

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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DOUGLAS E. JENKINS and CAROL M.  
JENKINS

Bankruptcy No. 93-51649XS

Debtors.

Chapter 7

Contested No. 8046

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### ORDER RE: MOTION TO AVOID LIEN

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The matter before the court is the motion by Douglas E. Jenkins and Carol M. Jenkins to avoid the lien of Sloan State Bank (BANK) on farm equipment claimed exempt. Hearing on the matter was held May 10, 1994 in Sioux City, Iowa. The court now issues its findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

#### Findings of Fact

Douglas E. Jenkins and Carol M. Jenkins filed their chapter 7 petition on October 8, 1993. The Jenkinse currently derive all their income from a grain hauling business run by Douglas Jenkins. Jenkins began in the trucking business in March of 1993. He initially worked for trucking firms in Council Bluffs, Iowa and leased a semitractor through those firms. Beginning in October, 1993, his work involved long hauls which often required travel to Missouri for three to four days at a time. Since December, 1993, Jenkins has operated a trucking business on his own. The statements and schedules filed in this case indicate that Jenkins is leasing a semi-tractor and trailer from DBR Leasing in Omaha. Jenkins now hauls grain to elevators within a 100-mile radius of his home in Salix, Iowa.

Before beginning his trucking business, Jenkins was in the business of raising hogs and supplemented his income by working at Cargill. Carol Jenkins assisted with the hog operation by doing chores and looking after the hogs while Douglas Jenkins was at work. The Jenkinse raised hogs for eight years. They did not grow crops or raise other livestock.

In late 1992, the Jenkinse were delinquent on their note to Sloan State Bank. The debt was secured by a lien on farm equipment and machinery, real estate and the swine herd. In December, 1992 or January, 1993, Douglas Jenkins met with Gene Smith, President of the Sloan Bank, to discuss the loan. Jenkins told Smith he did not have enough money for the loan payment due in February, 1993. Smith told Jenkins that he was not making any money from the hog operation and suggested that he liquidate the herd and pay down the note as much as possible. Jenkins also told Smith that he was considering going into the trucking business and asked him about borrowing money from the Bank to buy a truck.

In January, 1993, the Jenkinses began selling their hogs. The Bank learned that they had sold hogs when it received the sale proceeds checks. Half of the herd was sold by the end of February. The payments made to the Bank in February were not sufficient to cure the default. The Jenkinses completed sale of their entire swine herd in April, 1993. The Bank had not called the loan or brought legal action against the Jenkinses.

The Jenkinses have kept the farm equipment on their acreage and have kept it insured. The Jenkinses claimed the following farm equipment exempt from property of their bankruptcy estate:

2 gravity wagons (\$300 each)	\$ 600.00
loader for IHM	200.00
4 80 gal. hog waterers (\$50 each)	200.00
old grinder mixer	150.00
8 60 bu. hog feeders (\$150 each)	1,200.00
50 farrowing crates (\$50 each)	2,500.00
8 creep feeders (\$20 each)	160.00
5 creep waterers (\$20 each)	100.00
2 portable hog sheds (\$800 each)	1,600.00
2 manure spreaders (\$200 each)	400.00
1 barge wagon	250.00
IH 856	6,000.00
Stan hoist loader for 856	800.00
Rawhide gooseneck trailer	2,000.00
IH sickle mower (9 ft.)	1,000.00
2 hay racks (\$200 each)	400.00
portable auger	150.00
Flair box feed wagon	100.00
<b>TOTAL</b>	<b>\$17,810.00</b>

Exhibit 1, Schedule C. No one filed an objection to the claimed exemptions.

The Jenkinses filed a motion to avoid the Bank's lien on their farm equipment on February 9, 1994. Since about that time, Douglas Jenkins has talked with a number of people about either borrowing money to purchase sows or custom feeding hogs for other farmers. He would like to get back into the hog-raising business and would need equipment either for use as collateral or as necessary equipment for custom farming.

At the time of filing their petition, the Jenkinses intended to reaffirm the debt to the Bank secured by their homestead acreage. They were then willing to give back the farm equipment in order to work out a deal to keep the acreage. The parties have been unable to enter into a reaffirmation agreement because they dispute the value of the real estate. The Bank intends to foreclose on the acreage. In early January, 1994, Douglas Jenkins made arrangements with his father to move any hogs he acquires to his father's farm near Sloan if the Bank forecloses.

## Discussion

Bankruptcy Code § 522(f) allows lien avoidance if a lien impairs certain exemptions to which a debtor would have been entitled but for the lien. The Jenkinse seek to avoid the Bank's lien under 11 U.S.C. § 522(f)(2)(B) because the items of equipment are tools of the farming trade. The parties agree that the Bank has a nonpossessory, nonpurchase-money security interest in the equipment. The Bank argues the Jenkinse may not avoid the lien because they were not engaged in farming at the time of the bankruptcy filing and had no intention of resuming farm operations. The Bank argues the Jenkinse' present stated intention is not sincere, and is only made in reaction to finding out they will lose their acreage. The Bank also contends that the Jenkinse have consistently lost money in their hog operation in the past and have not received any actual support from farming.

The Jenkinse' farm equipment is exempt because no one objected to their claim of exemptions. 11 U.S.C. § 522(l); Taylor v. Freeland & Kronz, 112 S.Ct. 1644 (1992). However, a creditor may raise issues regarding the debtor's entitlement to an exemption in a lien avoidance motion even though the creditor did not object to the exemption. In re Streeper, 158 B.R. 783, 787 (Bankr. N.D. Iowa 1993); In re Indvik, 118 B.R. 993, 1007 (Bankr. N.D. Iowa 1990). Therefore, although the property is exempt, the Bank may raise the issue of whether for lien avoidance purposes, the Jenkinse are engaged in farming.

Whether the Jenkinse may avoid the Bank's lien on their farm equipment is a matter of federal law. Matter of Thompson, 750 F.2d 628, 630 (8th Cir. 1984). However, a prerequisite for lien avoidance is that the Jenkinse, but for the lien, would have a valid exemption under Iowa law. Matter of Myers, 56 B.R. 423, 425 (Bankr. S.D. Iowa 1985). Iowa law allows an exemption for the "implements and equipment reasonably related to a normal farming operation" if the debtor is "engaged in farming." Iowa Code § 627.6(11)(a). The Bankruptcy Code allows avoidance of a lien on "implements . . . or tools of the trade of the debtor." 11 U.S.C. § 522(f)(2)(B). In In re Indvik, this court concluded that in determining whether a debtor is "engaged in farming" for Iowa exemption law or whether a debtor is engaged in the trade of farming for federal lien avoidance law, the tests are substantially the same. Indvik, 118 B.R. at 1005. "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." Id., citing Pease v. Price, 101 Iowa 57, 69 N.W. 1120 (1897); Hickman v. Cruise, 72 Iowa 528, 34 N.W. 316, 317 (1887). "In determining whether a debtor is engaged in a farm trade for lien avoidance purposes, the court must examine the debtor's past farming activities and the sincerity of the debtor's intention to continue farming." Indvik, 118 B.R. at 1005, citing Production Credit Ass'n of St. Cloud v. LaFond (In re LaFond), 791 F.2d 623, 626 (8th Cir. 1986). If debtors are engaged in farming under Iowa exemption law, then they are engaged in the trade of farming for lien avoidance purposes. Indvik, 118 B.R. at 1005.

Debtors claiming an exemption for tools of the trade must be engaged in the trade at the time of filing the bankruptcy petition. Myers, 56 B.R. at 426. However, a debtor may still claim an exemption in farm equipment if the debtor has temporarily ceased farming as of the filing date and intends to return to farming. In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990); Myers, 56 B.R. at 426; In re Nie, No. 87-01248W, slip op. at 7 (Bankr. N.D. Iowa, Jan. 4, 1988). Custom farming is "farming" for purposes of the farm equipment exemption if the equipment is needed for the operation. See Matter of Clausen, 81 B.R. 519, 521 (Bankr. S.D. Iowa 1988). The Jenkinse will need the equipment to custom feed hogs. Therefore, their intention to do custom farming if they are unable to own their own hogs would not prevent them from being engaged in farming.

As of the date of their petition, the Jenkinses did not own any livestock and had no income from farming. However, they claimed their farm equipment exempt as tools of the trade. Douglas Jenkins testified they did not initially plan to keep their equipment because they did not know they could. They were willing to give up the equipment in an attempt to negotiate reaffirmation of their acreage debt. The Jenkinses liquidated their hog herd because of financial difficulties. The time between the date of sale and the date of filing bankruptcy was short, approximately five or six months. Financial difficulties and the bankruptcy proceedings would tend to impair their ability to resume farming. Indvik, 118 B.R. at 1008. Douglas Jenkins has spoken with several people about buying or custom farming hogs, but has been unable to make firm commitments because of the Bank's lien. He has changed his trucking work in order to be home more often and to be able to spend more time on a livestock operation. Considering the length of time the Jenkinses had raised hogs, it is reasonable to believe that they wanted to get back into farming but did not yet know on the date they filed bankruptcy how they would be able to do so. The court finds that the Jenkinses have shown a sincere intention to resume farming and that they have reasonable prospects for doing so in the near future. In re Nie, Bankruptcy No. 87-01248W, slip op. at 9 (Bankr. N.D. Iowa, Jan. 4, 1988); cf. Matter of Clausen, 81 B.R. 519 (Bankr. S.D. Iowa 1988) (debtor had stored farm equipment for six years and stated intention to resume farming within five to ten years). The court concludes that as of the date of their bankruptcy petition, the Jenkinses had only temporarily ceased farming and were therefore "engaged in farming" for purposes of lien avoidance.

The Bank next makes the argument that the Jenkinses are not engaged in farming because their farming operations did not contribute to their support. A debtor with two occupations may claim exemptions for tools of the trade. Debtors may claim farm exemptions even if they derive income from non-farm sources. Myers, 56 B.R. at 426. There is no principal occupation test or percentage of income test under Iowa law. The only requirement, in addition to working at the trade or profession, is that the work contribute to the debtor's support. Id.

The Bank has submitted Exhibit F, a profit and loss statement for the years 1985 through 1991, as evidence that the Jenkinses' farm operations have not contributed to their support. The statement was prepared December 16, 1992 by Bank President Gene Smith from Schedule F of the Jenkinses' tax returns for 1985-1991 tax years. The Jenkinses had farm income primarily from livestock sales, with a small amount of income from agricultural programs. The Bank points out that after subtracting all expenses, the Jenkinses had a net loss each year. The statement also calculates cash income by subtracting expenses other than depreciation. The following totals are taken from Exhibit F.

	1985	1986	1987	1988	1989	1990	1991
Gross Income	14,807	31,848	65,531	82,606	56,670	67,775	43,431
Total Expenses	33,304	39,062	84,886	87,153	64,384	68,538	45,894
Net Income	(18,497)	(7,214)	(19,355)	(4,547)	(7,714)	(763)	(2,463)
Cash Income	(13,847)	574	(8,706)	4,724	(855)	5,825	1,767

Some of the expense items listed on Exhibit F, such as utilities and interest on mortgages, have a living expense component. The Jenkinses' only mortgage was with the Bank on their homestead acreage. During the years 1986 through 1991, the Jenkinses paid \$26,218.00 for interest on the mortgage. Even taking the Bank's "bottom line" approach, in four of the seven years shown, the Jenkinses had cash income after making these payments. However, the court believes the Bank has incorrectly focused on net income when the better view is to determine whether "any substantial portion of the debtor's income is earned through farming activities." In re Leonard, Bankruptcy No.

X90-00877S, slip op. at 4 (Bankr. N.D. Iowa, Sept. 21, 1990), citing Matter of Rasmussen, 54 B.R. 965, 968 (Bankr. W.D. Mo. 1985). There is no question that the Jenkinses were engaged in farming activities. The only evidence comparing off-farm income to farm income for the years shown on Exhibit F is the statement of financial affairs, which shows that Douglas Jenkins had income of \$17,080.00 from "wages" in 1991. The gross income figures on Exhibit F taken alone indicate that the Jenkinses derived substantial income from raising hogs. Therefore, the court finds that their farming activities have contributed to their support.

The court concludes that the Jenkinses have been engaged in farming in the past, that they had temporarily ceased farming as of the date of their bankruptcy filing, and intend to resume farming. Therefore, the Bank's resistance should be overruled, and the Jenkinses' motion should be granted.

### **ORDER**

IT IS ORDERED that the motion of Douglas E. Jenkins and Carol M. Jenkins to avoid the lien of Sloan State Bank on farm equipment is granted.

SO ORDERED ON THIS 31st DAY OF MAY, 1994,

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on \_\_\_\_\_ I mailed a copy of this order and judgment by U. S. mail to: Alvin J. Ford, Donald Molstad, James Radig and U. S. Trustee.