

THE ARKANSAS COURT OF APPEALS HOLDS THAT A REAL
ESTATE CONTRACT MADE AFTER APPELLANT FILED
BANKRUPTCY WHERE THE BANKRUPTCY COURT DID NOT
APPROVE THE SALE IS UNENFORCEABLE

In *Le v. Nguyen*¹, the Arkansas Court of Appeals held that an agreement to sell real estate was void and unenforceable where the bankruptcy court did not approve the appellant's motion to sell the property.²

The appellants, Tina, Dennis, and Tony Le, appealed the Pulaski County Circuit court's finding that a valid enforceable contract existed with the appellee, Hoang Thi Nguyen, based on a real estate contract that was entered into after Tony Le filed bankruptcy on May 4, 2005.³ On June 1, 2006, Tony Le signed an agreement to sell Nguyen the property that she had rented from him since 2003 and carry a loan for the purchase price of \$106,000.⁴ Le filed a motion in the bankruptcy court to sell the property, but the court withdrew his motion because the bankruptcy trustee objected to the terms of the sale, i.e., Tony Le carrying the note.⁵

Although both parties agree that Nguyen continued to occupy the property after Tony Le signed the agreement and that she paid him various sums of money, they disagree about the purpose of these payments.⁶ Beginning in August 2007, Nguyen made the payments to her attorney's trust account.⁷ In March 2008, Tina Le filed a complaint in unlawful detainer against Nguyen attempting to gain possession of the property.⁸ In August 2008, Tina amended the complaint to add Tony Le and Dennis Le as plaintiffs.⁹

In November 2008, after a hearing, the circuit court denied the Les' motion for a writ of possession.¹⁰ On April 6, 2009, the circuit court held a bench trial on the Les' amended complaint for unlawful detainer.¹¹ On April 8, 2008, the circuit court issued a letter ruling, denying the Les' complaint and finding that 1) the lease between Tony Le and Nguyen ended on June 1,

1. 2011 Ark. App. 20, ___ S.W.3d ___.

2. *Id.* at 6, ___ S.W.3d at ___.

3. *Id.* at 1–2, ___ S.W.3d at ___.

4. *Id.* at 2, ___ S.W.3d at ___. Tony Le owned twenty-five percent interest in the property; his ex-wife, Tina, owned a twenty-five percent interest; and Tony's brother, Dennis, owned a fifty percent interest. *Id.*, ___ S.W.3d at ___.

5. *Id.*, ___ S.W.3d at ___.

6. *Le*, 2011 Ark. App. 20, at 2, ___ S.W.3d at ___.

7. *Id.*, ___ S.W.3d at ___.

8. *Id.*, ___ S.W.3d at ___.

9. *Id.*, ___ S.W.3d at ___.

10. *Id.* at 1–3, ___ S.W.3d at ___.

11. *Id.* at 3, ___ S.W.3d at ___.

2006 when the parties entered into an agreement to sell the property, 2) the plaintiffs were not permitted to use Tony Le's bankruptcy and "his own negligence or fraud in drafting or executing the contract" as a defense to the validity of the contract, and 3) the plaintiffs were not entitled to possession of the property.¹²

In June 2009, the trial court entered an order requiring the parties to brief the issue of whether the signatures of all three owners were required on the agreement to sell Nguyen the property.¹³ The court entered an order in November 2009, finding that "even though the contract for sale is invalid because it lacks the signatures of two of the owners it is enforceable against the Plaintiffs because those owners have ratified Tony Le's unauthorized acts."¹⁴

Upon appeal, the appellants argued that the circuit court lacked jurisdiction to determine whether the agreement was enforceable because the property in question was part of a bankrupt estate.¹⁵ The appellants also argued that the court's discussion of whether the contract was enforceable because it was ratified by Dennis Le and Tina Le was extraneous to the critical question of whether the property could be sold without the permission of the bankruptcy court.¹⁶ Additionally, the appellant argued that the trial court erred by acting outside the scope of the unlawful detainer action when it ruled the agreement was enforceable, because the unlawful detainer action should only determine the right to possession.¹⁷

Nguyen argued that because the property was not sold during the bankruptcy proceedings, and because the bankruptcy trustee objected to the terms of the sale rather than the sale itself, the agreement was enforceable because Tony Le had been discharged from bankruptcy before the trial court ruled on the enforceability of the contract. She therefore asserts the bankruptcy issue was moot.¹⁸

The Court of Appeals reversed the trial court's ruling on the enforceability of the contract and remanded the determination of who is entitled to possession pursuant to the unlawful detainer statute, focusing on three issues.¹⁹ First, the court stated that an "executory contract is a contract that is

12. *Le*, 2011 Ark. App. 20, at 3, ___ S.W.3d at ___.

13. *Id.* at 3, ___ S.W.3d at ___.

14. *Id.*, ___ S.W.3d at ___.

15. *Id.*, ___ S.W.3d at ___.

16. *Id.* at 5, ___ S.W.3d at ___ (citing *In re Williamson*, 327 B.R. 578, 580 (Bankr. E.D. Va. 2005) holding that the purchaser had no protected expectancy [contractually and as a matter of bankruptcy law] because her contract was contingent on court approval, and prior to court approval of the contract, the property remained on the market where it was subject to higher or better offers).

17. *Le*, 2011 Ark. App. 20, at 6, ___ S.W.3d at ___.

18. *Id.* at 5, ___ S.W.3d at ___.

19. *Id.*, ___ S.W.3d at ___.

entered into *before* a bankruptcy is filed, not during the course of the bankruptcy.”²⁰ Second, “the bankruptcy court must approve the sale, or there is no contract.”²¹ Third, the Arkansas Court of Appeals noted that the circuit court had jurisdiction to determine which party was entitled to possession pursuant to Arkansas Code Annotated, Section 18-60-308 (unlawful detainer), but explained the result will be different after its reversal on the enforceability of the contract.²²

Le v. Nguyen emphasizes the public policy concerns embodied in the bankruptcy code – that a debtor is entitled to a fresh start.²³ While the primary objective of the bankruptcy code is to satisfy the debtor’s creditors and help the debtor chart a course to regain solvency, the inequity to persons harmed by the debtor’s actions is readily apparent in cases like the one at bar. Here, Nguyen resided on the property for eight years and believed that she had purchased the land from Tony Le.²⁴ Whether this case achieves an equitable result for Nguyen will depend on the circuit court’s interpretation of this decision and their finding determining which party is entitled to possession.

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20. *Id.* at 5, ___ S.W.3d at ___ (citing WILLIAM L. NORTON, JR., 2 NORTON BANKR. L. & PRAC. 3d § 46:1 (3d ed.2010)).

21. *Id.* at 6, ___ S.W.3d ___ (citing *In re Williamson*, 327 B.R. 578, 580 (Bankr. E.D. Va. 2005)).

22. *Le*, 2011 Ark. App. 20, at 7, ___ S.W.3d at ___.

23. *Id.* at 6, ___ S.W.3d at ___ (stating that “[i]t defies logic to contend that a debtor in bankruptcy could enter into a contract to sell part of the bankrupt estate, fail to gain approval from the bankruptcy court, then wait until he is discharged and enforce the same contract.”).

24. *Id.* at 1–2, ___ S.W.3d at ___.