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*1994 U.S. Dist. LEXIS 4359, **

IN THE MATTER OF: LIONEL R. INGRAM, JR. AND ALOHOA R. INGRAM (DEBTORS)

CIVIL ACTION NO. 94-165, SECTION "D" (3)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

1994 U.S. Dist. LEXIS 4359

April 5, 1994, Decided
April 6, 1994, Filed, Entered

PRIOR HISTORY: [*1] BANKRUPTCY NO. 90-13095-THK

DISPOSITION: AFFIRMED

CASE SUMMARY

PROCEDURAL POSTURE: Appellant, one of the joint owners of a building with the debtor, challenged that portion of a Bankruptcy Court's order awarding appellee broker a real estate commission on the sale of the building. The owners had leased a portion of the building. Pursuant to the lease, the broker received a commission as leasing agent from the owners on a monthly basis. The lease also provided for a commission to the broker on the building's sale to a tenant.

OVERVIEW: After the lease expired, the lessee continued to occupy the premises on a month to month basis paying the same rent. He later offered to purchase the building. The trustee accepted the lessee's bid and filed a motion for authority to sell the building to the lessee, free and clear of all liens and encumbrances. The broker filed an objection to the sale, claiming it was entitled to receive a sales commission under the terms of the lease. The bankruptcy court agreed. On appeal, the court noted that Louisiana Civil Code Article 2689 provided that if the tenant of a house or of a room should continue for a week after his lease had expired, without any opposition thereto by the lessor, the lease should be presumed to have been continued. Reconduction in Louisiana made all of the provisions of the original lease applicable and effective except for the lease term. Here, the lease continued on a month to month basis after the expiration of the primary term. Thus, the lease provision requiring a real estate commission to be paid upon the sale of the property to a tenant was still in effect. Further, the broker was the procuring cause of the sale because it brought the parties together.

OUTCOME: The court affirmed the rulings of the bankruptcy court that were the subject of the appeal and ordered that the monies held in escrow by the trustee from the sale of the subject property be distributed to the broker.

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JUDGES: McNamara

OPINION BY: A. J. McNAMARA

OPINION: ORDER AND REASONS

Before the court is the Appeal of Debtor, Sharon Carona, from that portion of the Bankruptcy Court's Order awarding Gertrude Gardner, Inc. a real estate commission for property sold post-petition under the terms of a lease agreement executed by all of the parties to the sale. Gertrude Gardner, Inc. filed an appellee brief. The matter is before the court on written briefs, without oral argument. Having considered the briefs of counsel, the record below and the applicable law, the court finds that the Bankruptcy Court's Order should be affirmed.

I. Background

On August 21, 1990, debtors, Lionel R. Ingram and Alhoa Weaver Ingram, filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On February 10, 1992, Michael J. Rapier was appointed Trustee of the Chapter 11 proceeding. Lionel R. Ingram and his sisters, Salvina Cefalu and Sharon Carona, were owners of the "Ingram Plaza Building" located at 3828 Veterans Boulevard, Metairie, Louisiana and this property was administered in the bankruptcy proceeding as jointly owned property.

Prior to the bankruptcy proceeding, the owners [*2] of the property entered into a lease agreement n1 with William T. Johnson wherein Mr. Johnson leased a portion of the building for use as a retail store. Pursuant to this lease agreement, Gertrude Gardner, Inc. received a commission as leasing agent from the owners on a monthly basis. n2

----- Footnotes -----

n1 The subject lease agreement is attached to Appellant's brief in its entirety as Exhibit A.

n2 The "Commission" clause is contained on page 8, paragraph 30 of the lease agreement, which is attached to Appellant's brief as Exhibit A.

----- End Footnotes -----

The lease expired at the end of the three year term. Mr. Johnson did not exercise the option to renew the lease, but he continued to occupy the premises on a month to month basis paying the same rent. Approximately ten months after the lease expired, Mr. Johnson submitted an offer to purchase the building from the owners. Mr. Ingram rejected the offer claiming he had a prospective purchaser who was willing to pay more than Mr. Johnson's offering price. However, the non-debtor joint owners, Mrs. [*3] Cefalu and Mrs. Carona, wanted to accept Mr. Johnson's offer.

The bankruptcy court conducted a hearing at which time it solicited bids from both Mr. Johnson and the potential purchaser whom Mr. Ingram had contacted. The Trustee, Mr. Rapier, accepted Mr. Johnson's bid, which was the highest bid, and with the consent of Mrs. Cefalu and Mrs. Carona filed a motion for authority to sell the Ingram Plaza Building to Mr. Johnson, free and clear of all liens and encumbrances. Gertrude Gardner, Inc. ultimately filed an objection to the sale, claiming that (per the lease agreement) it was entitled to receive from the sellers a sales commission. n3

----- Footnotes -----

n3 The pertinent language regarding the commission on a "sale" of the property is contained on page 8, section 30 (second paragraph) of the lease agreement, attached as to Appellant's

brief as Exhibit A.

----- End Footnotes-----

The Trustee then filed a Motion to Reject the Lease claiming that the lease, if enforceable, was a burden to the estate and, alternatively, that the lease had expired so Gertrude [*4] Gardner, Inc. was not due a commission. The bankruptcy court denied the Motion to Reject Lease and found that Gertrude Gardner, Inc. was entitled to a sales commission based upon the language of the lease.

The sale of the property to Mr. Johnson was ultimately allowed, but the Trustee is holding a portion of the proceeds of the sale in escrow sufficient to satisfy Gertrude Gardner, Inc.'s claim for a commission. The Trustee has not appealed the bankruptcy court's order, but Sharon Carona, one of the joint owners of the property, has filed this appeal on behalf of the owners.

II. Legal Analysis

A. The bankruptcy court properly held that Gertrude Gardner, Inc. was due a commission upon the sale of the subject property based upon the language of the lease agreement between Mr. Johnson and the sellers.

Interpretation of the subject lease is a question of state law. Louisiana Civil Code Article 2689 provides:

Reconduction of lease of house or room by continued possession after expiration of term

If the tenant either of a house or of a room should continue for a week after his lease has expired, without any opposition being made thereto by the lessor, the lease shall [*5] be resumed to have been continued, and he can not be compelled to deliver up the house or room without having received the legal notice or warning directed by article 2686. (emphasis added)

"Reconduction in Louisiana does in fact make all of the provisions of the original lease applicable and effective except that for the term of duration." Governor Claiborne Apartments, Inc. v. Attaldo, 256 La. 218, 235 So. 2d 574, 576 (La. 1970), quoted with approval in, New Hotel Monteleone, Inc. v. Depp's Bull Corner, Inc., 598 So. 2d 721, 724 (La.App.4th Cir.1992).

In this matter, there is no question that the subject lease continued on a month to month basis after the expiration of the primary term of the lease. Mr. Johnson, the tenant, continued to pay rent and the Trustee also continued to pay Gertrude Gardner, Inc. a commission on that rental payment under the terms of the lease.

This is a classic case of reconduction. Therefore, the court concludes that all provisions of the subject lease, except the duration of the lease, were still in effect when Mr. Johnson purchased the property. Thus, the provision of the [*6] lease requiring a real estate commission be paid upon the sale of the property to a tenant was still in effect and the bankruptcy court properly held that Gertrude Gardner, Inc. is entitled to a real estate commission for the sale of the property based on this provision.

The court also finds that Gertrude Gardner, Inc. was the procuring cause of the sale as "a real estate broker is considered the procuring cause of a sale and is entitled to a commission if he brings the parties together even though the parties conduct the final negotiations themselves and even though the broker does not have a listing or exclusive agency agreement." Keating v. Lachney, 216 So. 2d 906, 909-10 (La.App.1st Cir.1968), quoted with approval in, Cearley v. Farris, 432 So. 2d 902, 905 (La.App.1st Cir. 1983).

In this case, Gertrude Gardner, Inc. brought the parties together to initially lease the building and that relationship eventually led to the Mr. Johnson's purchase of the property. Further, Gertrude Gardner, Inc. had an ongoing participation in this relationship because it continued to receive a monthly rental commission not only during [*7] the fixed lease period but also during the period of reconduction when the sale negotiations were taking place. The fact that Gertrude Gardner, Inc. did not participate in the final negotiations does not preclude it from receiving a commission from the sale.

B. The bankruptcy court properly denied the Trustee's Motion to Reject the Lease.

The Trustee did not attempt to reject the lease until Gertrude Gardner, Inc. filed an objection to the sale claiming a commission. Obviously, the continuation of the lease, albeit through reconduction, up to that point was in the best interest of all the parties, including the Trustee, the Appellant, the tenant and Gertrude Gardner, Inc.

After the filing of the debtor's petition in bankruptcy, Gertrude Gardner, Inc. continued to receive **commissions** on the monthly rental payments. This was a recognized **administrative expense** which no one objected to. The court concludes that there is no reason for the "**sale**" **commission** to be treated any differently from the "rental" **commission** which was paid as an **administrative claim** against the estate. (See 11 U.S.C. § 503(b)(1)(A) allowing for payment of **post-petition [*8] administrative expenses**).

III. Conclusion

For the reasons set forth above, the court **AFFIRMS** the rulings of the bankruptcy court which are the subject of this Appeal and **ORDERS** that the monies held in escrow by the Trustee from the sale of the subject property be distributed to Gertrude Gardner, Inc.

New Orleans, Louisiana, this 5th day of April, 1994.

A. J. McNamara

UNITED STATES DISTRICT JUDGE







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