

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

JEFFREY BUSTAD KLEVE and
CAROL KAYE KLEVE

Bankruptcy No. 95-50141XS

Debtor(s).

Chapter 13
Contested No. 9052

DECISION RE MOTION TO AVOID LIEN

Debtors move to avoid the Farmers Home Administration lien against their farm equipment. The United States on behalf of the Administration, now known as Rural Economic and Community Development (RECD), resists. Hearing was held September 13, 1995 in Sioux City. Donald H. Molstad, Esq. appeared for debtors; Donna K. Webb, Esq. appeared for RECD. This is a core proceeding under 28 U.S.C. §157(b)(2)(K).

Findings

Jeffrey and Carol Kleve (DEBTORS) filed their joint petition under chapter 13 on January 30, 1995. They began farming in 1970. Since 1978, they have lived on an acreage near Ocheyedan, Iowa. Kleves operated a dairy farm at that location. They have raised row crops on farm ground owned by them and on rented farms. Both debtors have off-farm jobs, Mr. Kleve since 1993 and Mrs. Kleve since the Kleves have been married. Mr. Kleve estimates the combined monthly income from their jobs at \$1,800.00 including overtime.

Financial problems led to a reduction in the couple's farming operation. They raised crops on 350 acres in 1992 and on 100 acres in 1993. In 1994, they leased out their tillable acres, retaining only some hay ground. In early 1994, debtors ceased their dairy operation. They sold their dairy cows in February 1994 and turned the money over to RECD, the lienholder. They sold an old manure spreader and turned the proceeds over to the RECD.

Debtors have been involved in custom farm work intermittently since 1970. As custom operators, they did some cultivation in June 1995; they have combined; they have cut grain or hay. The 1995 cultivation was done in exchange for hay which they fed to their horse and to horses owned by their sons. They earned \$500.00 cutting grains or hay in 1993. Kleves earned between \$2,000.00 and \$3,000.00 per year custom farming in the 1970s. They have not earned more than \$500.00 per year from custom farming in the 1990s. Their schedule I shows an estimated \$100.00 per month from the operation of a business or farm. This refers to custom farming. Mr. Kleve assists his 75-year old father with his farming operation.

When they filed their bankruptcy, Kleves scheduled the following items of farm equipment with the estimated values as shown. The debtors claimed all of the items as exempt pursuant to Iowa Code § 627.6(11)(a). No objections were filed to their claims. These items are exempt from the estate:

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|---|--------|
| 8" X 52 sudenga auger | \$ 500 |
| 19' Krause discs | 1,000 |
| Allis 7045 tractor | 5,000 |
| Allis D-17 tractor | 200 |
| Allis WD tractor | 200 |
| Allis 500 loader | 100 |
| Allis 19' disc | 100 |
| Allis 4-18 plow | 200 |
| Case 8-row cultivator | 500 |
| New Idea spreader | "Junk" |
| Blair feed R wagon | "Junk" |
| Allis field cultivator | 300 |
| J & M wagons with gears | 1,500 |
| John Deere swather | 700 |
| Dairy Cool milk cooler, Dairy Cool milk machine, and Bon matic pipeline | 2,000 |
| *Gleaner combine, Gleaner corn head and bean platform | 2,500 |
| *Detison snowblower | 100 |
| *Field sprayer | 50 |
| *Bush Hog chisel plow | 125 |

(Schedule B-31, Docket No. 1). Items marked with an asterisk are jointly owned by Mr. Kleve's father. Only one of the debtors' tractors works, presumably the Allis 7045.

Kleves would like to continue custom farming with the hope of again earning \$2,000.00 to \$3,000.00 a year. Mr. Kleve also has hopes of farming his father's farm when his father retires. He would also like to get back into dairy farming, but would not be able to until the couple completes payments on their confirmed three-year plan, as all disposable income is dedicated to plan payments, with no excess available to purchase livestock.

Debtors seek to avoid the RECD lien in the farm equipment. The parties stipulate that debtors are in possession of the items and that RECD does not have a purchase money security interest.

DISCUSSION

In Iowa, each debtor engaged in farming may claim as exempt from execution implements and equipment reasonably related to a normal farming operation not to exceed in value \$10,000.00 in the aggregate. Iowa Code §627.6(11)(a). RECD contends that debtors are no longer engaged in any type

of farming, that their operation is now little more than hobby farming to obtain hay for pet horses. Even if they are farmers, RECD argues that not all of the implements and equipment claimed by them are reasonably necessary to their present, limited, operation.

The court must examine the debtors' rights to the claimed exemptions under Iowa law and whether the items, for lien avoidance purposes, are tools of their farming trade. The tests for determining whether the items are exempt, but for the lien, and whether the lien is avoidable, are substantially the same. In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990). The court must consider the intensity of the debtors' past farming activities, the sincerity of their intentions to continue farming, and whether debtors are legitimately engaged in a farming activity which currently and regularly uses the specific implements exempted. Production Credit Assn. of St. Cloud v. LaFond (In re LaFond), 791 F.2d 623, 626 (8th Cir. 1986).

Custom farmers are considered to be farmers for exemption purposes. Matter of Myers, 56 B.R. 423, 427 (Bankr. S.D. Iowa 1985). Holding off-farm jobs is not fatal to farmers' claiming exemptions as farmers. Matter of Hahn, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980).

Although generally debtors must be engaged in farming at the time of filing bankruptcy, they may still claim an exemption in farm equipment if they have only temporarily ceased farming as of the filing date and if they intend to return to farming. Indvik, 118 B.R. at 1005; Myers, 56 B.R. at 426; Hahn, 5 B.R. at 245. The debtors' prospects for re-engaging in farming must be reasonable. The court should consider the amount of time which has passed since the debtors last engaged in farming, and any circumstances which would or might preclude the debtors' future farming activities.

Debtors ceased their recent crop and dairy operations because of financial difficulties and stress, oft-cited problems in the farming business. There is no question that they were farmers and have recently farmed as an occupation. Mr. Kleve's father still farms. Kleves have helped his father in the past, and they expect to do so again. Debtors have earned substantial income in the past from custom farming. It is not an unreasonable expectation that they could do so again if they retain the equipment. Based on the intensity and recency of their past activities, it is not unreasonable that they expect to engage in crop and custom farming again soon. As to the machinery and implements related to crop farming, the court finds that they are tools of the debtors' farming trade and that the RECD lien against the items may be avoided.

Debtors also seek avoidance of RECD's lien against their dairy equipment, specifically the Dairy Cool milk cooler, the Dairy Cool milk machine and the Bon matic pipeline. Debtors have not engaged in dairy farming since early 1994, and by their own admission, could not do so again until the completion of their chapter 13 plan in early 1998. Debtors would like to engage in dairy farming again at that time, but there is little evidence to show they would be able to do so. The cessation of that farming activity is more than temporary. The court finds that the debtors are no longer engaged in dairy farming for the purposes of avoiding RECD's lien. As to the dairy equipment, RECD's lien may not be avoided.

ORDER

IT IS ORDERED that debtors' motion to avoid the RECD lien is granted as to all farm equipment claimed by them as exempt with the exception of the Dairy Cool milk cooler, the Dairy Cool milk machine and the Bon matic pipeline. As to these items, the motion is denied. Judgment shall enter accordingly.

SO ORDERED THIS 24th DAY OF OCTOBER 1995.

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: Don Molstad, Carol Dunbar, U.S. Attorney and U.S. Trustee.