

In the United States Bankruptcy Court

for the Northern District of Iowa

CURTIS B. WATERMAN and CYNTHIA L.
WATERMAN

Debtors.

Bankruptcy No. 95-61657KW

Chapter 7

ORDER RE MOTION TO AVOID LIEN

On January 3, 1996, the above-captioned matter came on for hearing on Debtors' Motion to Avoid Lien. Debtors appeared in person with Attorney Timothy Dunbar. Objector First Security State Bank appeared by Mark Conway. Evidence was presented after which the matter was taken under advisement.

Debtors filed this Motion to Avoid Lien on November 3, 1995 seeking to avoid liens on a 1987 Dodge Shadow and a 1977 Chevrolet Impala. Avoidance is sought under 11 U.S.C. 522(f)(1)(B)(ii). In so doing, Debtors assert that these motor vehicles are tools of the trade of Debtor or the trade of a dependent of Debtor. This is a core proceeding under 28 U.S.C. 157(b)(2)(K).

FINDINGS OF FACT

Curtis Waterman has been employed by Hawkeye Tech as a maintenance custodian for three years. As a custodian, he provides janitorial services on several job sites on the campus of Hawkeye Tech. He is required to go from job site to job site to perform these duties. He testified that he does not ordinarily have access to a school-owned vehicle, though on rare occasions he can use a school vehicle or ride with other persons. He stated that it is necessary and part of his job requirements that he have a vehicle to go from job site to job site to perform his duties. His work hours are from 10:00 p.m. until 6:30 a.m.

Upon completion of his job at Hawkeye Tech, Mr. Waterman commences employment at Waterloo Paper Company until noon. Afterwards, he works out of his home as a VCR repairman, ordinarily until approximately 3:00 p.m. He feels it is necessary that he have a motor vehicle to get to work and to perform his job duties. He ordinarily drives the 1977 Chevrolet Impala and considers it a tool of his trade.

Debtors operate a VCR repair business known as All Sorts VCR Repair Service. They advertise that they will pick up and then deliver repaired VCRs. Cynthia Waterman testified that she makes deliveries two or three times per week. She has been requested on several occasions to do on-site repairs. While it does not appear that she is the primary repair person, she apparently can do minor repairs. Her primary job with this business is to pick up supplies and materials for the business as well as pick up and deliver VCRs. She testified that she could not perform her duties without a vehicle. She does concede that pick-ups and deliveries could be scheduled in the afternoon on most occasions when her husband is home. She asks that the lien be avoided on the 1987 Dodge Shadow as a tool of her trade.

Mr. Dennis Hansen testified that he is Vice-President for Security State Bank at Evansdale. He was the loan officer on Debtors' extension loan. It is stipulated that the value of these vehicles is less than \$5,000 and the liens constitute non-purchase money security interests arising from the extension loan. Mr. Hansen testified that he was told the VCR business was no longer viable at the time of the loan because Debtors had anticipated a contract with Covenant Medical Center. That contract, however, did not materialize. Mr. Hansen also testified that he was not told that the car (Chevy) was a necessary vehicle or tool of the trade for Mr. Waterman. Mr. Hansen testified that Mr. Waterman told him that his wife was not working.

Mr. Waterman did not deny that he had told Mr. Hansen that business was down because of the Covenant Medical Center contract. He did not tell Mr. Hansen of the ongoing business because the income was sporadic and could not be counted on. However, he testified that they have since advertised in the yellow pages and business has picked up slightly. He testified that they now net approximately \$100 per month from the VCR business and he considers it a legitimate part-time business operation.

MEMORANDUM OF LAW

Section 522(f)(1) states that "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." The categories of lien that may be avoided are judicial liens and nonpossessory, nonpurchase-money security interests. 11 U.S.C. 522(f)(1)(A), (B). This latter category is subdivided into three parts: (1) household goods; (2) tools of the debtor trade; and (3) prescribed health aids. 11 U.S.C.

522(f)(1)(B)(i)-(iii). Debtors assert that the lien on their two automobiles is subject to avoidance as tools of Debtor's trade. A party seeking lien avoidance has the burden of proof on all issues. In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990). Therefore, Debtors have the burden to establish all issues relating to the exempt status of the property as well as its function as a tool of Debtors' trade.

The critical issue under 522(f) lien avoidance is whether the lien impairs an exemption to which the Debtor is entitled under 522(b). In re Less, No. 95-11136KC, slip op. at 1 (Bankr. N.D. Iowa Oct. 11, 1995). The court must refer to Iowa's exemption statute, as Iowa has opted out of 522(b)'s federal exemption provisions. 11 U.S.C. 522(b)(2)(A); In re Van Pelt, 83 B.R. 617, 619 (Bankr. S.D. Iowa 1987); Iowa Code sec. 627.6(9)(b). Iowa Code sec. 627.6(9)(b) states that a debtor may hold exempt from execution one motor vehicle with a value not to exceed five thousand dollars. Alternately, Iowa Code sec. 627.6(10) provides

a debtor who is a resident of this state may hold exempt from execution the following property:

....

[i]f the debtor is engaged in any profession other than farming, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate.

Although Debtors are entitled to exempt one automobile under sec. 627.6(9)(b), they claimed both as exempt without objection. Debtors have received their discharge and retain both automobiles as exempt property. Now Debtors define both autos as tools of the trade to utilize lien avoidance under 522(f)(1)(B)(ii).

Two tests are utilized to evaluate whether estate property qualifies as a tool of the trade. One test applies state law and the other applies Federal bankruptcy law. Nevertheless, they are essentially the same. The state law test involves an inquiry "whether the items are the proper implements in the reasonable conduct of the debtor's trade or profession." Indvik, 118 B.R. at 1005. Implement is defined as "an item reasonably fitted or employed as a means of making labor more effective." Less, slip op. at 2 (utilizing Baker v. Maxwell, 168 N.W. 160 (Iowa 1918)). The bankruptcy test for determining if an item is an "implement or tool of the trade" for lien avoidance purposes 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." LaFond, 791 F.2d at 626-27. As Federal law determines what constitutes a tool of the trade for lien avoidance purposes, the bankruptcy test is used in this analysis. In re Graettinger 95 B.R. 632, 635 (Bankr. N.D. Iowa 1988).

Variiously applying Iowa and Eighth Circuit law, the Bankruptcy Court for the Northern District of Iowa has allowed farm and construction equipment, trailers, and a pickup truck to be classified as tools of the trade for the purpose of lien avoidance. LaFond, 791 F.2d at 623 (holding exempt as tools of the trade a tractor, a plow, a wagon and silage box, a haybine, and a cylinder and hoses); Less, 95-11136KC (holding exempt as tools of the trade a Keefer livestock trailer, a skid loader with a blown engine, miscellaneous tools, welders and shop equipment); In re Ackerman, No. 94-21846KD, slip op. at 7 (Bankr. N.D. Iowa Apr. 12, 1995) (holding exempt as a tool of the trade a flatbed trailer used to transport

materials); Graettinger, 95 B.R. at 632 (holding exempt as a tool of the trade a 1983 Nissan pickup truck). The court in Graettinger held that the pickup truck in dispute was eligible for lien avoidance as a tool of the trade because it was essential to the debtor's business of selling and delivering grain bins. Graettinger, 95 B.R. 635. Other courts have also classified pickup trucks as tools of the trade for lien avoidance purposes. In re Shipman, 167 B.R. 527 (Bankr. N.D. Ind. 1994); In re Stallsworth, 133 B.R. 470 (Bankr. S.D. Ind. 1991).

Whether an automobile is a tool of the trade for lien avoidance purposes is unresolved in this District. However, most other jurisdictions presented with this issue have decided in the negative. Colorado prohibits a self-employed housekeeper from defining her automobile as a tool of the trade, even though she uses it to transport herself and her equipment from job site to job site. In re Weiss, 51 B.R. 224, 227 (D. Colo. 1985). Kansas prohibits automobiles, when used as family cars, or when used to travel between job sites, to be defined as tools of the trade for the purpose of lien avoidance. In re Currie, 34 B.R. 745, 748 (D. Kan. 1983) (holding that when the debtor's pickup truck qualifies as a tool of the trade for lien avoidance purposes, a family car that gets better gas mileage and can accomplish the same tasks cannot also be a tool of the trade); In re Bondank, 130 B.R. 586, 588 (Bankr. Kan. 1991) (holding that when an automobile is not specifically modified for the debtor's occupation and it is used in his occupation to travel from one place to another, it is exempt as a means of conveyance and not as a tool of the trade). The District of Oregon holds that a debtor is not entitled to a tools of the trade exemption when an automobile is used both for transportation to and from the debtor's primary employment and for deliveries in a side business. In re Lindsay, 29 B.R. 25, 26-27 (Bankr. Or. 1983).

As indicated by the foregoing authorities, some courts have concluded that a pickup truck can be classified, under certain circumstances, as a tool of the trade. This includes the Graettinger case decided in the Northern District of Iowa. In Graettinger, the Court determined that the pickup was essential for the debtor's business of selling and delivering grain bins. However, a substantial functional distinction has been made between pickup trucks and automobiles. In this case, the evidence does not reflect that either automobile has been specifically modified or outfitted to perform trade duties of either Debtor. These vehicles are used for transportation to and from Debtor's employment and for personal transportation purposes. It is the conclusion of this Court that those authorities declining to define an automobile as a tool of the trade are persuasive and distinguishable from the Graettinger case which involved a pickup truck which was necessary and indispensable for delivering merchandise. Such is not the case here. It is the conclusion of this Court that under the facts presented in this case, Debtors may not define their automobiles as tools of the trade and the liens thereon cannot be avoided.

WHEREFORE, for the reasons set forth herein, Debtors' Motion to Avoid Liens under 11 U.S.C. 522(b) is DENIED.

SO ORDERED this 2nd day of February, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge