

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

TERRY COLE and
ROXANNA COLE

Debtor(s).

Bankruptcy No. X90-00895S

Chapter 7

ORDER RE TRUSTEE'S OBJECTION TO EXEMPTION

The matter before the court is the trustee's objection to debtor's claim of exemption in a "Pension Plan" with his employer. Trial was held on August 28, 1990 in Sioux City, Iowa. The court now issues its ruling including findings of fact and conclusions of law. This is a core proceeding under 28 U.S.C. § 157(b) (2) (B).

FINDINGS OF FACT

Terry Cole (COLE) filed his chapter 7 case on May 16, 1990. At that time he had an interest in an investment plan with his employer, Cargill, Inc. (CARGILL). He has claimed it as exempt under Iowa Code § 627.6(8) (e) at an estimated value of \$1,887.16. Trustee has objected to the claim of exemption on two grounds: (1) that it is not a pension or similar plan under Iowa law and (2) that even if it is, the plan is not reasonably necessary for the support of the debtor and his dependents.

Cole has been employed by Cargill since 1977. He is a laborer in its soybean plant in Sioux City. He is married and has two stepchildren, ages 8 and 5. He has no employment outside of the Cargill job.

In 1989, Cole's income, including overtime pay, was approximately \$25,000.00. In January, 1990, he received a 25 cent per hour increase. There was no evidence as to the hours worked, but the court presumes it to be a 40-hour per week job. Cole expects to earn approximately the same amount in 1990, based on his assumption that overtime pay will be about the same.

Roxanna Cole is presently unemployed and is receiving unemployment compensation from the state. Also, she receives child support payments from her former husband.

Cargill deducts 3% from Cole's weekly gross pay for investment in the "Cargill Investment Plan." This deduction amounts to about \$11.00 per week. A description of the plan was introduced into evidence as Exhibit B. Under the plan, Cole has a deferred income account. Exhibit C. In January, 1989, Cargill instituted a program whereby it would make matching contributions to employee plans. The program provides for the company to pay 25 cents into the employee's account for each dollar invested by the employee. This match would apply up to the first 4% of the employee's earnings invested. This contribution is discretionary; contributions are made at the end of each fiscal year which ends May 31. Exhibit D. As of March 31, 1990, no contributions had been made by the corporation. Exhibit C, "Investment Plan Statement."

On March 31, 1990, Cole had \$4,069.56 in his deferred income account. However, in September, 1989, Cole borrowed \$2,350.00 from Cargill as plan administrator. Exhibit A. The loan was secured by Cole's interest in the investment plan. Exhibit A, "Security Agreement." Payments on the loan, in the amount of \$49.94, are deducted from Cole's first payroll check each month. On March 31, 1990, the balance due under Cole's loan from the plan was \$2,195.67. Cole had an

equity interest in the plan as of March 31, 1990 of \$1,873.89.

Twenty-five per cent of Cole's account is in Fund 1 entitled "Vanguard Primecap." Seventy-five per cent of his investment is in Fund 4 entitled "Guaranteed Income." It appears from the "Investment Plan Statement," Exhibit C, that the loan has the effect of reducing Cole's investments in the funds, but that the loan balance is still part of the "deferred income account."

Cole's monthly take-home pay is approximately \$1,100.00. There is no evidence as to the unemployment compensation paid monthly to Mrs. Cole nor as to how long she will receive it. She receives approximately \$555.00 per month for child support. The couple's total monthly expenses are presently approximately \$2,303.00. Cole is 34 years of age and in apparent good health. Since the bankruptcy, the couple has incurred medical bills for Mrs. Cole's surgery. Additional medical bills have been incurred for outpatient treatment of their daughter. Mrs. Cole has established a residence separate from her husband in order to provide a permanent school district residence for the children. Cole is remaining in the house until the foreclosure of the mortgage. It is expected that the home will be lost to foreclosure. The couple's only assets are household goods and miscellaneous personal property having a total value of \$1,750.00, wearing apparel and other personal property having a value of approximately \$500.00, a 1985 Dodge pickup truck valued at \$2,500.00 and a 1980 Chevy Citation valued at \$500.00. The pickup truck is security for a loan exceeding its value.

DISCUSSION

Iowa Code § 627.6(8)(e) exempts from execution "a payment under a pension, annuity, or similar plan or a contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." Cole claims the investment plan exempt under that Code section. The trustee argues that because Cole has unrestricted access to his contributions in the plan, they are not exempt.

Under certain circumstances, contracts similar to pension and annuities may be exempt under Iowa Code § 627.6(8) (e). In the Matter of Pettit, 55 B.R. 394, 398 (Bankr. S.D. Iowa 1985), aff'd. 57 B.R. 362 (S.D. Iowa 1985). The plan qualities essential to the exemption are:

A formal plan or fund established for the benefit of the debtor, usually as part of a relationship with an employer or employee organization.

The benefits of the plan or fund are of a nature "akin to future earnings" of the debtor and intended as retirement income or at least income deferred during the debtor's employment to provide future support for the debtor.

Access and control of the plan or fund in the hands of someone other than the debtor with strong limitations on withdrawal or distribution expressed in the formal plan or fund for the purpose of providing retirement or deferred income.

That payment under the plan or contract is to be on account of illness, disability, death, age, or length of service.

The burden is on the trustee to prove that Cole's interest in the plan is not exempt under Iowa law.

In Iowa, exemption statutes receive liberal construction. "[A]ny doubts as to a claimed exemption should be construed in favor of those claiming the benefits provided." Johnson v. Williams, 235 Iowa 688, 17 N.W.2d 405, 406 (1945).

Exhibit B was offered into evidence as the investment plan. It is not the plan. The court, having read it, believes that it is nothing more than a company advertisement of the available plan. It generally describes the plan, investment funds within the plan and sets out "Some Points to Remember" when the employee makes his or her decision on whether to invest.

The court, therefore, does not have the actual plan on which to base its decision . Without it, the court does not see how it can determine that the plan does not meet the characteristics necessary for exemption. For example, in order for such a plan to qualify as exempt, there must be "strong limitations on withdrawal or distribution expressed in the formal plan." In the Matter of Pettit, 55 B.R. at 398. The trustee points out that in Exhibit D, Cargill states that "Withdrawals while still an active employee are limited to employee contributions only." However, that merely states that the employee cannot withdraw the employer contributions while still employed by Cargill. There are no matching funds involved in this case, and the foregoing statement from Exhibit D does not specify what limitations, if any, discourage the debtor from the withdrawal of his own contributions.

Nor does the court place great weight on Cole's testimony that he thinks he can get his contributions out of the plan. The court cannot guess what the formal plan says. Absent the formal plan, the trustee cannot meet his burden of proof that the investment plan is not exempt.

CONCLUSIONS OF LAW

Terry Cole's interest in the "Cargill Investment Plan" is exempt under Iowa Code § 627.6(8)(e).

ORDER

The trustee's objection to debtor's claim of exemption in a Cargill Investment Plan is overruled.

SO ORDERED ON THIS 5th DAY OF SEPTEMBER, 1990.

William L. Edmonds
Chief Bankruptcy Judge

1. A Cargill Investment Plan document has been submitted to the court in another case. It is not evidence in this case.