In the United States Bankruptcy Court

for the Northern District of Iowa

LOWELL ROBERT SEGERSTROM and KERRI DAWN SEGERSTROM	Bankruptcy No. 92-41788XM
Debtors.	Chapter 7

ORDER RE: OBJECTION TO CLAIMS OF EXEMPTION

The United States of America on behalf of the Farmers Home Administration (FmHA) objects to certain claims of exemption of the debtors. Hearing on the matter was conducted on May 19, 1993 in Fort Dodge and on October 20, 1993 in Mason City. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(B).

FINDINGS

Lowell Segerstrom, age 32, has farmed for most of his adult life. In early 1982, he entered into a written partnership agreement with his father, Robert Segerstrom, and his brother-in-law, Paul Gremillion (Exhibits A and 1). [(1)] The name of the partnership was Pilot View Farms. Its purpose was to engage in the business of farming. There is no specific mention in the agreement as to the transfer of any machinery and equipment to the partnership.

On January 31, 1982, the partners each signed a Rental and Lease Agreement which attempted to set out the ownership interests of the individuals and the partnership in assets related to farming. The agreement recites that the individuals had been engaged in farming and had acquired a full line of farm equipment, a listing of which was attached. The agreement went on to state:

1. The owners will continue to own each of their individual lines of farm equipment until each item is depreciated.

2. The partnership will purchase additional equipment with partnership funds. A partner may also purchase equipment privately with the consent of the other two partners.

* * *

5. The above agreements will be in effect after finalizing of property transfers between partners.

(Exhibit B.)

The property transfers referred to were the subject of another agreement among Robert, Lowell and Paul. Lowell and Paul each had agreed to assume one-third of Robert's debt to the First State Bank, Hanlontown, Iowa, in exchange for ownership in part of the machinery. From the machinery lists which are part of Exhibit B, it appears that Lowell and Paul acquired from Robert ownership interests in $41,388.00 worth of machinery. It also appears that they together owned equal interests in six items not acquired from Robert, those items having a total estimated value of $27,576.00.

Sometime, at least by late 1983, the bank which was financing the partnership's farming operation stated its desire to conclude the lending relationship. By early 1984, because of Robert's ill health, Muriel Segerstrom, who was Robert's wife and Lowell's mother, had taken Robert's position in the partnership. Sometime early in 1984, the partnership began seeking an FmHA loan. In seeking the FmHA loan, the partnership, Lowell, and Robert and Muriel Segerstrom filed applications for FmHA services (Exhibits 42, 43, and 44). The individual applications were required by FmHA even

though the loan was sought by the partnership. Lowell acquired his application form from his mother; he filled it out and returned it to her. It was submitted to the FmHA. Each application form contains a financial statement. Robert and Muriel's statement, which was dated January 1, 1984, showed only an auto valued at $4,500.00 under the section labeled "machinery and equipment." Lowell's showed an auto valued at $2,500.00. Under "other farm machinery", it was filled out to show "1/3 int Pilot View $82,726.00." The partnership's application for services was dated February 27, 1984, and was signed by Lowell, Paul and Muriel. Under the "machinery and equipment" portion of the financial statement, "other farm machinery" was given a value of $115,630.00.

Although the farm machinery and equipment valued in the partnership application was not itemized, it was the practice of FmHA to obtain a separate listing of the machinery. According to Winnebago County FmHA supervisor Dana Schulke, who processed the loan, such a listing, entitled "Appraisal of Chattel Property", was received from the partnership (Exhibit 25). Although there may be some dispute as to how and when FmHA acquired the document, the court finds to be credible Schulke's testimony that he received it from the partnership as part of the loan application process. The totaling of values is in Schulke's handwriting. It shows a total estimated value of machinery of $115,630.00. This total corresponds to the estimate of value of farm machinery contained in the Application for FmHA Services submitted to FmHA by the partners in late February, 1984 (Exhibit 44).

FmHA arranged a meeting with the partners for March 30, 1984, to discuss the partnership's eligibility for an FmHA loan. The meeting was canceled because of the death of Gremillion's wife who was Robert and Muriel's daughter. The meeting was not rescheduled. Nonetheless, the FmHA county committee, by two of its members, determined that the partnership was eligible for an FmHA operating loan. The partnership was notified of the favorable eligibility determination by letter dated March 21, 1984 (Exhibit 48). It remained for the county supervisor to determine if a loan would be made.

Robert Segerstrom executed a formal assignment of his partnership interest to Muriel on April 18, 1984. On April 25, 1984, Schulke wrote to Robert notifying him that the county supervisor planned a visit to the farm "to inspect the chattel property of Pilot View Farms." (Exhibit 49).

The FmHA granted the loan application and agreed to loan the partnership $160,000.00. A note dated June 18, 1984 was executed by the partners. Despite Robert's withdrawal, he signed the note as a partner along with Muriel, Lowell and Paul. (Exhibit 3). The four also signed, for the partnership, a Security Agreement dated June 18, 1984; it granted the FmHA a security interest in, among other things, all farm and other equipment. The agreement contained an itemized list of 74 items or groups of items of machinery and equipment.

In January, 1985, Paul Gremillion withdrew from the partnership (Exhibit D). On August 30, 1985, Lowell married Kerri.

Sometime during or after December, 1984, the partnership provided to FmHA a partnership Balance Sheet as of December, 1984 (Exhibit 2). The document is in Robert Segerstrom's handwriting. It was not signed by Lowell. There is no evidence it was submitted by Lowell. From the evidence, the court is unable to determine when it was submitted to FmHA. Under the section showing Intermediate Assets, it shows $120,923.00 as the basis or cost value of machinery and equipment. After deducting for accumulated depreciation, it shows the net value of machinery and equipment of $96,622.00 (Exhibit 2, page 2). Exhibit 2A is a "Machinery List." There was dispute at trial as to who submitted the document to FmHA and when. The court finds the document was prepared before the Balance Sheet because the cost and estimated fair market value column totals of the list correspond to the figures shown on the balance sheet for cost and depreciated value of machinery. The machinery list was typed on a typewriter owned by Robert and Muriel. The machinery list was provided to FmHA by someone who was either a partner or a person involved in the farming operation. There was, however, no evidence as to what part, if any, Lowell played in the preparation or submission of the document.

During 1985, Muriel, Robert and Lowell signed, on behalf of the partnership, a security agreement giving FmHA a security interest in personalty (Exhibit 6). The document is dated September 13, 1985; there is no indication when it was signed or when it was delivered. There is no explanation as to why Robert signed. The agreement lists 75 items or groups of items of machinery, tools and equipment as collateral.

On January 28, 1986, Muriel signed a Farm and Home Plan which included the partnership's financial statement as of January 15, 1986 (Exhibit 31). There is no indication as to what part, if any, Lowell or Kerri played in the preparation or submission of the document.

In June, 1986, at the request of the partnership, FmHA rewrote the loan, adding accrued interest to principal and lowering the interest rate from 10 per cent to five per cent (Exhibit 4). Lowell and Muriel signed the note as partners; Lowell, Kerri, Muriel and Robert signed it as individuals.

It is the practice of FmHA to request security agreements annually from its borrowers inasmuch as FmHA attempts to update the lists of equipment and livestock included in the agreements. Beginning on or about September 24, 1986, FmHA began obtaining security agreements from the partnership and from Lowell, Kerri, Muriel and Robert. The agreements were executed by Lowell and Muriel as partners and by the four individuals, except in 1989 when Robert did not sign (1986, Exhibits J and 7; 1987, Exhibits L and 8; 1989, Exhibits M and 9; 1990, Exhibits N and 10). These documents are of little help in determining the issues in this case.

On or about November 14, 1989, Lowell executed a Farm and Home Plan for Pilot View Farms (Exhibit 35). Such plans are requested annually from borrowers; FmHA also requests them from the partners of partnership borrowers. The plans include financial statements, estimates of farming costs, other expenses and income for the next year's operation, and debt repayment estimates and proposals. The plan signed by Lowell shows $90,000.00 in farm equipment. This plan was submitted to FmHA, but there is no evidence it was submitted by Lowell.

Lowell and Kerri signed a Farm and Home Plan for themselves on September 26, 1990 (Exhibit 36). It shows no machinery and equipment in the asset portion of the balance sheet. Lowell says he did not fill it out and does not recall why he was asked to sign it. He does not remember where he was when he signed, although he admits the signature is his. There is no evidence he was the person who submitted it to FmHA, and no evidence of when it was submitted.

In determining whether to grant the loan, County Supervisor Schulke considered tax returns or portions of tax returns submitted to him. At trial, Schulke did not recall which tax returns he examined, whether they were full returns or portions of returns, or whether they were partnership or individual returns; nor does he recall which years were covered. An examination of the loan file on or about the date of trial by Bill Paulus, Winnebago County FmHA Supervisor, showed the presence in the file of portions of tax returns for three years: 1982, Robert's Schedule F only; 1981, Robert's Schedule F only; and 1980, Robert's and Muriel's Schedule F only. These "Farm Income and Expense" schedules show gross amounts of depreciation but do not show the items depreciated. The schedules were not offered into evidence.

In April, 1992, Muriel executed a U. S. Partnership [Tax] Return of Income for 1990 (Exhibit 30). The return shows a depreciation deduction for machinery, and in a depreciation schedule dated December 31, 1989, lists 17 items of equipment, far less than the amount of equipment shown in the security agreements given to FmHA. Also in April, 1992, Lowell and Kerri executed, and presumably filed, amended federal and state tax returns for 1990 (Exhibits G and H). These returns claim depreciation as part of the couple's farm expenses for 1990. According to the returns, the machinery for which depreciation is shown was acquired in 1982 and placed in service in 1987. An explanation sheet included with the returns states that the equipment is "owned exclusively by the taxpayer, not the farming partnership." (Exhibit G, page 6; Exhibit H, page 13).

Schulke, who approved the initial loan, did not recall ever asking Robert, Muriel, Lowell or Paul Gremillion if the equipment line was owned personally or by Pilot View Farms. Lowell testified on direct examination by his counsel that he supplied FmHA with a copy of the agreement by the original partners showing personal, not partnership, ownership of machinery (see exhibit B). He did not recall to whom he gave it. He was not specific as to when he supplied the document. On cross-examination, he admitted that previous deposition testimony indicated that his most specific recollection of any conversation with FmHA as to machinery ownership was with county supervisor Robert Willms and that the conversation had taken place in 1989 or 1990.

DISCUSSION

Lowell and Kerri Segerstrom claim farm implements and equipment as exempt under Iowa Code 627.6(11)(a). Lowell

claims approximately 11 items having a value of $10,000.00. Kerri claims more than two dozen items having a value of $9,965.00. Different items are claimed by each debtor. FmHA objects to the exemption of farm equipment on three grounds. First, FmHA contends that the implements and equipment are owned by Pilot View Farms, the partnership of which Lowell is a partner, and as a result, such property may not be claimed exempt from partnership debt. FmHA alternatively argues that even if the equipment is personally owned by debtors, they should be estopped to claim the exemptions. Second, FmHA claims that the debtors have undervalued the items, and the true value of the items exceeds any allowable exemption. Third, FmHA argues that the debtors are not farmers entitled to an exemption for farm equipment. FmHA objects also to debtors' claims of exemption in a homestead for the reason that the description of the homestead was not adequate.

Farm Implements and Equipment

The court must first decide who owns the personal property claimed as exempt. In their schedules, Lowell and Kerri claimed joint ownership of $34,410.00 worth of unitemized farm equipment. Lowell claimed as exempt his interest in machinery having a value of $10,000.00. Kerri claimed as exempt $9,965.00 worth of equipment.

Shortly after the formation of Pilot View Farms, the three partners executed a Rental and Lease Agreement (Exhibit B) which provided that each of the partners would continue to own his own equipment. The agreement implies that each would lease or lend his equipment to the partnership. However, additional equipment would be purchased by the partnership; the partners could purchase equipment "privately" with the consent of the other partners. It was the intent of the partners that as the individual's equipment was fully "depreciated" it would be replaced by partnership purchases. No evidence was presented as to whether the partnership purchased additional equipment, or as to whether Lowell purchased any equipment on his own.

Initially, in 1982, Lowell obtained a partial interest in farm equipment by agreeing to assume one-third of his father's debt to a bank. The extent of the ownership interest is unclear from the Rental and Lease Agreement (Exhibit B). The first sentence of paragraph three indicates that each of the partners had obtained a "one-third share in ownership of machinery." However, the list attached to the agreement implies that Paul Gremillion and Lowell Segerstrom had obtained joint and equal ownership of a list of equipment having an aggregate value of $68,958.00. As to some of the equipment, Lowell and Paul obtained their joint interest from Robert Segerstrom in return for their agreement to assume bank debt. But it also appears that they may have obtained a joint interest in other equipment through another source or other sources. The court was not able to find every item claimed exempt on the list of equipment attached to Exhibit B. It may be that there were items claimed as exempt which could not be matched to Exhibit B merely because the descriptions varied sufficiently to make the match difficult. It may be that some items claimed as exempt did not appear on the attachment to Exhibit B because they were purchased by someone after the formation of the partnership. There was no explanation for the discrepancy. Nearly all of the items claimed as exempt by the debtors, however, are included in the security agreement delivered by the partnership to FmHA when the loan was closed in June, 1984 (Exhibit 5). The only items claimed as exempt which are not in the security agreement are two 3700-bushel round steel storage bins claimed exempt by Kerri Segerstrom.

With the exception of the storage bins, the court finds and concludes that Kerri Segerstrom has no ownership interest in any of the implements or equipment. Except for the bins, it is clear that all of the equipment was owned either by Lowell or by the partnership prior to the granting of the security agreement in June, 1984. Assuming for a moment that all was owned by Lowell, he would have been the owner of the equipment prior to his marriage to Kerri in August, 1985. Kerri testified that she became a part-owner of Lowell's property solely by virtue of her marriage to Lowell. There was no evidence of a gift or sale to contradict her testimony. Kerri's claim to part-ownership by virtue of marriage is not supported by the law. In Iowa, a husband or wife may own property separately from the spouse. Iowa Code 597.1. "Iowa is not a community property state, and a spouse does not become joint owner of the other spouse's property or property purchased with farm income merely by virtue of the marital status. Under Iowa law, a spouse possesses only inchoate rights in the property of the other." Paulsen v. Home State Bank (In re Paulsen), slip op. pp. 6-7 (Bankr. N.D. Iowa, Feb. 20, 1986) citing Wallace v. United States, 439 F.2d 757, 760 (8th Cir. 1971). Moreover, to the extent that the equipment is owned by the partnership, not Lowell, Kerri also can have no ownership interest in it. Therefore, FmHA's objection to Kerri's claim of exemption must be sustained except as to the storage bins. As to them, FmHA has failed to satisfy its burden of proof that the exemption by Kerri was not properly claimed. There was no evidence as to when the

bins were purchased or by whom. They may have been purchased by the couple after the marriage and without permission of the other partner or partners. Also, FmHA has not proven that Kerri is not engaged in farming. The objection as to the bins must be overruled. Kerri's one-half interest in the bins is determined to be exempt.

Lowell claims 12 items of equipment as exempt:

1972 IHC 766 gas tractor	$3,500.00
IHC model 5 gas tractor	500.00
bulk tank and 6-unit milk system	600.00
mix mill 5 hp electric motor	400.00
1978 Chev. C30, one-ton truck	800.00
IHC 128 Cub Cadet	350.00
IHC 124 Cub Cadet	250.00
Owatonna 330 skid loader	1,750.00
two Radger forage boxes	1,400.00
Sno-co Sno Blower	350.00
Clay silo unloader, 16 ft.	100.00
Total	**$10,000.00**

Those items claimed as exempt which appeared on the 1982 Lease Agreement (Exhibit B) include the two Cub Cadets, the skid loader, the two Radger forage boxes, and the Clay silo unloader. According to the Lease Agreement, Lowell owned only a one-half interest in these items; the other one-half interest belonged to Paul Gremillion. At least in January, 1982, Lowell intended to retain his ownership interest in these items and let the partnership use them. It may be argued that he transferred his interest in these items to the partnership sometime after January 31, 1982, but before January, 1984. It was then that Lowell executed the Application for FmHA Services which showed he owned no farm machinery but did own a one-third interest in Pilot View (Exhibit 42). An inference that a transfer took place is also supported by the partnership's pledge of these items to FmHA in June, 1984 (Exhibit 5). However, there is no direct evidence of such a transfer. Debtor contends the items were never transferred. The Rental and Lease Agreement is the most persuasive evidence as to the ownership of the five items. The court finds and concludes that the two Cub Cadets, the Owatonna skid loader, the two Radger forage boxes and the Clay silo unloader are the personal property of Lowell and not the partnership.

However, the court agrees with FmHA's contention that Lowell should be equitably estopped from claiming the items exempt from its claim against the partnership. The elements of equitable estoppel are: (1) a false representation or concealment of a material fact; (2) lack of knowledge of true facts on the part of the actor (in this case the FmHA); (3) intention that the representation be acted upon; and (4) reliance thereon by the party to whom made, to the party's injury or prejudice. DeWall v. Prentice, 224 N.W.2d 428, 430 (Iowa 1974); Fernandez v. Iowa Department of Human Services, 375 N.W.2d 701, 708 (Iowa 1985). "[T]he doctrine . . . is designed to prevent fraud and injustice and may come into play whenever a party cannot in good conscience gainsay his prior acts or assertions." DeWall v. Prentice at 431. The doctrine is used to prevent injustice. Fernandez at 708. The elements must be proven by clear and convincing evidence. DeWall v. Prentice at 431.

FmHA has proven all of the elements in this case. When the partnership wanted a loan from FmHA, the partnership and the partners submitted Applications for FmHA Services. Lowell's application was executed on January 1, 1984 (Exhibit 42). He filled it out and gave it to his mother under the presumption that it would be returned to FmHA. It was, and it represented to FmHA that so far as machinery and equipment were concerned, Lowell owned only a $2,500.00 auto. It showed he owned no farm equipment. It disclosed that he owned a one-third interest in Pilot View, valued at $82,726.00. As to the five pieces of equipment, the representation was false, as Lowell had retained ownership and merely permitted Pilot View to use the equipment. Pilot View's application to FmHA complemented Lowell's. It showed that the partnership owned $115,630.00 worth of farm machinery (Exhibit 44). Lowell executed the Pilot View

application which was submitted to FmHA as part of the loan application process. FmHA relied on the applications and lent the partnership $160,000.00. Lowell intended that FmHA rely on the representations in the applications because he wanted a loan for the partnership. The bank with which the partnership dealt no longer wanted to lend it money. The court also finds that FmHA did not have knowledge of the true state of affairs. Lowell says he provided a copy of the rental agreement to FmHA, but he does not remember when he did so. FmHA denies receiving a copy. Ownership may have been discussed in 1989, but this was long after the loan.

That FmHA may have received tax returns or portions of tax returns showing that one or more of the partners claimed depreciation in property does not prove to the court that FmHA had knowledge that the partnership did not own the machinery. The evidence was inconclusive as to what tax returns were given to FmHA. FmHA claims to have received only portions of Robert's returns for the years 1980, 1981 and 1982. Even if others were given, if they did not itemize the particular items, they would not necessarily contradict the loan applications.

Debtors contend that because FmHA required Lowell, Kerri, Robert and Muriel to sign the extension note (Exhibit 4) and to sign security agreements as individuals (see Exhibit K), this showed that FmHA knew that the individuals owned the collateral. The court does not agree that this is the only reasonable inference that may be drawn from such requirements. It may be that FmHA merely wanted, out of caution, the partners and their spouses to promise to repay and to secure that promise with other property. It does not show that FmHA knew that the equipment was owned in part by Lowell. Indeed, Farm and Home Plans submitted to FmHA by the individual partners and the partnership from 1986 through 1990 continue to show the partnership as the owner of farm machinery, not the individual partners (Exhibits 31, 33, 35 and 36). The court rejects any contention that the Applications for FmHA Services merely recognize that partners had been permitted to use the equipment both in the operation and as collateral for the loan. The Applications are clear under the title of the Financial Statement (section 21), that the applicant was to "show property owned. . . ."

As to prejudice, if Lowell were allowed to exempt the five items from partnership debt, he would likely be entitled to avoid the FmHA non-purchase money lien which FmHA would hold as a result of his personally signing later security agreements. He would not be able to exempt the property from the partnership's debt to FmHA if it is owned by the partnership. Iowa Code 486.25(2)(c). Permitting Lowell to claim the property as exempt would prejudice the value of FmHA's security interest. The court, therefore, concludes that Lowell Segerstrom should be estopped from claiming the five items as exempt.

As to the other items, the court finds and concludes that they are machinery and implements owned, not by Lowell, but by the partnership. These other items do not appear on the Rental and Lease Agreement. They do appear on the security agreement dated June 18, 1984 as part of the loan transaction (Exhibit 5). This agreement was executed by Lowell. Ownership by the partnership is consistent with the agreement by the partners to have subsequently acquired machinery be owned by Pilot View Farms (Exhibit B). Ownership by the partnership is also corroborated by the Applications for FmHA Services submitted by the partnership and Lowell during the loan application process. These showed Pilot View as the owner of machinery and Lowell as having none other than an auto. To the extent that these items were obtained after January 31, 1982, it is a reasonable inference that the partners acted in accordance with their agreement and that the partnership purchased them. Lowell provided no documentation of purchases showing he obtained the items either with or without the consent of other partners. Because the remaining items--766 gas tractor, model 5 gas tractor, bulk tank and milk system, electric motor, Chevrolet truck and snow blower--are property of Pilot View Farms, Lowell Segerstrom may not claim them as exempt from the partnership's debt to FmHA. Iowa Code 486.25(2)(c). The court need not reach the issue of whether Lowell is a farmer.

As to the homestead exemption, FmHA is correct that the claim of the homestead exemption is somewhat vague. However, in their Schedule A, debtors show ownership of two parcels of ground--a 40-acre parcel north of Forest City, which they claim as their homestead, and a 14-acre parcel in a different section. FmHA does not argue that debtors are not entitled to a 40-acre homestead, only that it is inadequately described. It appears, however, that the debtors claim a 40-acre parcel as a 40-acre homestead. The lack of precision in the legal description does not appear to be critical to debtors' entitlement. At trial, FmHA did not explain its objection, offer any evidence in support of it, or argue it. The objection to the homestead claim will be overruled.

Based on the findings and conclusions stated herein,

IT IS ORDERED that the objection of the United States of America, acting for the Farmers Home Administration, is overruled as to Kerri Segerstrom's claim of exemption of her one-half interest in two 3,700-bushel round steel storage bins.

IT IS FURTHER ORDERED that the objection of the United States as to the debtors' claims of exemption in other farm machinery and equipment is sustained.

IT IS FURTHER ORDERED that the objection of the United States to the debtors' claims of exemption to a homestead is overruled. Judgment shall enter accordingly.

SO ORDERED ON THIS 4th DAY OF NOVEMBER, 1993.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U. S. mail to: David Nelsen, U. S. Attorney and U. S. Trustee.

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1. [1] Two partnership agreements were introduced into evidence. Exhibits A and 1 are copies of nearly identical agreements; Exhibit A is dated January 1, 1982; Exhibit 1 is dated February 2, 1982. The only difference between the two agreements, other than the hand-entered date, is a handwritten correction in the title of a typographical error as to the spelling of the word "Pilot." Lowell Segerstrom had no explanation as to the significance of differently dated partnership agreements. Neither party has argued that the difference has any bearing on the outcome of this dispute. Regardless of the reason for the execution of the February agreement, the court finds that the partnership was entered into on January 1, 1982.