

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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GARLAND G. ATTRILL  
Debtor.

Bankruptcy No. X88-01008  
Chapter 7

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DONALD H. MOLSTAD, Trustee  
Plaintiff

Adversary No. X88-0290S

vs.

SUSAN ATTRILL and  
RHINEHART & ASSOCIATES  
Defendants.

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### ORDER RE: MOTION FOR SUMMARY JUDGMENT

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The matter before the court is a motion for summary judgment filed by the plaintiff against defendant Rhinehart & Associates. A hearing was held on May 24, 1989 in Sioux City, Iowa.

The court, having considered the arguments of the parties, now issues its findings of fact and conclusions of law pursuant to Bankr. R. 7052. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(F), (K).

### FINDINGS OF FACT

The plaintiff-trustee filed a complaint on December 5, 1988 claiming that the judgment received by Rhinehart & Associates against the debtor was a preference and therefore the transfer should be set aside. The plaintiff filed an amendment to the petition on March 31, 1989 requesting the court to determine that the attorneys lien claimed by Rhinehart & Associates does not create a perfected lien.

The defendant Rhinehart & Associates represented the debtor in a dissolution action. As a result of the services performed in the dissolution action, Rhinehart & Associates received a judgment against the debtor in the amount of \$5,633.36. The judgment entered by the Woodbury County, Iowa District Court was dated March 4, 1988.

At the time of the dissolution, the debtor and his former wife, Susan Attrill, owned the following described real estate located at 5201 Stone Avenue, Sioux City, Iowa:

All that part of the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of section 36, Township 89 North, Range 47, East of the 5th Principal Meridian, Sioux City, Woodbury County, Iowa, described as follows: commencing at the SW corner of the said NW $\frac{1}{4}$  of the SE $\frac{1}{4}$ , thence East along the South

line thereof, for 538.4 feet to the place of beginning; thence North parallel to the West line of said quarter for 183 feet; thence East parallel to the said South line for 89.1 feet; thence South parallel to the said West line for 183 feet; thence West along the said South line for 89.1 feet to the place of beginning except for the South 33 feet thereof which has been dedicated as public right of way.

The state court found the value of the real estate to be \$36,250.00 as of the date of the divorce decree. There was indebtedness of approximately \$14,260.26 against the real estate.

The dissolution judgment and decree of Susan Attrill and Garland Attrill was entered on June 29, 1987 in the Iowa District Court for Woodbury County. The decree provides in part:

Susan continues to need to reside in the house in order to raise the children. For that reason, she should be permitted to continue to reside in the house until the youngest child living with her reaches eighteen years. After the youngest child reaches 18 or Susan and the child cease to live in the house, the property shall be put up for sale and upon sale the proceeds divided as follows: one half the proceeds to each party, after deducting any indebtedness against the real estate and any expenses of the sale.

At Susan's option, the house may be sold at any time and the proceeds divided as above set out.

Until the real estate is sold, Susan shall continue to make all payments on the indebtedness against the real estate, and pay all taxes, insurance and maintenance costs.

The debtor has two children, Tiffany Sue Attrill, age 16 and Stacey Renee Attrill, age 11. Susan Attrill and her two children continue to reside in the house located at 5201 Stone Avenue, Sioux City, Iowa.

A notice of attorney's lien was sent to Susan Attrill by Rhinehart & Associates on September 10, 1987. The notice provides as follows:

TO: SUSAN R. ATTRILL, adverse party, in the matter of Attrill vs. Attrill, Equity No. 10456 and to Debra Lulf, her attorney:

You and each of you are hereby notified that the undersigned Richard Rhinehart & Associates by R. Scott Rhinehart, attorney at law formally for Garland G. Attrill, hereby claims an attorney's lien upon and as per the following:

1. Any and all sums of money due its former client, Garland G. Attrill from Susan R. Attrill, adverse party, and her attorney, Debra Lulf, or either of them, to be paid or payable to said Garland Attrill, on account of dissolution settlement or award. Said moneys now being in your possession or under your control or will come into your possession and under your control,

AND said lien is claimed in the amount of \$5,905.15 together with legal interest from date hereof, said sum being payable to the undersigned, Richard Rhinehart & Associates by R. Scott Rhinehart, a duly licensed attorney and member of the Iowa Bar, residing at Sioux City, Iowa, as former attorney for the said Garland G. Attrill for actual legal service rendered by him in connection with the matters referred to above and the

collection of said amounts, and the enforcement of the rights and claims of the said Garland G. Attrill all at his instance and request.

The notice of attorney's lien was filed with the Woodbury County Clerk of District Court on September 10, 1987. Garland Attrill filed his chapter 7 petition on June 29, 1988.

## DISCUSSION

### I.

"Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided on purely legal grounds." Agristor Leasing v. Farrow, 826 F.2d 732, 734 (8th Cir. 1987), citing Holloway v. Lockhart, 813 F.2d 874, 878 (8th Cir. 1987). "Where the moving party establishes the absence of any genuine issue of material fact and the opposing party submits no evidence or rebuttal, summary judgment is justified." Stovall v. City of St. Louis, 614 F.2d 619, 621 (8th Cir. 1980).

### II.

The trustee argues that the judgment lien of defendant Rhinehart & Associates was perfected within one year of the debtor's filing of the bankruptcy petition and that defendant Rhinehart was an insider as defined by 11 U.S.C. § 101. Therefore, the trustee argues that the lien is a preference pursuant to 11 U.S.C. § 547(b). That section provides as follows:

Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property--

1. to or for the benefit of a creditor;
2. for or on account of an antecedent debt owed by the debtor before such transfer was made;
3. made while the debtor was insolvent;
4. made--
  - A. on or within ninety days before the date of the filing of the petition; or
  - B. between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
5. that enables such creditor to receive more than such creditor would receive if--
  - A. the case were a case under chapter 7 of this title;
  - B. the transfer had not been made; and
  - C. such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b). A judgment lien was not obtained by the defendant Rhinehart & Associates within ninety days before the date of the filing of the petition. Therefore, the transfer must have been made between ninety days and one year before the date of the filing of the petition and the creditor must have been an insider at the time of the transfer. The judgment lien was obtained by Rhinehart & Associates within one year before the date of the filing of the petition. Plaintiff argues that law firm's role as attorney for the debtor in the dissolution proceeding gave it access to financial affairs of the debtor that placed it in the position as an insider. The court does not believe that Rhinehart or Rhinehart & Associates were insiders as defined in 11 U.S.C. § 101(30).

Although the defendant's obtaining of the judgment lien was not a preferential transfer, the judgment lien did not attach to any real estate of the debtor.

Judgments in the appellate or district courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all the defendant may subsequently acquire, for the period of ten years from the date of the judgment.

Iowa Code § 624.23(1). Section 624.24 of the Iowa Code provides the time frame for attachment of a judgment lien. That section provides:

When the real estate lies in the county wherein the judgment of the district court of this state or the circuit or district courts of the United States was entered in the judgment docket and lien index kept by the clerk of the court having jurisdiction, the lien shall attach from the date of such entry of judgment, but if in another it will not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies.

Iowa Code § 624.24.

However, the Iowa courts have recognized an exception to the rule set forth in Iowa Code § 624.23-.24. A judgment lien does not attach to real estate used and occupied as a homestead. Lamb v. Shays, 14 Iowa 567 (1863); Brown v. Vonnahmt, 343 N.W.2d 445, 449 (Iowa 1984). The divorce decree provides that Susan Attrill may continue to reside in the house until her children reach the age of 18. After the youngest child reaches the age of 18, the house will be sold and the debtor will obtain one-half of the proceeds. If Susan Attrill decides to sell the property prior to that time, the debtor will also be entitled to retain one-half of the proceeds. In spite of this provision in the divorce decree, the house continues to be the homestead property of Susan Attrill. The property is not subject to execution by creditors of either the debtor or Susan Attrill. "A dissolution decree does not affect the exemption of homestead property that is awarded to one of the parties. Brown v. Vonnahme, 343 N.W.2d 445, 451 (Iowa 1984).

Susan Attrill has a homestead exemption in all of the real estate, even though the debtor has a right to obtain one-half of the proceeds upon sale. The interest in land which can be claimed as a homestead are not confined to fee simple estates. See Livasy v. State Bank of Redfield, 185 Iowa 442, 170 N.W. 756 (1919); Lutz v. Ristine and Ruml, 136 Iowa 684, 112 N.W. 818 (1907); Pelan v. DeVevar, 13 Iowa 53 (1862). The court stated in Rutledge v. Wright, 186 Iowa 777, 171 N.W. 28, 30 (1919):

It is not essential to the acquisition of a homestead within the meaning of the statute that the claimant have a perfect or complete legal title. It is essential that he have a sufficient title to justify his occupancy. Occupancy under such a title would justify a claim of homestead right subject to the limitations of the statute.

Susan Attrill has a right to occupy the homestead property until her children reach the age of eighteen. This right of occupancy provided for in the divorce decree justifies a claim of a homestead exemption under Iowa Code § 561.16. That section provides as follows:

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. Persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial

sale. A single person may claim only one homestead to be exempt from judicial sale. For purposes of this section, "household unit" means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

There can be no splitting of homestead rights. Merchants Mutual Bonding Co. v. Underberg, 291 N.W.2d 19, 21 (Iowa 1980). The homestead rights of Susan Attrill in the jointly owned real estate continued after the dissolution. Susan Attrill's homestead interest is not subject to execution. Therefore, any interest the debtor may have in the real estate is also not subject to execution despite the fact that the property may no longer be the debtor's homestead. "A creditor who seeks to satisfy his debt out of a homestead must be certain he has a right against the whole property, not just part of it." Merchants Mutual Bonding Co. v. Underberg, 291 N.W.2d at 21. (Emphasis in original.) Rhinehart & Associates does not have a right against the homestead interest of Susan Attrill. Therefore, the real estate is not subject to execution through a judicial lien.

This result is consistent with the liberal interpretation Iowa courts have given to the homestead exemption. See American Savings Bank v. Willenbrock, 209 Iowa 250, 228 N.W. 295, 297 (1929). The judgment entered in favor of Rhinehart & Associates is not enforceable against the debtor's interest in the real estate since the real estate is the homestead of Susan Attrill. The judgment did not create a lien.

### III.

The defendant Rhinehart & Associate also argues that it has a valid attorney's lien against the property of the debtor which cannot be avoided by the trustee under 11 U.S.C. § 547. The plaintiff argues that the filing of the attorney's lien did not create a perfected lien on the debtor's real estate. The plaintiff further argues that if it is a perfected lien, it was a preferential transfer.

Defendant Rhinehart & Associates did file a notice of attorney's lien with the Woodbury County Clerk of District Court. However, the notice of attorney's lien did not create an attorney's lien on the debtor's interest in the real estate.

The attorney's lien statute in Iowa provides as follows:

An attorney as a lien for a general balance of compensation upon:

1. Any papers belonging to a client which have come into the attorney's hands in the course of professional employment.
2. Money in the attorney's hands belonging to a client.
3. Money due a client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to such adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.
4. After judgment in any court of record, such notice may be given, and the lien made effective against the judgment debtor, by entering the same in the judgment or combination docket, opposite the entry of the judgment.

Iowa Code § 602.10116. Defendant Rhinehart & Associates argues

that the debtor is owed money from Susan Attrill as a result of the divorce decree. The divorce decree provided that one-half of the proceeds from the sale of real estate would go to the debtor. However, Susan Attrill has a right to continue living in the house until her children both reach the age of eighteen.

This court does not believe that there is any money due the debtor in the hands of Susan Attrill. There is not a fund being held by Susan Attrill which could be used to satisfy the debtor's one-half interest in the real estate. There is no requirement that the property be sold prior to the time the children reach the age of eighteen. At that time or if Susan Attrill elects to sell the property earlier, the property will be sold and one-half of the proceeds will go to each the debtor and Susan Attrill. There is no indication or evidence that the money constituting the debtor's one-half interest in the real estate would ever come into the hands of Susan Attrill.

The plaintiff also argues that an attorney's lien does not represent a lien on real estate. This court agrees. An attorney's lien is only valid on money due a client from an adverse party. An attorney does not have a lien on real estate. See Keehn v. Keehn, 115 Iowa 467, 88 N.W. 957, 958 (1902).

Additionally, the court concludes that the attorney's lien could not attach to the real estate since it is the homestead of Susan Attrill.

Rhinehart & Associates does not have a security interest in the debtor's interest in real estate, either as a judgment lien or an attorney's lien. Therefore, the trustee's motion for summary judgment as to Count III of the complaint should be granted. The debtor's interest in the real estate is property of the estate pursuant to 11 U.S.C. § 541(a)(1). The trustee did not seek a summary judgment against defendant Susan Attrill. Therefore, a trial will be necessary in order to determine whether the trustee may sell the property and obtain one-half of the proceeds.

### ORDER

IT IS ORDERED that the plaintiff's motion for summary judgment against defendant Rhinehart & Associates as to Count III of the complaint is granted.

After trial on Count I, judgment shall enter that defendant Rhinehart & Associates does not have a valid security interest in the debtor's interest in the real estate.

IT IS FURTHER ORDERED that as to Counts II and IV, plaintiff's motion for summary judgment is denied.

Trial on Count I shall be set by the clerk.

SO ORDERED THIS 5th DAY OF JUNE, 1989.

William L. Edmonds  
Bankruptcy Judge