

In the United States Bankruptcy Court

for the Northern District of Iowa

BRADLEY L. SHANAHAN SR.
Debtor(s).

Bankruptcy No. 94-11127KC
Chapter 7

ORDER RE DEBTOR'S MOTION TO AVOID JUDICIAL LIEN

On October 6, 1994, the above-captioned matter came on for hearing pursuant to assignment. Attorney Mark McCool appeared for Debtor Bradley L. Shanahan, Sr. Attorney Stephen Swift appeared as a judgment creditor pro se. The matter before the Court was Debtor's Motion to Avoid Judicial Lien and Mr. Swift's objection thereto. After hearing the evidence and arguments presented by the parties, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K).

STATEMENT OF THE CASE

Debtor moves to avoid the lien of creditor Stephen Swift pursuant to 11 U.S.C. § 522(f)(1). Debtor's homestead is encumbered by a judgment entered in a small claims action captioned Swift v. Shanahan, SC22901. The judgment was entered in Linn County on March 31, 1993 in the amount of \$6,194.76. Said judgment was granted for unpaid fees for legal services rendered by Mr. Swift between November, 1989 and September, 1991. The parties stipulated to the amount of attorney's fees and the underlying obligation.

Debtor's mother owned property located at 619 8th Avenue S.W. in Cedar Rapids, Iowa. She passed away on June 27, 1992, bequeathing said property to Debtor. The parties stipulated that Debtor received his interest in the property on the date of his mother's death.

This Chapter 7 bankruptcy proceeding was commenced on July 12, 1994. Debtor claimed the above-mentioned property exempt as his homestead pursuant to Iowa Code sec. 561.16. Mr. Swift did not object to the exemption within the 30-day deadline set out in Federal Rule of Bankruptcy Procedure 4003(b). However, he did object to Debtor's motion to avoid lien.

The parties agree that Debtor contracted for Mr. Swift's legal services prior to the acquisition of his homestead in June, 1992. Mr. Swift argues that Debtor cannot avoid his lien because the underlying debt was contracted prior to the acquisition of the homestead. He asserts that Debtor's homestead may be sold to satisfy his lien pursuant to Iowa Code sec. 561.21(1) which states that the homestead is liable for preacquisition debts.

Debtor counters that Mr. Swift's debt did not arise for purposes of sec. 561.21(1) until it was reduced to judgment on March 31, 1994. As a result, Debtor argues, the debt was not a preacquisition debt against the homestead and sec. 561.21(1) does not apply. Debtor further argues that Mr. Swift's lien should be avoided regardless of Iowa Code sec. 561.21(1) because the lien avoidance provisions of 11 U.S.C. § 522(f) are governed by federal law. He asserts that a judicial lien can be avoided under § 522(f) despite a state law specification that the lien falls within an exception to the exemption statute.

CONCLUSIONS OF LAW

Debtor's motion to avoid lien relies on § 522(f) which states:

Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is -

1. a judicial lien . . .

According to § 522(b), "an individual debtor may exempt from property of the estate . . . any property that is exempt under . . . State or local law . . ." Iowa has opted out of the federal exemption scheme. Iowa Code § 627.10; In re Wooten, 82 B.R. 84, 85 (Bankr. N.D. Iowa 1986). Under Iowa law, "the homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary." Iowa Code § 561.16. However, this homestead exemption is subject to several restrictions. Iowa Code sec. 561.21(1) is germane to this proceeding. It operates as an exception to the Iowa homestead exemption, stating:

The homestead may be sold to satisfy debts of each of the following classes:

1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

Iowa Code § 561.21(1).

Debtor's homestead is deemed exempt in light of the absence of objections to his claim of exemptions. 11 U.S.C. § 522(l). However, Mr. Swift's failure to challenge the claim of exemption does not prevent him from challenging Debtor's lien avoidance motion. In re Streeper, 158 B.R. 783, 787 (Bankr. N.D. Iowa 1993). "[C]reditor[s] may raise exemption issues in a lien avoidance motion under § 522(f) to litigate whether the debtor would have been entitled to the exemption under § 522(b), even if the property at issue has been deemed exempt under § 522(l)." Id. at 787.

State law governs the availability and scope of exemptions while federal law determines the availability of § 522(f) lien avoidance. In re Thompson, 884 F.2d 1100, 1102 (8th Cir. 1989). The fact that property qualifies for exempt status does not automatically render a judicial lien avoidable under § 522(f). Streeper, 158 B.R. at 787. Debtor must prove entitlement to the lien avoidance powers of § 522(f). Streeper, 158 B.R. at 786; In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990); In re Winkowitsch, No. 93-60712LW, slip. op. at 2 (Bankr. N.D. Iowa September 20, 1993).

In determining whether Debtor is entitled to avoid Mr. Swift's lien, the Court must query "not whether the lien impairs an exemption to which the debtor is in fact entitled, but whether it impairs an exemption to which he would have been entitled but for the lien itself." Owen v. Owen, 500 U.S. 305, 111 S. Ct. 1833, 1834 (1991); Streeper, 158 B.R. at 786. The manner in which to apply § 522(f) is to "ask first whether avoiding the lien would entitle the debtor to an exemption, and if it would, then avoid and recover the lien." Owen, 111 S. Ct. at 1837.

Under Iowa law, a debtor's homestead exemption does not operate against debt contracted prior to acquisition of the homestead. Streeper, 158 B.R. at 788; Wooten, 82 B.R. at 87. The debtor in Wooten, as here, contracted a debt prior to acquiring his home. The court held that the debtor was not entitled to an exemption at all under Iowa Code sec. 561.21(1) and, as a result "could not avail himself of 11 U.S.C. § 522(f) to avoid the . . . lien . . ." Wooten, 82 B.R. at 87. In this case, it is stipulated that Debtor contracted the debt to Mr. Swift for legal services rendered between November, 1989 and September, 1991. This debt preceded Debtor's acquisition of his homestead in June, 1992. This debt is therefore a preacquisition debt for purposes of Iowa Code sec. 561.21(1). See Streeper, 158 B.R. at 788.

Debtor argues that the fact that he acquired his homestead in June, 1992 and Mr. Swift did not obtain his judicial lien until March, 1993 mandates approval of his motion to avoid the lien. In other words, he argues, the debt must be reduced to judgment prior to the acquisition of the homestead for Iowa Code sec. 561.21(1) to apply. Iowa cases have previously addressed this argument. "[T]he date of contracting the debt is the test, and not that of the rendition of the judgment . . ." Bills v. Mason, 42 Iowa 329, 332 (1876). Section 561.21 of the Iowa Code speaks in terms of "debts . . . contracted prior to [the homestead's] acquisition," not in terms of "judicial liens." In re Nehring, 84 B.R. 571, 576 (Bankr. S.D. Iowa 1988). This emphasis suggests that the Debtor cannot claim the homestead exempt against Mr. Swift's debt regardless of whether or not Mr. Swift had reduced the debt to judgment.

A similar situation was presented in Kramer v. Hofmann, 257 N.W. 361 (Iowa 1934). The Kramer debtor failed to pay four months' rent on property he leased from his mother. Id. at 362-63. He received the property upon his mother's death in October, 1932, and later claimed it exempt as his homestead. Id. at 362. The administrator of the debtor's mother's estate brought an action against the debtor for the unpaid rent and received a judgment against the debtor in April, 1933. Id. at 362-63. The court stated:

While the administrator's judgment was not entered until April 3, 1933, the debt represented by this judgment . . . was contracted prior to the mother's death. The entire judgment . . . was therefore based upon an indebtedness contracted prior to the accrual of any right of homestead . . . [T]he homestead is, of course, liable for debts antedating its acquisition, and when this debt was reduced to judgment . . . such judgment became a lien upon . . . any homestead right which [debtor] might have in the real estate.

Kramer, 257 N.W. at 364-65. Because the debtor was insolvent and all other property liable to execution had been exhausted, the debtor could not claim a homestead exemption against the administrator's judgment lien. Id. at 365.

Debtor contracted with Mr. Swift for legal services between 1989 and 1991. While Mr. Swift's judgment for the unpaid fees was not entered until March 1993, the debt underlying this judgment was contracted prior to Debtor's acquisition of the homestead upon his mother's death in June, 1992. The homestead is liable for debts predating its acquisition. In other words, "the lien of the judgment . . . relates back to the time of the contraction of the debt." Bills, 42 Iowa at 334. Consequently, Debtor's homestead exemption does not operate against his debt to Mr. Swift. The fact that Mr. Swift did not reduce the debt to judgment prior to Debtor's acquisition of his homestead is inconsequential.

The fact that Iowa law establishes an exception to the homestead exemption does not necessarily render the lien unavoidable. The Owen court held that a judicial lien could be avoided under § 522(f) in the face of a state law specifying that a judicial lien fell within an exception to the state exemption statute. Owen, 111 S. Ct. at 1351. The Streeper court distinguished Iowa's exemption statutes from the Florida law at issue in Owen. The Florida law stated that no homestead exemption existed for liens arising before acquisition of the homestead. Owen, 111 S. Ct. at 1834. Iowa law, on the other hand, states that no homestead exemption exists for debts arising before acquisition of the homestead. Iowa Code § 561.21(1); Streeper, 158 B.R. at 788; Wooten, 82 B.R. at 87.

In response to the question posited in Owen, whether avoiding the lien would entitle Debtor to an exemption, the answer is no. Debtor cannot claim his homestead exempt from the antecedent debt even in the absence of Mr. Swift's judicial lien. As discussed above, the homestead exemption does not operate against debts contracted prior to the acquisition of the homestead. "[A] valid exemption under state law is a prerequisite to receiving relief through lien avoidance in states where the uniform federal exemptions do not apply." In re Myers, 56 B.R. 423, 425 (Bankr. S.D. Iowa 1985). Debtor may not utilize § 522(f) to avoid Mr. Swift's lien.

WHEREFORE, Debtor's Motion to Avoid Judicial Lien is DENIED.

FURTHER, Stephen Swift's Objection to the Motion to Avoid Judicial Lien is SUSTAINED.

FURTHER, Debtor may not avoid creditor Stephen Swift's judicial lien on his homestead property.

FURTHER, judgment shall be entered accordingly.

SO ORDERED this 17th day of November, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge