

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4475
Summary Calendar

IN THE MATTER OF: ALEXA ENTERPRISES, INC.,

Debtor.

FRED S. ENGEL,

Appellant,

versus

STATE OF TEXAS, ET AL.,

Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
6:91 CV 642

May 6, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

The debtor Alexa Enterprises, Inc. has appealed from orders of the bankruptcy and district courts denying its motion to invalidate a sale of the assets of Alexa to East Cedar Creek Fresh

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Water Supply District for \$550,000 cash. Finding no error in the judgments below, we affirm.

Although stated as seven issues on appeal, Alexa's quarrel with the orders that resulted in a sale of its assets is two-fold: first, Alexa objects to the bankruptcy court's decision to sell its assets to East Cedar Creek after Alexa had negotiated a sale contract for the same amount of money to Sentry Title Company, albeit in a less favorable ten-year installment contract rather than a cash sale. Second, Alexa asserts that the court improperly amended its order authorizing sale to deal with "all" of the assets of Alexa rather than "substantially all" of those assets.

The first contention is easily disposed of. Alexa never timely filed notices of appeal contesting the orders of the bankruptcy court governing the potential sales to Sentry and Cedar Creek other than the September 18, 1991 order refusing to invalidate the sale to Cedar Creek. It is no answer to say that Alexa misunderstood those orders or failed to apprehend that the court would "misconstrue" them. The bankruptcy rules provide specific and limited procedures for appeal that were not met.

Appellant's second contention is practically nonsensical. On January 2, 1991, the bankruptcy court entered an order permitting East Cedar Creek to purchase substantially all of the debtor's assets. Elsewhere, the order instructed debtor to "sell its assets," but exhibits attached to the contract of sale inadvertently excluded reference to one parcel of property. The

trustee, appointed after the case was converted to Chapter 7 because the debtor refused to carry out the sale, believed he had to clarify this ambiguity in order to tender a valid trustee's deed to the purchaser. The debtor, on the other hand, wished to exploit an alleged ambiguity between the scope of sale to Cedar Creek and that to Sentry in order to invalidate the sale.¹ The bankruptcy court took testimony and decided to clarify its order as requested by the trustee. The court declined to invalidate the sale.

There was no error in the bankruptcy court's handling of this matter. After conversion of the case to Chapter 7, the trustee had authority to sell the assets with bankruptcy court approval. The court had the authority to clarify the scope of the sale of the debtor's assets. The interpretation of the sale to East Cedar Creek stood on its own feet and was not circumscribed by the terms of the earlier contract with Sentry. The bankruptcy court's determination concerning the intent of the parties to the East Cedar Creek contract is, in this case, a factual one, which was not clearly erroneous.

AFFIRMED.

¹ Although the debtor vigorously contends that there was a material difference between the contract he negotiated with Sentry and the contract approved to Cedar Creek, he does not clearly explain the nature of that difference. Moreover, at the hearing held October 30, 1990, to discuss the possibility of the court's adopting the Cedar Creek offer to purchase, debtor's counsel stated at least twice that the contract with Sentry was for all of the assets of the corporation.