

In the United States Bankruptcy Court

for the Northern District of Iowa

RANDY L. LESS
Debtor.

Bankruptcy No. 95-11136KC
Chapter 7

ORDER RE DEBTOR'S MOTION TO AVOID LIENS

On August 29, 1995, the above-captioned matter came on for hearing pursuant to assignment. Present at the hearing were H. Raymond Terpstra II on behalf of Debtor Randy L. Less, Joseph Schmall on behalf of Creditor Linn County State Bank, and Steven Howes on behalf of Creditor Cassill Ford Mercury. The matter before the Court is Debtor's Motion to Avoid Liens filed June 21, 1995. After presentation of evidence and arguments of counsel, 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 Randy L. Less seeks to avoid the lien of Linn County State Bank on various items of personal property pursuant to 11 U.S.C. 522(f)(1)(B)(ii)(1995), asserting that the Bank's lien impairs exemptions to which he is entitled. Debtor previously claimed the following as exempt: a flatbed trailer, a Keefer livestock trailer, a skid loader with a blown engine, and miscellaneous hand tools, welders and shop equipment. No timely objections being made to Debtor's claims of exemption, the property is deemed exempt pursuant to 522(*l*). The Bank now resists Debtor's motion to avoid its lien on the above items, claiming that Debtor is not entitled to an exemption of such property and therefore, Debtor may not avoid the Bank's lien under 522(f)(1)(B)(ii).

Debtor is a welder by trade and claimed his exemption of the items listed above under Iowa's "implements or tools of the trade" exemption provision. Iowa Code 627.6(10)(1995). The Bank asserts that the items exempted by Debtor do not qualify as implements or tools of Debtor's trade because they are farm implements and tools rather than welding implements or tools.

CONCLUSIONS OF LAW

Section 522(f) provides that a debtor may avoid a lien on the debtor's property to the extent that such lien impairs an exemption to which the debtor would have been entitled but for the lien. Owen v. Owen, 111 S.Ct 1833, 1837 (1991). The critical issue for the purposes of 522(f) lien avoidance is whether the lien impairs an exemption to which the Debtor is "entitled" under 522(b). 11 U.S.C. 522 (f). Because Iowa has opted out of the federal exemption provisions of 522(b), the Court must use Iowa's exemption statute, Iowa Code section 627.6, to determine whether Debtor is "entitled" to exempt the items for the purposes of this 522(f) lien avoidance analysis.

Even though the items are deemed to be exempt pursuant to 522(*l*), the Bank is not estopped by issue preclusion from raising the issue of whether Debtor is "entitled" to exempt the items in question,. This

is because the underlying factual issues of the exemptions were never actually litigated. In re Streeper, 158 B.R. 783, 787 (Bankr. N.D. Iowa 1993). Further, the potential result of a judicial determination pursuant to 522(f) is significantly different from that under 522(l). In a lien avoidance proceeding such as this, the Bank, as a secured creditor, may potentially have a property right extinguished. In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990). Whereas, the recognition of exempt property under 522(l) merely determines what property of Debtor is available to the trustee for distribution to unsecured creditors. Streeper, at 787. It would be inconsistent with due process to prevent the Bank from raising an entitlement to exemption issue in this lien avoidance proceeding simply because it failed to object to Debtor's claim of exemption. Id.

Iowa Code section 627.6(10) provides that a debtor, engaged in a profession or occupation other than farming, may claim as exempt the proper implements and tools of the debtor's trade, not to exceed ten thousand dollars in aggregate value. Section 522(f)(1)(B)(ii) allows a debtor in bankruptcy to avoid certain liens on the debtor's implements or tools of the trade. The state law test for determining whether an item of property qualifies for an "implement or tool of the trade" exemption and the bankruptcy test for determining whether that item qualifies as a "implement or tool of the trade" for lien avoidance purposes are substantially the same. See Indvik, 118 B.R. at 1005.

The state test is "whether the items are the proper implements in the reasonable conduct of the debtor's trade or profession." Matter of Eby, 76 B.R. 140, 141 (Bankr. S.D. Iowa 1987) (citing Hoyer v. McBride, 202 Iowa 1278, 211 N.W. 847, 848 (1927)). An implement is an item reasonably fitted or employed as a means of making labor more effective. Baker v. Maxwell, 168 N.W. 160 (Iowa 1918). Thus, property which is reasonably fitted to being employed in making its owner's labor may appropriately be considered an implement of the owner's trade. Id. at 161. The bankruptcy lien avoidance test is (1) whether the tools or implements are commonly used by persons employed in the debtor's trade, and (2) whether they are reasonably necessary items of the debtor's trade or business. In re LaFond, 791 F.2d 623, 626-27 (8th Cir. 1986).

Since the tests are substantially the same, if Debtor is entitled to exempt the property under the state test, the property also qualifies as a tool of the trade under 522(f)(1)(ii). Indvik, 188 B.R. at 1005. Thus, if the property in question is deemed to be an implement or tool of Debtor's trade under state law, Debtor may avoid the Bank's lien on such property, there being no objection on the issue of whether the lien actually impairs Debtor's exemption. Therefore, the essential inquiry in this matter is whether each item of property listed above qualifies as an implement or tools of Debtor's trade under state law.

Debtor, as the party seeking lien avoidance, has the burden of proof on all issues. Indvik, 118 B.R. at 1005. The fact that the property on which lien avoidance is sought has been deemed exempt pursuant to 522(l) does not relieve Debtor of his burden of proof on the issue of whether the exempt items are tools of the trade. Id. at 1006. The Court will undertake item-by-item analysis to determine whether Debtor has sustained his burden of proof as to that particular item.

Keefer Livestock Trailer

Debtor gave credible testimony and presented pictorial documentation that he used this trailer for the hauling of his tools and welders to various "on-location" welding jobs. The trailer is reasonably fitted to making his labor as a welder more efficient. The size of the equipment involved in Debtor's trade clearly calls for the use of some type of hauling device for on- location jobs. The livestock trailer is quite practical for accomplishing this need. The Court is not concerned with the fact that the trailer was originally designed to transport cattle rather than welding equipment or that Debtor referred to

the trailer as a livestock trailer in his schedules and motions before this Court. The current configuration of the trailer is clearly effective and efficient for Debtor's welding purposes and the Court believes that the test must be utilitarian rather than nominal. Therefore, the Court finds that Debtor has sustained his burden of proof as to his entitlement to exempt the livestock trailer.

Skid Loader

Defendant testified that he uses the skid loader, when in operating condition, to load and unload some of his heavier equipment at job sites. Considering the size and weight of the equipment involved, the Court finds the skid loader is reasonably fitted to making Debtor's labor as a welder more efficient. Therefore, the Court finds that Debtor has sustained his burden of proof as to his entitlement to exempt the skid loader.

Miscellaneous Hand Tools, Welders and Shop Equipment

There being little or no contest over these items, the Court finds that Debtor gave credible evidence and sustained his burden as to his entitlement to exempt these items.

Flatbed Trailer

Unlike Debtor's testimony regarding his other property, his testimony as to his use of the flatbed trailer was not totally consistent with it being an implement or tool of his trade. Debtor testified that he sometimes used the flatbed to haul work projects back to his shop and that he sometimes used it to haul other people's property. The Court notes that the use of a flatbed trailer in the welding profession could potentially entitle a debtor to an implement of the trade exemption in another situation. Cf. In re Ackerman, No. 94-21846KD, slip op. (Bankr. N.D. Iowa Apr. 12, 1995)(holding that the debtor was entitled to exempt a flatbed trailer as a tool of the trade where trailer was used by the debtor/mason to transport masonry materials.) In this case however, Debtor has failed to sustain his burden of proof that this particular flatbed trailer is used by him as an implement of his welding trade. Therefore, Debtor is not entitled to exempt the flatbed trailer for the purposes of his motion to avoid the Bank's lien on such property.

Conclusion

The Court finds that Debtor is entitled to exempt the Keefer livestock trailer, the skid loader and the miscellaneous tools, welders and shop equipment as implements or tools of his trade under state law. The Court further finds that the above property qualifies as implements or tools of Debtor's trade under 522(f)(1)(B)(ii), since the state law and bankruptcy test are essentially the same. Indvik, 188 B.R. at 1005. Therefore, Debtor may avoid the Bank's lien on the Keefer livestock trailer, the skid loader and the miscellaneous tools, welders and shop equipment, as lien on such items impairs exemptions to which Debtor is entitled to under Iowa Code section 627.6(10).

The Court finds that Debtor is not entitled to an exemption in the flatbed trailer under Iowa Code section 627.6(10). Therefore, Debtor may not avoid the Bank's lien on the flatbed trailer. This finding does not effect the exempt status of the flatbed under 11 U.S.C. 522(I) as to unsecured creditors.

WHEREFORE, Debtor's motion to avoid Linn County State Bank's lien on the Keefer livestock trailer, the skid loader and the miscellaneous tools welders and shop equipment is SUSTAINED.

FURTHER, Debtor's motion to avoid the Bank's lien on the flatbed trailer is DENIED.

SO ORDERED this 11th day of October, 1995.

Paul J. Kilburg
U.S. Bankruptcy Judge