

# In the United States Bankruptcy Court

## for the Northern District of Iowa

JEROME RALPH NIE and  
ANTOINETTE LEE NIE

Bankruptcy No. 87-01248W

*Debtors.*

### MEMORANDUM OF DECISION AND ORDER RE: EXEMPTIONS

Before the Court is a dispute between the debtors and the United States of America, Farmers Home Administration, over debtors' claims of exemptions in certain farming equipment.

Trial was held on November 18, 1987 in the bankruptcy courtroom in Waterloo, Iowa.

Having heard the evidence and the arguments of counsel, the undersigned now issues the following Findings of Fact and Conclusions of Law pursuant to Bankr. R. 7052.

#### FINDINGS OF FACT

1. Jerome Nie began full-time farming in 1971. Jerome Nie and Antoinette Nie married in 1976, and thereafter they farmed together. The Nies reside near Gilbertville, Iowa on a farm they are purchasing on contract.
2. Prior to 1984, the Nies had a dairy herd operation and had raised crops..
3. Due to financial difficulties, however, the Nies began decreasing their farming operation in 1984. At one time, the Nies' dairy herd numbered approximately 33 head. Some died and others were sold. The last cow sold was sold in approximately late 1984. The debtors kept one cow. Since the fall of 1984, that cow has been in the possession of John Even, who cares for the cow and takes its milk as compensation. He also cares for the cow's two calves born since he took possession of the cow.
4. Mr. Nie would like to use that cow to begin a new dairy herd.
5. Since 1983, Mr. and Mrs. Nie have not planted a crop on their farm. The farm, during the 1984 through 1987 crop seasons, has been leased to other persons. The rental payments are used to make the contract payments on the farm.
6. During 1987, Mr. and Mrs. Nie custom farrowed pigs. Mr. Nie also did custom crop work for others.
7. The following tools and equipment were used either for the custom crop work or for the custom farrowing:

#### EQUIPMENT GROUP A

1. Tractor with cab 110OMF, 1970
2. 1 Kewanee 14' disc
3. 1 John Deere 20' drag
4. 1 John Deere 24T, 1967 baler
5. 1 Hesston 8' windrower, Model 1010, 1979
6. 2 gravity wagons
7. 1 New idea 7' mower
8. 2 hay racks
9. 1 John Deere 4-row cultivator, 1969
10. 8 farrowing crates
11. 3 waterers
12. 1 stock trailer

13. 1 air compressor
  14. 1 steer stuffer
  15. Miscellaneous tools valued at \$200.
8. The following tools were broken and not in use at the time of the filing of the bankruptcy case:

#### EQUIPMENT GROUP B

1. John Deere 2510 tractor
  2. 1 New Idea 10' side rack.
9. The following group of tools and equipment have not been used by the debtors in the custom farrowing or crop work. These items were related to the debtors' crop operation prior to 1984 or to the dairy operation.

#### EQUIPMENT GROUP C

1. 1 Oliver 4-16 plow, 1968
  2. 1 Oliver 4-row planter, 1971
  3. 1 harrow on planter 14', 1971
  4. 1 Gehl 2T grinder, 1965
  5. 1 pull picker, New Idea, 1968
  6. 1 New Idea 40' elevator
  7. 1 New Idea chopper, 1965
  8. 1 windrow turner, Farmhand, 1975
  9. 1 New Idea loader; 1960
  10. 4 milkers
  11. 1 pipeline Dairy Kool 2"
  12. 1 bulk tank
  13. 1 Thermostor water heater
  14. 18.4.34 dual wheels
  15. 15.5.38 dual wheels
  16. feed drag with motor
  17. 2 heat housers
  18. John Deere 530 tractor, 1959.
10. Of the foregoing Group C items, some have been rented out to others since 1984.
11. The debtors would like to return to their own farming operation. Mrs. Nie desires to raise pigs. Mr. Nie desires to reengage in the dairy operation and also to again plant crops on their farm.
12. Mr. Nie has made no concrete plans to return to a dairy operation soon although he does own a cow and two calves. It is not, however, economical for Mr. Nie to care for and milk one cow and therefore this is being done by Mr. Even.
13. Mr. Nie's desire to restart the milking operation is related to his desire to do some crop farming. Mr. Nie has not entered into any agreements that would permit him to farm any portion of his farm in 1988. He believes, however, a neighbor, Phil Thoma, would help him with a loan. Although Mr. Nie wants to farm a portion of the 140-acre farm in 1988, he does not know if he can. He desires to start by farming 40 acres near the building site.
14. Mr. Nie works for a local fertilizer company. The work is seasonal, and at the present time, there is no work available. When he works, he is generally employed by the company from 20 to 60 hours per week. Mrs. Nie works for an area employer. Beginning in approximately 1984, Mrs. Nie held various part-time or full-time jobs; also she has studied at Hawkeye Institute of Technology majoring in marketing management and data entry.
15. Mrs. Nie returned to school in order to obtain marketable job skills to help out with family income. Her desire, however; was not to leave farming, and she continues to take part in the custom farrowing operation.
16. The debtors filed their joint voluntary petition under Chapter 7 of the Bankruptcy Code on May 27, 1987. In their bankruptcy schedules, the debtors itemized \$13,115.00 in farming equipment and implements and claim the items as exempt under Iowa Code section 627.6(12)(a).<sup>1</sup>

<sup>1</sup> This contested matter was actually tried on the basis of the appropriate Coda section: Iowa Code section 627.6(11)(a).

17. On August 20, 1987, the United States of America, on behalf of the Farmers Home Administration (FmHA), objected to the debtors' claim of exemption on the sole ground that the debtors were not "engaged in farming."
18. There is no dispute between the parties as to the value of the property claimed exempt. This is a core proceeding under 28 U.S.C. section 157(b)(2)(A) and (0).

## DISCUSSION

In Iowa, a debtor engaged in farming may claim as exempt from execution implements and equipment, livestock and feed, reasonably related to a normal farming operation, not to exceed in value \$10,000.00 in the aggregate. Iowa Code section 627.6(11)(a)-(b).

The Eighth Circuit Court of appeals has stated that a determination of whether one is "engaged in farming"

"[s]hould take into account the intensity of a debtor's past farming activities and the sincerity of his intentions to continue farming, as well as evidence that debtor is legitimately engaged in a trade which currently and regularly uses the specific implements or tools exempted and in which lien avoidance is sought." (Citations omitted.)

In re LaFond; 791 F.2d 623, 626 (8th Cir. 1986). These considerations apply even when the sole question is as to exemptions.

There is no question that the debtors were engaged in certain farming activities on the date of the filing of this bankruptcy case. The debtors were operating a custom farming operation with Mr. Nie concentrating on custom crop work and Mrs. Nie working with Mr. Nie on the custom farrowing. Those items used by Mr. and Mrs. Nie in the custom crop and farrowing operation should be set aside as exempt.

Even though the debtors were engaged in a custom farming operation at the time of the filing of the bankruptcy case, it does not necessarily follow that all tools and equipment claimed by the debtors are exempt under Iowa Code section 627.6(11)(a).

The claim of exemption must be analyzed in terms of the above referenced groups of property in relationship to debtors' farming activity to determine which tools and implements are exempt.

Exemption statutes are to be liberally construed in favor of those claiming their benefits. Frudden Lumber Co. v. Clifton, 183 N.W.2d 201 (Iowa 1971),

The debtors' exemption rights are to be determined as of the time of the filing of the bankruptcy case. In re Hahn, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980).

Although the debtors each hold outside jobs, this is not fatal to their claiming exemptions as farmers. In re Hahn, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980).

Custom farmers are to be considered "farmers" for the purposes of the exemption statute in Iowa. In re Myers, 56 B.R. 423, 427-28 (Bankr. S.D. Iowa 1985).

Because the date of the filing of the bankruptcy is the date of cleavage with regard to claims of exemption, it is the rule that debtors claiming tools of the trade must be engaged in a trade at the time of the filing of the petition. In re Myers, 56 B.R. 423, 426 (Bankr. S.D. Iowa 1985).

It is also the rule in Iowa, however, that a temporary cessation of farming activity does not defeat the claim of exemption if the debtor intends to return to farming. In re Myers, 56 B.R. 423, 426 (Bankr. S.D. Iowa 1985); In re Hahn, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980); Pease v. Price, 101 Iowa 57, 59, 69 N.W. 1120 (1897); Hickman v. Cruise, 72 Iowa 528, 529, 34 N.W. 316, 317 (1887).

To determine whether the equipment in Groups B and C are exempt, the Court must apply the In re LaFond analysis to

the debtors' crop farming and dairy farming operations.

The debtors have not planted and harvested their own crops since 1983. By the end of 1984, the debtors had divested themselves of all livestock save one cow.

While the debtors were forced by financial problems to cease crop farming and dairy farming, they nonetheless did so.

While a temporary cessation of farming activity does not defeat a claim to exemption if there is an intent to return to farming, the cessation of crop farming and dairy farming activities by these debtors cannot be characterized as temporary.

The Nies have rented out the tillable ground of their 140-acre farm beginning in 1984. During 1984, the debtors ceased the dairy operation.

While great weight is often given to a debtor's stated intention to resume farming, it is not dispositive.

The leading Iowa Supreme Court case involving the intent to continue farming as it relates to the issue of exemptions, is *Pease v. Price*, 101 Iowa 57, 59, 69 N.W. 1120 (1897). That case, however, involved a farmer who had farmed until March 1, 1884 but who was unable to obtain a farm for use for the 1884 crop season. His farm equipment was levied on in January of 1885. The Supreme Court affirmed the trial court's decision discharging the equipment from the levy because of the claim of exemption.

The cessation of crop farming and dairy farming activities by the Nies does not involve months, but years.

There is no dispute that the Nies quit dairy farming and quit crop farming. If the sole test of the statutory right to claim the exemptions were the sincerity of the intent to return to farming, these items would be exempt.

The length of time during which the debtors have not used the equipment in Group "C" because of the lack of a crop farming or dairy operation, in this Court's view, requires a showing that the intent to return to former operations is reasonable.

Debtors in this case have shown little if any prospects for crop or dairy farming in 1988. There appears to be no intention by the debtors to re-establish the dairy farming operation at any time soon.

The issue of crop farming, however, is more difficult. Clearly, the debtors, while they do not have a herd, do have land. The land appears to be available to them to farm in 1988. While they have not farmed it since 1983, they have looked into financing through a neighbor for the 1988 crop year. The debtors do not have a commitment for any set amount of dollars, and are not sure they can farm even 40 acres of their 140-acre farm.

This Court is aware that there are two lines of thought with regard to a debtor's sincerity of intent to re-engage in farming.

One line of reasoning does not look behind the debtor's stated intention to return to farming. *In re Hahn*, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980); *In re Pommerer*, 10 B.R. 935, 942 (Bankr. D. Minn. 1981).

The alternative position is that the debtor must show reasonable prospects for re-engaging in farming operations which require the tools claimed as exempt or in which he seeks lien avoidance. *In re Richardson*, 47 B.R. 113; 119 (Bankr. W.D. Wisc. 1985); *In re Johnson*, 19 B.R. 371, 375 (Bankr. Kan. 1982).

This Court believes that in examining the sincerity of one's intentions to continue farming, the Court must look at the reasonableness of those intentions. One factor to be considered is the time which has passed since the farming activity has ceased. In light of the foregoing facts, the Court finds that the debtors ceased crop farming and dairy farming in 1983-84 and that at the time of the filing of the petition neither of the debtors were engaged in crop farming or dairy farming.

The Court further finds that the tools in Equipment Groups "B" and "C" are not tools or implements of the debtors' trade of custom farming, Middleton v. Farmers State Bank of Fosston, 41 B.R. 953, 955 (Bankr. D. Minn. 1984), nor are the tools in Groups "B" and "C" reasonably necessary for the debtors' custom farming operation. In re LaFond; 791 F.2d 623, 627 (8th Cir. 1986).

### CONCLUSIONS OF LAW

The tools claimed by the debtors as exempt in the foregoing Group "A" are exempt under Iowa Code section 627.6(11) (a). The tools claimed as exempt in Equipment Groups "B" and "C" are not exempt under Iowa Code section 627.6(11) (a)-(h). Judgment shall enter accordingly.

SO ORDERED ON THIS 4TH DAY JANUARY, 1988

William L. Edmonds  
Chief Bankruptcy Judge