IN RE IVES ET AL.

Case No. 7,116.

{18 N, B. R. (1879) 28.}[1]

District Court, E. D. Michigan.

BANKRUPTCY—RENT—PAYMENT OF, BY ASSIGNEE—USE OF PREMISES.

1. While an assignee is bound to pay a reasonable compensation for the use of premises occupied by him in winding up the estate, he does not, by accepting the trust, become the assignee of leases belonging to the bankrupt, or bound to pay the rent reserved.

2. To entitle the landlord to rent, the occupation of the assignee must be not merely technical, but substantial and beneficial to the estate.

On petition of Eliza F. Brown for an order that the assignee pay the rent of a certain lot occupied by him. The petition set forth that, at the commencement of the bankruptcy proceedings, the bankrupts {Iyes, Green & Co.} were in possession of a certain lot on Atwater street, under a lease expiring March 30, 1879, at a rental of eight hundred dollars per year; that at the time of filing of the creditors' petition, there was standing upon the lot a large smoke-stack and some boilers belonging to the bankrupts, and used by them in connection with their mill, which stood upon an adjoining lot, and until said smoke-stack and boiler were removed, it was impossible for the petitioner to have exclusive use of the premises, or to lease them; that such removal was not effected until about the 1st of October last, and that the petitioner had no notice of said

removal for some time thereafter. Petitioner prayed that the assignee might be directed to pay for the premises, from the 22d day of March to the 22d day of September, at the rent reserved in the lease. The answer admitted that the bankrupts had erected a smoke-stack, about six feet square at the base, and that the boilers were also placed on the lot in question, so as to occupy a strip of about twelve by forty feet on the westerly edge thereof, adjoining the mill upon the lot west of the premises in question; but that the mill had ceased to be used by the bankrupts at the time of the filing of the petition. The answer further averred that the lot was about seventy-five feet front by one hundred and fifty feet deep, extending to the Detroit river; that it had no wharf in front, the water being shallow; that the lot had no valuable use except for storage, and that for such purposes it had been of no value since the commencement of the proceedings in bankruptcy; that there was no demand for unimproved lots in that vicinity, nor had they any rentable value; that petitioner had sustained no loss by the continuance on said premises of the smoke-stack and boilers, and that she had had no opportunity of renting the same. The assignee also averred that he had never accepted the lease, never received notice from the petitioner that he would be deemed to have accepted the same, by allowing the smoke-stack and boilers to remain; that the landlord never applied to this court to have them removed and the premises vacated. It further appeared that soon after the appointment of the assignee, the agent of the petitioner stated to him that the petitioner ought to be allowed rent for the premises in question, while the smoke-stack and boilers remained there; that the agent asked the assignee whether he would let her have the smoke-stack and boilers for the rent, which he declined to do; that there was no serious proposition made on either side, until a short time before they were removed, when the assignee proposed to let the petitioner have the smoke-stack and the brick work about the boilers, if she would take them down, which proposition she declined to accept; whereupon the assignee removed them.

George S. Swift, for petitioner.

Theodore Romeyn, for assignee.

BROWN, District Judge. Doubtless an assignee in bankruptcy is bound to compensate a landlord for the use of premises occupied by him in winding up the estate. In re Hufnagle {Case No. 6,837}, and cases cited; In re Hamburger {Id. 5,975}; In re Commercial Bulletin Co. {Id. 3,060}. He does not, however, by accepting the trust, become the assignee of leases belonging to the bankrupt, or become bound by any covenants contained therein. In re Washburn {Id. 17,211}; In re Lucius Hart Manuf'g Co. {Id. 8,592}. Although the rent be reserved in the lease, the assignee does not become liable to pay such rent by continuing to occupy the premises. The petitioner does not proceed upon the theory that the assignee accepted the lease, and thereby became obligated to pay the rent, but upon the theory that it was impossible for her to have exclusive use of the premises, so long as the smoke-stack and boiler remained there. But to make the assignee liable as

a tenant it must appear that his occupancy was not merely technical, but substantial and beneficial. In this case, the chimney and boiler covered but a small part of the lot; by far the greater part being vacant. As the mill did not run, the assignee derived no benefit from permitting the chimney to stand there, and the petitioner lost nothing, for she was at liberty to rent the property at any time. While, technically, she could not occupy the entire lot, so long as the chimney stood there, there was no substantial occupation by the assignee, and there was no loss of any valuable right by the petitioner. In re McGrath {Id. 8,808}; In re Washbum {supra}; In re Breck {Case No. 1,822}; In re Hamburger {Id. 5,975}; In re Metz {Id. 9,509}; In re Lynch {Id. 8,634}. If the conversation between the assignee and her agent amounted to an agreement to pay the rent so long as the incumbrance remained upon the lot, it was an agreement to pay only what such occupation was reasonably worth; and as there is no evidence upon this point, and none to show that the assignee agreed to accept the lease, the petition must be dismissed.

IVES, The LUCLA B. See Case No. 8,590.

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