

# In the United States Bankruptcy Court

## for the Northern District of Iowa

MAX O. PELZER  
a/k/a Max Orville Pelzer  
d/b/a Pelzer Pelzer &  
Neppel d/b/a Lee Farm and  
BONNIE PELZER  
a/k/a Bonnie M. Pelzer  
d/b/a Pelzer Farms  
Debtors.  
RICHARD PELZER  
a/k/a Richard Dean Pelzer  
a/k/a Dean Pelzer  
RUTH PELZER  
a/k/a Ruth M. Pelzer  
Debtors.  
*Debtor(s).*

Bankruptcy No. 87-01355F

Chapter 7

### ORDER RE: MOTION FOR DISALLOWANCE OF LIENS

The matters before the court are the debtors' motions for disallowance of liens. The motions were resisted by Robert and Olive Nichols and by Travelers Insurance Co. Alleged mortgage holder Emmet County State Bank did not resist. Travelers has withdrawn its resistance to the motion. A hearing was held on July 21, 1988 at Fort Dodge, Iowa. The court now states findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

#### FINDINGS OF FACT

The debtors, Max and Bonnie Pelzer, filed their Chapter 7 bankruptcy petition on June 15, 1987. The debtors, Richard and Ruth Pelzer, filed their Chapter 7 bankruptcy petition on June 8,

1987. At the time of filing, the debtors owned a 320-acre tract of real estate in Emmet County, Iowa, described as:

320 acres more or less; South ½ Section 27, Township 98 North, Range 34 West of the 5th Principal Meridian, Emmet County, Iowa.

The debtors each own a 25% interest in the above-described property. The parties agreed to have both motions for disallowance of liens decided together.

This real estate described above was subject to the following mortgages, judgments, and liens at the times of the filing of the petitions:

1. Travelers Insurance Company, a first mortgage with a remaining balance on the date of filing of \$135,000.00.

2. Robert and Olive Nichols, a second mortgage whose underlying debt was reduced to judgment on May 5, 1987 when creditors foreclosed on property other than the above-described property. The mortgage was surrendered to the Emmet County Clerk of Court upon entry of a judgment in the amount of \$244,052.58.

3. Emmet County State Bank, a third mortgage encumbering the above-described real estate and other real estate with a balance due on the date of filing of debtors' petition of \$369,358.00.

The debtors are seeking to avoid liens on the above-described property to the extent that the liens exceed the allowed secured claims, pursuant to 11 U.S.C. § 506(d).

The debtors' farm is currently enrolled in the Conservation Reserve Program (CRP). The CRP provides ten annual rental payments to participants in return for their agreement to retire the land. The debtors receive annual CRP payments of \$23,000.00 for the subject property. The annual CRP payments will continue for nine years.

At the hearing, debtor Max Pelzer testified that the fair market value of the 320-acre farm was \$99,500.00. The debtor compared his property with the sale price of two farms in the same vicinity in order to determine the value. Additionally, Mr. Pelzer testified to value based on his own personal opinion.

Debtors' comparable no. 1 is a 190-acre farm located in Emmet County, Iowa which is adjacent to the debtors' farm. The property was sold around June, 1987 for \$184.00 per acre. The debtor Max Pelzer testified at the hearing that this farm was not enrolled in the CRP.

Debtors' comparable no. 2 is an 80-acre farm located in Emmet County, Iowa near the debtors' farm. The property was sold around April, 1988 for \$275.00 per acre. The debtor Max Pelzer also testified that this farm was not enrolled in the CRP.

The debtor used these sale comparisons in determining the value of the subject farm. Additionally, the debtor stated that the valuation was based on his own farming experience. The debtor testified that he has owned and managed several farms during the past several years and has been involved in the valuation of farm land through his law practice. Based on this experience, the debtor contends that he is knowledgeable of farm values in Emmet County, Iowa and therefore is capable of determining the value of the subject farmland.

The Nichols contend that the value of the farm is approxi-

mately \$180,000.00. The Nichols base their value on an appraisal report prepared by Bonnie Hoover of Hoover Real Estate Co., Spencer, Iowa. Ms. Hoover was present at the hearing and testified regarding the appraisal. An appraisal report prepared by Ms. Hoover (debtors' Exhibit 1) was admitted into evidence.

Ms. Hoover is a principal and broker--associate of Hoover Farm Real Estate Co. in Spencer, Iowa, a company which provides farm real estate services, including sales, rural appraisals and farm management. Ms. Hoover testified that she has been a licensed Iowa real estate sales person and broker for nine years and has five years of appraisal experience.

The Nichols' appraiser determined the value of the property by analyzing market data and using an income approach to value. The appraiser analyzed data from six farm properties in Palo Alto County to help determine the value of the debtors' farm. The sales prices of these six properties are as follows:

Sale Date Total Acres Price Per Tillable Acre

4-8-88 160 \$ 756.00

5-4-88 160 1,124.18

4-1-88 320 (164 tillable) 851.58

9-1-87 160 593.28

9-23-87 100 792.00

4-10-87 110 777.18

In order to prepare the appraisal report, Ms. Hoover physically inspected the property and considered ASCS records and soil conservation maps for the subject property. The income approach to value was based upon a stream of net income produced by the property. Ms. Hoover computed the present value of the property with nine remaining CRP payments less the annual taxes and determined the current market value ranged from \$185,000.00 to \$221,000.00. As a conservative approach, Ms. Hoover determined that a net income of \$65.00 per tillable acre would support a purchase price of approximately \$565.00 per tillable acre or \$156,025.00.

The final appraisal figure was based upon a combination of the market data and the income approach to value. It is not clear from the appraisal report and testimony of Ms. Hoover as to how the market data and income approach were combined in order to come up with a final appraisal figure. The appraisal report concluded that the market value of the property was estimated to be \$180,000.00 in June of 1987. Ms. Hoover indicated that the June, 1987 value was determined by taking the current market value discounted by 15%. Ms. Hoover testified that it was her opinion that this property had appreciated 15% between June, 1987 and July, 1988.

Ms. Hoover stated that she did not do a cash flow analysis for the subject farm in determining her appraisal figure. Ms. Hoover did testify that if this farm had a negative cash flow, it would have some impact on the value of the farm.

## **DISCUSSION**

### **I.**

The initial issue before this court is whether the court has

jurisdiction in this matter since the subject property has been abandoned. The Nichols argue that this court does not have jurisdiction to avoid liens since the property was abandoned by the trustee on January 27, 1988. The Nichols contend that 11 U.S.C. § 506 only applies to property in which the estate has an interest.

Several courts have held that a Chapter 7 debtor may not avoid liens against abandoned real property. These courts have reasoned that § 506(d) is intended for the avoidance of liens against property that will be administered under the Bankruptcy Code, not property which has been abandoned or exempted. See In re Maitland, 61 B.R. 130, 133 (Bankr. E.D. Va. 1986); In re Gaglia, 76 B.R. 82, 84 (Bankr. W.D. Pa. 1987).

This court finds the recent decision of In re Haugland, 83 B.R. 648 (Bankr. D. Minn. 1988) to be more persuasive. In Haugland at 651, the court held that a lien on property that has been abandoned can be avoided under 11 U.S.C. § 506(d). The court stated at 651, "Section 506 applies to property that once was, but no longer is, property of the estate." In In re Gibbs, 44 B.R. 475, 478 (Bankr. D. Minn. 1984), the court stated, "Since it

(§ 506) does apply in Chapter 7 cases, its use would almost always be by debtors on exempt property or on property that had been abandoned by the trustee."

This district has determined that a Chapter 7 debtor is entitled to avoid a real estate mortgage to the extent that the mortgage against the debtor is not an allowed secured claim. In re Cleveringa, 52 B.R. 56 (Bankr. N.D. Iowa 1985), affirmed, slip op., U.S.D.C. No. C85-4215, February 12, 1987. Since this district has determined liens as to exempt property may be avoided, it is logical that liens on property that has been abandoned can also be avoided under 11 U.S.C. § 506(d). If 11 U.S.C. § 506(d) was deemed inapplicable to abandoned or exempted property, the section would be practically useless in a Chapter 7 case. This court believes it has the jurisdiction to avoid liens on the subject property pursuant to § 506(d) even though the property has been abandoned by the trustee.

## II.

The debtors believe that two of the liens on the subject property have no value. Therefore the debtors are seeking to avoid the unsecured liens pursuant to 11 U.S.C. § 506(d). As stated above, this jurisdiction has held that a Chapter 7 debtor is entitled to avoid a real property mortgage to the extent that the mortgage against the debtor is not an allowed secured claim. In re Cleveringa, 52 B.R. 56 (Bankr. N.D. Iowa 1985)(affirmed) slip op., U.S.D.C. No. C85-4215 (February 12, 1987). Therefore, this court must determine the value of the farm so that the allowed secured claim can be determined. A determination of the allowed secured claim will permit the court to determine which liens are unsecured and therefore void under 11 U.S.C. § 506(d).

The Code does not set forth any fixed approach to be used in valuing a secured claim. Courts are to determine value on a case-by-case basis taking into account the facts of each case. S. Rep. No. 95-989, 95th Cong., 2nd Sess. 68 (1978), reprinted in 5 U.S. Code Cong. & Admin. News 5854 (1978).

The debtors and the Nichols introduced evidence regarding the value of the 320-acre farm. The debtors relied on a comparison of two neighboring farms. Additionally, one of the debtors, Max Pelzer, testified to the value based on his own knowledge and experience. The Nichols relied on an appraisal report prepared by Bonnie Hoover of Hoover Real Estate Co.

This court, after reviewing the testimony and exhibits, finds the value established by the appraisal report and testimony of Bonnie Hoover to be more persuasive and more reliable than the appraisal of Mr. Pelzer. The appraisal of Ms. Hoover was based on both a sales comparison and income approach. The farms used in the comparison approach were similar to the subject property. Additionally, the appraisal report took into consideration the impact of CRP payments on the value of the subject property.

The debtor Max Pelzer stated he agreed that the fact that the property was enrolled in CRP had a significant impact on the value. However, in determining the value of the property, the debtors did not compare the subject property with any sales of property that were enrolled in the CRP. This court believes that a guaranteed stream of rental payments for a period of nine years is certain to have some effect on the value of the farmland, which should at least be considered when determining the market value.

There is no indication that the debtor, Max Pelzer, used any data other than the sale prices of the neighboring farms in determining his opinion of the subject farm's value. The debtor, Max Pelzer, failed to consider any effect a future stream of income may have on the farm's value. The "[Income approach to value is another viable method that may at least be considered in going through the process of valuing income-producing farmland. In re Snider Farms, Inc., 79 B.R. 801, 813 (Bankr. N.D. Ind. 1987).

In light of the foregoing, this court finds that the fair market value of the property is \$180,000.00 as of the date of the bankruptcy filings.

The court finds that as of the dates of filings of these cases, Travelers Insurance Co. had an allowed secured claim of \$135,000.00; Robert and Olive Nichols had an allowed secured claim of \$45,000.00, with these claims secured by the real estate in question.

The debtors are entitled to avoidance of liens to the extent that the amount of the debts secured by the mortgages exceeds \$180,000.00 pursuant to 11 U.S.C. § 506(d). In re Cleveringa, 52 B.R. 56, 58 (Bankr. N.D. Iowa 1985), affirmed, slip op., U.S.D.C. No. C85-4215, February 12, 1987).

### **ORDER**

IT IS THEREFORE ORDERED that as to Travelers Insurance Co. the debtors' Motion to Avoid Lien is denied.

IT IS FURTHER ORDERED that to the extent that the mortgage or lien which secures the debt owed to Robert and Olive Nichols exceeds the sum of \$45,000.00, that portion of the mortgage or lien is hereby avoided.

IT IS FURTHER ORDERED that the mortgage to Emmet County State

Bank on the subject real estate is avoided.

SO ORDERED THIS 23rd DAY OF SEPTEMBER 1988.

William L. Edmonds  
Chief Bankruptcy Judge