peralta's bankruptcy estate, it is not subject to a right to cure under § 1322. The Bankruptcy Court erred in reaching a contrary conclusion.

***

AND NOW, this 4th day of December, 2020, upon consideration of the Bankruptcy Court's Memorandum (Doc. No. 5), Appellant's Brief (Doc. No. 4), Appellee's Brief (Doc. No. 8), and Appellant's Reply (Doc. No. 10), it is hereby **ORDERED** that the Bankruptcy Court's order is **VACATED**, and the matter is **REMANDED** to the Clerk of the United States Bankruptcy Court for the Eastern District of Pennsylvania for further proceedings in accordance with the foregoing.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.