

In the United States Bankruptcy Court

for the Northern District of Iowa

GARY L. ANDERSON and DIANNA C. ANDERSON
Debtors.

Bankruptcy No. X91-00773F
Chapter 7

MEMORANDUM AND ORDER RE: OBJECTION TO EXEMPTIONS and MOTION TO AVOID LIEN

Farmers Home Administration (FmHA) objects to debtors' claims of exemption in farm equipment. FmHA also resists debtors' motion seeking avoidance of FmHA's lien in the same property. Trial was held on July 25, 1991 in Fort Dodge. The court now issues its ruling. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B) and (0).

Gary and Dianna Anderson filed their joint voluntary petition on April 24, 1991. The couple has scheduled as assets of the estate their joint interests in \$7,000.00 worth of farm machinery, equipment and tools. They have claimed their interests in this property as exempt under Iowa Code 627.6(11)(a). Debtors have also moved to avoid FmHA's non-purchase money, nonpossessory lien on the property.

FmHA objects to the claims of exemption and resists the motion to avoid its lien. FmHA contends that because debtors are no longer engaged in farming the property may not be claimed as exempt nor may it be considered as tools of debtors' trade for purposes of lien avoidance.

Gary Anderson began farming in 1974. He and Dianna Anderson own 48 acres in Hamilton County. The property, which is mortgaged to FmHA, includes a four-acre building site, 18 acres of pasture and riverside land, and approximately 26 acres of crop land. From at least 1984 through 1986 Anderson farmed his acreage and 240 acres of rented ground. In addition to crop farming, Anderson raised livestock.

In early 1987, FmHA, his lender, notified him that they would provide no further operating loans. Without financing, Anderson was unable to farm in 1987. He leased his 25 crop acres to another farmer and did custom work for his father. He has continued to lease out the 25 acres each year since. He has not done any farming since the 1987 crop year. Both he and his wife have obtained off-farm jobs which employ them full time. Their gross wages from off-farm employment totaled \$42,506.00 in 1990. Their entire net income is used for living expenses.

Anderson has not sought to engage in farming since 1987 because he was told by FmHA, and he believed, that any crop he planted would be subject to FmHA's security interest. Anderson sincerely hopes to farm in the future. He has made no arrangements to lease farm ground nor to obtain financing for a farm operation. No evidence was presented as to any of Dianna Anderson's past farming activities nor as to her desire to farm in the future.

Under Iowa law, a debtor who is engaged in farming may claim as exempt "[i]mplements and equipment reasonably related to a normal farming operation." Iowa Code 627.6(11)(a). A debtor in bankruptcy, entitled to the foregoing exemption, may avoid a non-possessory, non-purchase money lien against machinery and equipment which are the tools of his or her trade. 11 U.S.C. § 522(f)(2)(B). This court considers the same factors in determining whether a debtor is engaged in farming under Iowa law as it would in determining the nature of a trade for lien avoidance purposes under federal law. *In re Indvik*, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990).

"To be a farmer, for exemption purposes, a person does not need to be farming on the day of a levy. A temporary cessation of farming activity does not defeat the claim of exemption if the debtor intends to resume farming." *In re Indvik* at 1005, citing *Pease v. Price*, 101 Iowa 57, 69 N.W. 1120 (1897) and *Hickman v. Cruise*, 72 Iowa 528, 34 N.W.

316, 317 (1887). To determine whether a debtor is engaged in a farm trade for lien avoidance purposes, the court will examine the debtor's past farming activity and the sincerity of his or her intention to continue farming. In re Indvik at 1005, citing PCA of St. Cloud v. LaFond (In re LaFond), 791 F.2d 623, 626 (8th Cir. 1986).

There is no question that Gary Anderson has in the past been a farmer. The court also believes that he has a sincere intention to continue farming if possible. However, because of the lengthy period since Anderson's last farming activity, the debtor must make a strong showing that his intent to return his former occupation is reasonable. In re Nie, Bankr. No. 87-01248W, slip op. at 8 (Bankr. N.D. Iowa, Jan. 4, 1988).

Such a showing is lacking in this case. Gary Anderson has not farmed since the 1987 crop year when he performed custom farming services for his father. He last farmed for himself in 1986. He has not used his equipment since 1987, has had no livestock since that year. Since 1986, he has rented his farm out to other farm operators. He presently does not have the finances to engage in farming; he has no concrete plan to commence farming even if the exemptions were granted and lien avoidance permitted. His monthly income does not provide sufficient money in excess of living expenses to permit him to finance a farming operation. He has made no arrangements to rent ground or do work for others. The court believes that Anderson is sincere in his desire to farm, but finds that desire is not reasonable considering his circumstances. There is no evidence that Dianna Anderson has farmed in the past, is farming, or plans to farm in the future. The court, therefore, finds that Andersons are no longer farming for the purposes of claiming exemptions in farm machinery and equipment. Furthermore, Andersons are not engaged in a farm trade so as to allow them to utilize 11 U.S.C. 522(f) to avoid FmHA's lien in farm equipment.

ORDER

IT IS ORDERED that FmHA's objections to debtors' claims of exemption in farm machinery and equipment is sustained. Debtors' motion to avoid FmHA's lien in farm machinery and equipment is denied. Judgment shall enter accordingly.

SO ORDERED ON THIS 29th DAY OF JULY, 1991.

William L. Edmonds
Bankruptcy Judge