

In the United States Bankruptcy Court

for the Northern District of Iowa

DEANNA M. TOWNSEND
Debtor(s).

Bankruptcy No. 92-12258LC
Chapter 7
Contested No. 3385

ORDER RE: DEBTOR'S MOTION TO AVOID LIEN

Debtor moves to avoid a creditor's lien against exempt property. The creditor, Farmers Savings Bank, resists the motion. Hearing was held March 9, 1993, in Cedar Rapids.

Deanna M. Townsend (TOWNSEND) filed her chapter 7 petition on December 7, 1992. In her schedules of personalty, she listed her one-half interest in a line of farm machinery and equipment. She valued her interest at \$22,800.00. She claimed some of the equipment as exempt under Iowa Code § 627.6(11) (a). No one objected to the claim of exemption. The exempt items are these:

<u>Equipment</u>	<u>Make & Model</u>	<u>Value</u>
Beanhead	'75 IH 810	\$ 200.00
Cornhead	'75 IH 4 Row 044	500.00
Tractor	1962 460 IH	800.00
Tractor	H IHC	400.00
Tractor	C IHC	400.00
Disk	'77 MF 23 ft.	1,500.00
Harrow & Cart	IH 4 Section	150.00
Corn Planter	IH 400 8 Row	300.00
Cultivator	IH 453 4 Row	200.00
Cultivator	IH 868 8 Row	250.00
Plow	IH 6 Bottom	150.00
Wagon	Tractor Supply 160 BUP	200.00
Wagon	Tractor Supply 160 BUP	200.00
Wagon	Stand Hoist 140 BUF	200.00
Corn Dryer	MC - Old	<u>500.00</u>
Total		<u>\$5,950.00</u>

The equipment is encumbered by a non-purchase money lien held by Farmers Savings Bank, Kalona, Iowa (BANK). On January 21, 1993, Townsend moved to avoid the Bank's lien in the exempt items.

Bank resisted, claiming that Townsend was not engaged in a farming trade. At the hearing, Bank contended also that because of her pending divorce proceeding, ownership of the items was also at issue.

Townsend lives on an acreage near North English. She and her husband are in the process of dissolving their 16-year marriage. The couple has farmed since they married. The farming operation has usually been limited to row crops grown on rented land. The scope of the operation has more recently ranged from a few hundred to 800 acres. Townsend has always been involved in the farm work, although the intensity of her involvement has varied inversely with her responsibilities as a mother. Her activities have included disking, harrowing, seeding, and moving equipment from farm to farm. She did such work in 1992.

In addition to her farm work, Townsend has been self-employed doing housecleaning in Iowa City. She cleans others' homes for about 15 hours per week. She also attends Kirkwood Community College in pursuit of a liberal arts degree. She has been attending college and working in Iowa city since at least 1991 and intends to pursue these activities in 1993. She intends to lease her interest in the farm equipment to her husband for 1993. There has been no decision by the state court as to the award of the acreage or the equipment as part of any property division. If she is awarded the equipment, she intends to lease it to Mr. Townsend. However, she does not intend to farm with him. Although she does not plan to be a full-time farmer, she does not eliminate the possibility of farming with someone else in the future. The acreage where she lives is in the conservation reserve program. If the acreage must be re-seeded under the program, Townsend would need a tractor, mower, seeder and disk.

Section 522(f) (2) (B) permits a debtor to avoid a non-purchase money lien in exempt tools or implements of the debtor's trade. Bank resists the debtor's motion to avoid its lien on two grounds. First, Bank says that the ownership of the property is called into question by the pending dissolution action. This contention is without merit. Bankruptcy exemptions are determined as of the petition date. On that date, Townsend was an owner of the equipment. She claimed it exempt without objection. Bank is precluded from now raising ownership as an issue. In re Indvik, 118 B.R. 993, 1004 (Bankr. N.D. Iowa 1990).

Bank's second contention is that Townsend has failed to prove that the items of farm equipment are tools of her trade, as she has no plans to farm in the future but only plans to lease her equipment to others. The court agrees that Townsend has no concrete plan to farm in the future. The lack of any foreseeable plan is inimical to her effort to avoid the bank's lien. Section 522(f) (2) (B) "allows debtors 'to make a fresh start after bankruptcy by the use of tools or implements necessary to enable him to pursue and make a living at his trade.'" Production Credit Association of St. Cloud v. LaFond (In re LaFond), 791 F.2d 623, 627 (8th Cir. 1986) citing In re Duchesne, 21 B.R. 390, 391 (N.D.N.Y. 1982). The only activity in which debtor expects to engage is the mowing and potential re-seeding of less than 40 acres of land enrolled in the Conservation Reserve Program. There is no evidence as to how much income the C.R.P. provides in relation to Townsend's cleaning business. It is doubtful that the amount of time spent on caring for the C.R.P. ground is significant in comparison to the time spent by Townsend in her cleaning business or in attending school. It appears to the court that the level of activity necessary to fulfill the requirements of the C.R.P. contract, at least in this case, is not significant enough to consider that Townsend is engaged in the occupation of farming. The court need not consider whether the care of C.R.P. ground is farming activity.

In summary, the debtor's lack of plans to farm in the future and the level of activity necessary to care for the acreage are considerations which lead the court to the conclusion that the debtor is not engaged

in the farming trade. The machinery and equipment are, therefore, not tools of her trade, and she may not avoid the Bank's lien under 11 U.S.C. § 522(f) (2) (B).

ORDER

IT IS ORDERED that debtor's lien avoidance motion is denied.

SO ORDERED ON THIS 29th DAY OF MARCH, 1993.

William L. Edmonds
Chief Bankruptcy Judge