

In the United States Bankruptcy Court

for the Northern District of Iowa

TIMOTHY RODEMEYER and
PATRICIA RODEMEYER

Bankruptcy No. X88-00069M

Debtor(s).

Chapter 7

UNITED STATES OF AMERICA

Adversary No. X88-0226M

Plaintiff(s)

vs.

TIMOTHY D. RODEMEYER and
PATRICIA RODEMEYER; LARRY S.
EIDE Trustee; HAMPTON STATE
BANK; and AID ASSOCIATION FOR
LUTHERANS

Defendant(s)

SUPPLEMENTAL FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

The matter before the court is a complaint by United States of America on behalf of the Farmers Home Administration (FmHA) seeking a determination of its rights in a portion of the cash value of a certain life insurance policy. Based on motions for summary judgment, the court by order filed August 25, 1989, decided many factual and legal issues relating to this adversary proceeding.¹ There remains the issue of whether FmHA is entitled to the imposition of a constructive trust or equitable lien on the portion of the cash value of the life insurance policy held not to be exempt. On November 8, 1989, the parties filed a stipulation of facts; they have indicated by a pre-trial statement that the court may decide the matter without further trial based on the stipulation and on its previous rulings in this case. All parties have waived oral argument.

¹ Other factual findings necessary to a determination of this adversary proceeding were issued in Eide v. Rodemeyer (in re Rodemeyer), 99 B.R. 416 (Bankr. N.D. Iowa 1989).

The court now supplements its findings and conclusions as set out in its memorandum and order filed August 25, 1989.

SUPPLEMENTAL FINDINGS OF FACT

The following findings of fact are adopted from the stipulation of facts submitted by the parties to the court on November 8, 1989:

During the calendar year 1987, FmHA held a valid perfected security interest in the Debtors' farm products. Certain of those farm products were sold during the calendar year 1987 and with the consent of FmHA the proceeds were deposited in a bank account maintained by the Debtors solely in their names at Aredale State Bank. Cash in which FmHA had no security interest was also deposited in said account. On or about October 10, 1987, the balance in said bank account was in the amount of \$27,000.00. Except for interest income earned on this balance, no additional deposits were made to said account either from the proceeds of FmHA collateral or from other sources. On or about January 5, 1988, debtors withdrew from said bank account the sum of \$27,150.00 which was subsequently paid to Hobson, Cady & Drew Trust Account by check dated January 5, 1988, and paid by the drawing bank, Aredale State Bank, on January 6, 1988. No other monies of the debtors were deposited into the attorney trust account. Disbursements from the attorney trust account were used to fund the life insurance transaction and to make other payments on behalf of the Debtors prior to the filing of the Voluntary Petition herein on January 15, 1988. The Debtors did not receive or deposit in their bank account maintained at the Aredale State Bank or the attorney trust account any money from the sale of collateral pledged to FmHA during the time period commencing January 1, 1988, and ending January 15, 1988, inclusive.

The FmHA is making claim herein only to the \$20,525.80, which funds were ruled not exempt by Order of the Court on January 3, 1989.

DISCUSSION

FmHA seeks imposition of a constructive trust on a portion of the cash value of a life insurance policy which was purchased by Timothy Rodemeyer with wrongfully converted proceeds of FmHA collateral. The court has previously determined that on the date of bankruptcy FmHA did not have a perfected security interest in the cash value even to the extent of the converted proceeds. Based upon the foregoing stipulated facts, the court concludes that had the proceeds not been converted, FmHA would not have had a perfected security interest in them on the date of the filing. Had there been no conversion as of the filing date, FmHA's perfected security interest in the proceeds would have been "limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings. . . . Iowa Code § 554.9306(4)(d)(ii). The parties have stipulated that debtors did not receive any proceeds of FmHA's collateral within the ten days prior to the bankruptcy filing. Absent conversion, § 554.9306(4)(d)(ii) would have precluded FmHA from claiming a perfected interest in any proceeds in the bank account on the date of filing. To impose a constructive trust or equitable lien on the wrongfully converted proceeds, arguably, would place FmHA in a better position than it would have enjoyed absent the conversion. This is only one consideration, however, in determining whether an equitable lien should be imposed. As previously discussed, an equitable lien is an appropriate remedy to prevent injustice and particularly unjust enrichment. Tubbs v. United Central Bank, N.A., Des Moines, Iowa, ___ N.W.2d ___, 1990 Westlaw WL 5297 at page 24 (Iowa, Jan. 24, 1990). Timothy Rodemeyer, contrary to his agreement with FmHA, converted FmHA cash proceeds into life insurance. Generally, the Eighth Circuit Court cases dealing with situations such as this deal with them in the context of the constructive trust. The constructive trust's effect upon property of the estate is discussed in In re Flight Transp. Corp. Securities Litigation, 730 F.2d 1108, 1136 (8th Cir. 1984), cert. denied sub nom. Reavis & McGrath v. Antinore, 469 U.S. 1207, 105 S.Ct. 1169, 84 L.Ed.2d 320 (1985). There it is said that "[w]here, under state law, the debtor's fraud or other wrongful conduct gives rise to a constructive trust, so that

the debtor holds only bare legal title to the property, subject to a duty to reconvey it to the rightful owner, the estate will generally hold the property subject to the same restrictions." Id. at 1136.

The circuit has also said that "imposition of a constructive trust under state law upon a bankruptcy debtor's property generally confers on the true owner of the property an equitable interest in the property superior to the trustees." Vineyard v. McKenzie (Matter of Quality Holstein Leasing), 752 F.2d 1009, 1012 (5th Cir. 1985). The estate succeeds to only such title and rights in the property as the debtor had at the time the petition was filed." In re N.S. Garrott & Sons, 772 F.2d 462, 467 (8th Cir. 1985).

If under state law the trust attaches prior to the filing of the bankruptcy petition, the trust beneficiary would normally recover its equitable interest in the property in the bankruptcy proceedings. Matter of Quality Holstein Leasing, 752 F.2d 1009, 1014 (5th Cir. 1985). In its previous Memorandum filed August 25, 1989, the court indicated that several factors affected its decision in this case. These bear repeating. FmHA could have required segregation of its proceeds in a separate bank account and yet did not do so; this militates against the imposition of an equitable lien. Also, had there been no conversion, and had the money remained in the commingled account at the time of the filing of the bankruptcy, FmHA would have been unperfected as to all monies in the account. This latter factor, however, does not supply an answer to the problem. It merely illustrates the tension between Iowa Code § 554.9306(4) and the state law remedies of equitable liens or constructive trusts. The court has found no case law indicating that § 9306(4) displaces equitable principles involving constructive trusts or equitable liens. Iowa Code § 554.1103. General Motors Acceptance Corp. v. Jones (In re Czebotor), 5 B.R. 379, 381 (Bankr. E.D. Wash. 1980). Shelton v. Erwin, 472 F.2d 1118 (8th Cir. 1973) may hold otherwise but its holding deals only with equitable liens based on contract, not tort.

Several factors favor the imposition of an equitable remedy. First and foremost is the wrongdoing of the debtor. Second, as the court found in its previous decision, FmHA had demanded a return of the proceeds while they were still in the commingled account. The factual finding was as follows:

When it became apparent that no agreement with FLB would be reached, FmHA, by Dunn, requested a return of the funds to FmHA. Dunn advised Timothy Rodemeyer that (sic) on January 4, 1988 that FmHA would not release those funds for a payment to FLB while Rodemeyers' operating loan to FmHA was delinquent. Rodemeyer responded to Dunn that the money had already been released.

Eide v. Rodemeyer (In re Rodemeyer), 99 B.R. 416, 420 (Bankr. N.D. Iowa 1989). At the time of the demand, FmHA had a perfected security interest in the majority of the proceeds in the bank account. Furthermore, FmHA's remedy at law appears inadequate. If adequate, the equitable remedy would not lie. Berry Seed Co. v. Hutchings, 74 N.W.2d 233, 236, 247 Iowa 417 (1956). FmHA's obtaining a portion of its claim through a trustee's distribution of the cash value to all creditors would not be an adequate remedy at law.

While this is a close case and the result is not free from doubt, based on the facts before the court and the legal issues under consideration, this court believes it would be equitable to impose a lien against the insurance policy's cash value to the extent of the cash proceeds converted from FmHA.

The court's decision is supported by a recent ruling of the Court of Appeals for the Second Circuit. Sanyo Electric, Inc. v. Howard's Appliance Corp. (In re Howard's Appliance Corp.), 874 F.2d 88 (2nd Cir. 1989). This court would be reluctant to follow that ruling in this case absent intentional wrongdoing by Rodemeyer. In Sanyo Electric, Inc. v. Howard's Appliance Corp., id. a constructive

trust was imposed upon a chapter 11 debtor's inventory, absent wrongdoing by the debtor, because of the debtor's failure to disclose to a secured party the storage of inventory in a state not covered by the original security documents, which failure prevented the secured creditor from perfecting the creditor's security interest in the new location. Because of Rodemeyer's wrongdoing, the imposition of an equitable lien seems more appropriate. See In re Woodfield Furniture Clearance Center of Suffolk, Inc., 102 B.R. 327, 334 (Bankr. E.D. N.Y. 1989); Security State Bank of Tyndall, S.D. v. Cap (In re Van Winkle, 54 B.R. 466, 469 (Bankr. D. S.D. 1985).

FmHA's equitable lien would relate back to the date of debtor's wrongdoing. This would be no later than the date of the purchase of the life insurance which occurred between January 6, 1988 and January 15, 1988. It may also have been at the time the debtor distributed the FmHA proceeds to its attorney on January 6, 1988, and may have occurred as early as January 4, 1988, when Timothy Rodemeyer refused the FmHA demand to return the funds. Mumm v. Adametz (In re Adametz), 53 B.R. 299, 307 (Bankr. W.D. Wis. 1985).

In any event, the wrongdoing occurred prior to the filing of bankruptcy and it is at the time of the wrongdoing that the equitable lien should attach to the proceeds. The court adopts the date of the refusal to return the funds--January 4, 1988. Any interest of the bankruptcy estate in the life insurance policy, to the extent of converted proceeds, was one of legal title subject to the equitable interest in FmHA.

Furthermore, the court concludes that the FmHA interest in the insurance policy to the extent of the converted proceeds is superior to any interest of Rodemeyers or Hampton State Bank. Hampton State Bank subordinated its interest in the converted collateral to the FmHA, and its only arguments in the case have been that the trustee's interest is prior and superior to that of FmHA's.

CONCLUSIONS OF LAW

At the time of the filing of the bankruptcy case, FmHA had an equitable lien against debtors' AAL insurance policy to the extent of \$20,525.80. This lien interest was prior and superior to any interest of the estate created by the filing of the petition in bankruptcy, and was superior to any interest in such proceeds claimed by Hampton State Bank or the Rodemeyers.

ORDER

IT IS ORDERED that judgment shall enter that the United States of America, on behalf of the Farmers Home Administration, had on the date of the creation of this bankruptcy estate, an equitable lien on the estate's interest in the debtor's life insurance policy with Aid Association for Lutherans and that the equitable interest was superior to the interest of debtors and Hampton State Bank.

SO ORDERED ON THIS 9th DAY OF FEBRUARY, 1990.

William L. Edmonds
Chief Bankruptcy Judge