

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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GLEN H. HUEBNER  
Debtor.

Bankruptcy No. X90-01961M  
Chapter 7

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### ORDER RE: MOTION TO AMEND OBJECTION TO EXEMPTION

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The matter before the court is a motion by Farmers State Bank of Grafton seeking leave of court to amend its objection to debtor's claim of exemption in his homestead. Hearing on the motion was held June 9, 1992, in Mason City.

Glen H. Huebner (DEBTOR or HUEBNER) filed his chapter 11 case on November 9, 1990. The case was voluntarily converted to chapter 7 on November 30, 1990. In schedules filed after the conversion, Huebner claimed certain of his property as exempt under Iowa law including a 40-acre homestead located in Worth County, Iowa. Farmers State Bank of Grafton (BANK) filed a timely objection which in part contended that although Huebner was entitled to a homestead exemption in an undivided one-third of the 40-acre parcel, he was not entitled to claim as exempt the other undivided two-thirds because it was owned by others. Bank also filed an adversary proceeding (X91-0210M) against Huebner and others which seeks a determination that Bank has a valid lien against Huebner's alleged interest in a separate 120-acre parcel.

The meeting of creditors was held January 14, 1991. The time for objecting to Huebner's claims of exemption expired February 13, 1991. On April 3, 1992, Bank filed an "Amendment to Objection to Exemption." The essence of the amendment was to delete or withdraw the portion of the original objection which had conceded Huebner's right to a homestead exemption in an undivided one-third of the 40 acres. Bank also filed a motion to amend its adversary complaint to establish its lien against Huebner's undivided one-third interest in the 40-acre homestead.

The court treated the "Amendment to Objection to Exemption" as a motion to amend. Hearing on the motion was held June 9, 1992. A separate hearing on the motion to amend the complaint was held May 5, 1992. Neither Huebner nor his counsel resisted the attempt to amend the objection. Neither attended the hearing. Huebner's counsel did file a resistance to the motion to amend the adversary complaint contending that Bank, by attacking the homestead claim to the undivided one-third interest, was altering its theory of the case to the prejudice of the debtor.

### DISCUSSION

The critical question regarding the amendment to the objection to exemption in the homestead is whether the amendment relates back to the original objection. If it does not, it is not timely under Fed.R.Bankr.P. 4003(b). Timeliness is essential to such objections. Taylor v. Freeland & Kronz, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992). An objection to exemptions being a contested matter proceeding, the application of the Rules of Procedure is governed by Fed.R.Bankr.P. 9014. The latter does not specifically make Rule 7015 applicable in contested matters. The Rule does permit the court to direct that Rule 7015 shall apply. The court need enter an order so directing and the clerk must give notice of the order to the parties "within such time as is necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order." Fed.R.Bankr.P. 9014.

Fed.R.Bankr.P. 7015 incorporates Fed.R.Civ.P. 15. Subsection (c) of the Rule permits relation back of the amendment to the date of the original filing "[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. . . ." Fed.R.Civ.P. 15(c). The court concludes that Fed.R.Bankr.P. 7015, as it incorporates 15(c), should be applied in this case. However,

the court also considers that it is premature to determine whether the amendment should relate back. The issue of relation back was inadequately briefed and argued in the hearing on the motion. Further, the court give no advance notice to the parties that the relation back issue would be decided as a predicate to the determination on the motion to amend. It has been held that "[a] proffered amendment to a complaint should not be denied on the ground that it introduces a new cause of action which, but for Rule 15(c), F.R.Civ.P., would be barred by limitations. The proper practice is to allow an amendment to be made, if otherwise proper, and leave the question of relation back for consideration after defendant pleads the defense of limitations." Ross v. Philip Morris Co., 164 F.Supp. 683, 686 (W.D. Mo. 1958). This procedure should be applied in this case.

Leave to amend pleadings should be given when justice requires. The parties had ample advance warning that the court was treating Bank's amendment as a motion to amend. Failure of the clerk to specifically inform the parties of the application of Rule 7015(a) was not prejudicial to any party. The matter has not been set for trial. The debtor has asserted no prejudice from which he cannot be protected by his raising of the statute of limitations of Fed.R.Bankr.P. 4003. See Adams v. Dorsie's Steak House, Inc. (In re Dorsie's Steak House, Inc.), 130 B.R. 363, 365 (D. Mass. 1991). Accordingly,

IT IS ORDERED that the motion of the Farmers State Bank of Grafton to amend its objection to the debtor's claim of exemption is granted.

IT IS FURTHER ORDERED that Fed.R.Bankr.P. 7015 shall apply in this contested matter proceeding.

IT IS FURTHER ORDERED that this ruling is without prejudice to debtor's raising a statute of limitations defense under Fed.R.Bankr.P. 4003(b). The issues raised by the objection and any defenses will be considered by the court at trial.

SO ORDERED ON THIS 2nd DAY OF JULY, 1992.

William L. Edmonds  
Bankruptcy Judge