

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

GREGORY W. LEONARD and
PENNY RENEE LEONARD

Debtor(s).

Bankruptcy No. X90-00877S

Chapter 7

Contested No. 2107

ORDER RE: OBJECTION TO EXEMPTIONS and MOTION TO AVOID LIEN

Two matters are before the court: (1) the objection of the United States to debtor's claim of exemption in farm machinery and equipment; and (2) the debtor's motion to avoid the lien of the United States in that equipment. Hearing on these contested matter proceedings was held on September 18, 1990 in Sioux City, Iowa. The court now issues its findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B) .

Gregory W. Leonard (DEBTOR or LEONARD) filed his joint chapter 7 petition with his wife on May 14, 1990. He claimed as exempt farm machinery and equipment pursuant to Iowa Code § 627.6(11)(A):

JD 4020 tractor \$5,500.00

JD 4 row cultivator 300.00

IH 14 ft. disc 100.00

JD 46A Loader 150.00

Brady 12 ft. chisel plow 450.00

Noble 4 row rotary hoe 25.00

Champion 120 gal. sprayer 50.00

Brady 3 pt. springtooth 35.00 1

Debtor is a 35-year old man with a wife and four children. He describes himself as a "custom farmer." For the past three years, he has done farming work for his father on 560 acres which

1 Three hog feeders were also claimed as exempt, but Leonard withdrew the claim at the hearing.

his father rents and owns. The debtor's father, George Leonard, is approximately 66 years old. He pays debtor \$5.75 per hour for his work on the farms. He requires the debtor to provide his own machinery and equipment but as part of their oral agreement, the father pays for repairs to the equipment and for fuel.

In addition to the \$5.75 per hour, the father provides debtor with a place to live. Debtor believes that even if he were not required to provide his own machinery and equipment, his father would still provide him with housing. However, debtor does not believe that his father would pay him \$5.75 per hour for farm labor if debtor did not provide his own equipment. Often when debtor is providing farm labor and equipment, his father is also working on the farm using his own equipment.

Debtor has done farm work for his father for the past three crop years. For 1987 and 1988, George Leonard provided debtor with an IRS W-2 form for wages paid. However, in 1989, on the advice of the debtor's uncle who is an attorney, George Leonard provided the debtor with an IRS form 1099 stating the debtor's compensation.

During the past three years, debtor also has earned money from seed sales and a taxidermy business. During 1987, debtor earned income from all three sources. He received \$2,676.80 for the work on his father's farms, had a net loss of \$2,236.00 in the taxidermy business, and had a net profit of \$5,244.00 in seed sales.

In 1988, he earned \$2,465.42 for his farm labors. He had a net loss of \$1,496.00 in taxidermy, and he had a profit of \$1,803.00 from seed sales.

In 1989, he earned \$1,590.00 for work on his father's farm. He had a net loss of \$1,582.00 in his taxidermy business, and a net profit of \$6,460.00 from the sale of seeds. He testifies, however, that the profit on the sale of seeds, as shown on his tax return, was inflated because of his failure to pay his supplier, Northrup King, for the seeds.

Prior to 1985 or 1986, debtor had his own farming operation which included both crops and livestock. He ceased his farming operation in 1985 or 1986 because he could not obtain renewed financing from Farmers Home Administration. Debtor's farming activities for his father include discing, harvesting, cultivating and planting. Debtor considers himself a custom farmer although he has not listed it as an occupation on his tax returns for the past three years. In his work on his father's farms, he uses all the equipment claimed as exempt except the Noble 4 row rotary hoe and the Brady 3 pt. springtooth. He has not used these items for the past two years. He has not used the rotary hoe because its use is to eliminate weeds and for the past two years, weeds have been eliminated by other means. He believes he will need it in the future. As to the springtooth, he expects he will have no need for it in the future.

DISCUSSION

Debtor claims the farm machinery and equipment as exempt under Iowa Code § 627.6(11)(A) which permits a debtor "engaged in farming" to exempt "implements and equipment reasonably related to a normal farming operation" to the extent of \$10,000.00 in value. USA/FmHA objects to the debtor's claim of exemption arguing that he is not engaged in farming within the meaning of the Iowa Code. Debtor has also filed a motion to avoid the FmHA's lien in the machinery and equipment. The parties agreed at the outset of the hearing that if the property is exempt, then the lien of FmHA in the exempt property should be avoided. Conversely, if the property is not exempt, then the lien may not be avoided.

A custom farmer is "engaged in farming" for the purposes of Iowa exemption law. See Matter of Myers, 56 B.R. 423, 427 (Bankr. S.D. Iowa 1985). One may be a custom farmer for the purposes of Iowa exemption law even though engaged in other occupations. Matter of Smith, 78 B.R. 922, 924 (Bankr. S.D. Iowa 1987). It has been held that one may be considered a farmer for exemption purposes if one earns "any substantial portion of . . . income through farming activities." Matter of Rasmussen, 54 B.R. 965, 968 (Bankr. W.D. Mo. 1985).

The question before the court is whether Leonard is a custom farmer entitled to claim the machinery and equipment as exempt. There is no question that Leonard is engaged in farming activities for his father. Furthermore, he provides the equipment to accomplish the required tasks. He is paid \$5.75 an hour and a place to live. As stated, his father pays for the repairs on the debtor's equipment and supplies the fuel. FmHA contends that this is not a normal custom farming relationship. However, there is insufficient evidence that the agreement falls outside the range of normalcy for custom farming agreements. The key ingredient in the determination here is that the debtor is required to provide his own equipment in performing the farming operations for his father. If he were merely paid for his labor and did not use his own equipment, he would be an unlikely candidate to claim such exemptions. See Matter of Clausen, 81 B.R. 519 (Bankr. S.D. Iowa 1988). Debtor's income from the farm work provides a substantial portion of his total income. In

1987, farm income was 26% of

total income; in 1988, it was 89%; and in 1989, it was 25%.(fn.2) This is without consideration of the value of the housing.

Debtor is a "custom farmer" and for purposes of Iowa exemption law, is "engaged in farming." There is no dispute that the equipment claimed as exempt is farm equipment. FmHA argues, however, that the debtor's farm equipment is not used in the custom farming operation. In order to be exempt, the machinery and implements must be proper ones in the reasonable conduct of the debtor's trade. Matter of Eby, 76 B.R. 140, 141 (S.D. Iowa 1987). Debtor uses all but two pieces of equipment in working

for his father--the Noble 4 row rotary hoe and the Brady 3 pt. springtooth. The latter are, therefore, not tools which the debtor uses in his farming activities.

CONCLUSIONS OF LAW

Gregory Leonard is engaged in farming within the meaning of Iowa Code § 627.6(11)(A). The following are tools and implements of his trade as a custom farmer and are exempt under Iowa law: JD 4020 tractor, JD 4 row cultivator, IH 14 ft. disc, JD 46A Loader, Brady 12 ft. chisel plow, Champion 120 gal. sprayer. The Noble 4 row rotary hoe and the Brady 3 pt. springtooth are not tools of the debtor's trade and are not exempt under Iowa law.

ORDER

IT IS ORDERED that FmHA's objection to debtors' claim of exemption is sustained in part and overruled in part.

(fn.2) The percentages were arrived at by the using figures shown on page 3 of this decision.

IT IS ORDERED that the following items are exempt to Gregory Leonard under Iowa law: JD 4020 tractor, JD 4 row cultivator, IH

14 ft. disc, JD 46A Loader, Brady 12 ft. chisel plow, Champion 120 gal. sprayer.

IT IS ORDERED that the lien of USA/FmHA in the foregoing property is avoided.

IT IS FURTHER ORDERED that the debtor's Noble 4 row rotary hoe and Brady 3 pt. springtooth are not exempt under Iowa law, and debtors' motion to avoid FmHA's lien as to them is denied.

SO ORDERED ON THIS 21st DAY OF SEPTEMBER, 1990.

William L. Edmonds
Chief Bankruptcy Judge