

In the United States Bankruptcy Court

for the Northern District of Iowa

FREDERICK CARL SMITH, DEBRA ANN SMITH

Debtors.

Bankruptcy No. 96-20243KD

Chapter 7

ORDER RE MOTION TO AVOID LIEN

On April 17, 1996, the above-captioned matter came on for hearing pursuant to assignment. Debtors Fred and Debra Smith appeared in person with Attorney Joe Peiffer. Creditor Union State Bank appeared by Attorney Richard Pattison. The matter before the Court is Debtors' Motion for Avoidance of Liens. Evidence was presented after which the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), (K).

STATEMENT OF THE CASE

Debtors seek to avoid the fixing of liens on certain farm equipment, implements and tools in which Union State Bank has a security interest. It is uncontested that Union State Bank holds a valid and properly perfected security interest which is a nonpossessory, nonpurchase-money security interest. Debtors have claimed the farm equipment, implements and tools exempt. The total value of these items is alleged to be \$20,000. The value is not contested and neither party presented evidence concerning value.

Union State Bank filed an Objection to Motion for Avoidance of Liens. The only ground for objection is the Bank's assertion that Debtors are no longer engaged in the business of farming and that there is no reasonable expectation that they will return to farming in the foreseeable future.

FINDINGS OF FACT

Debtor Fred Smith is 41 years old. He resides with his wife and children in Monona, Iowa. Mr. Smith has been a farmer all of his life. He grew up on a farm and started farming with his father. He has a high school education and attended trade school in mechanics after high school. Mr. Smith and his wife began renting farm ground in the 1970's on a crop share basis, continuing until they bought their own farm in 1992. They owned this farm for approximately four years until it was sold in February of 1996. The parties filed their Chapter 7 Petition on February 7, 1996.

Though Mr. Smith has spent his entire life in the farming business, he also has a background as a mechanic. His first employment off the farm was as a mechanic in Dyersville, Iowa approximately eleven years ago. He kept that job for approximately eight months. Since the sale of the farm, Mr. Smith has been employed at Dee Implement in Waukon as a mechanic on a full-time basis. His employer charges Mr. Smith's time as a mechanic at a rate of \$30 per hour. In addition, the record reflects that Mr. Smith has done work as a mechanic on the side and has been approached on occasion by farmers in the community to work as a mechanic.

Debtor Debra Smith has also been involved in the farm operation over the years. During the time that Debtors either rented or owned their own farm, she helped in the pig barns as needed. She has also kept the books and, on infrequent occasions, helped in the fields during hay season.

Eight years ago, Mrs. Smith accepted employment at Farm & Home Supply in Monona, Iowa. She is employed on a full-time basis, dividing her time between bookkeeping and sales. Previously, Mrs. Smith worked approximately 20 hours per week as a cook at a restaurant in town on a part-time basis for approximately three or four years.

Mrs. Smith testified that if the parties were able to resume farming, she would prefer to keep her employment with Farm & Home Supply in order to supplement their farm income. She testified that if she and her husband returned to farming, she would keep the books for the farm operation and help with the hogs if they began a hog operation. She testified that while she has not done a lot of crop work, she would help with any crops as necessary.

When Debtors sold their acreage in 1996, they retained the equipment which is the subject of this Motion. It is presently located at a place they are renting. If their Motion is granted, Debtors would locate a place to store the machinery and equipment until such time as they again commence farming. The items in question consist partly of farm implements, partly tools and other related items, and a horning machine.

The farm implements, i.e. a skid loader, two tractors, a disc and a seed box planter, constitute the major portion of the items Debtors claim exempt as tools of the trade. The collective listed value of these items is \$17,250. Items listed which would be considered tools and associated items have a collective value of \$1,750. The final item is the horning machine which has a listed value of \$1,000.

The value of these items is apparently not in question and no evidence was presented to challenge these values. Mr. Smith testified that of the tools which are the subject of this Motion, he is presently not using all of them in his present occupation. He does, on occasion, use his own tools but is presently only using basic tools as a mechanic.

Debtors testified that they would like to return to farming on a full-time basis if it is at all possible. Mr. Smith testified that he feels that farming over the long term is more economically beneficial than his present salaried position. If he returned to farming, he would eliminate or reduce his hours as a mechanic. Mrs. Smith testified that she would, in all likelihood, retain her employment off the farm as a supplement to farm income.

Debtors stated that they are anxious to return to farming and would like to find a small acreage and slowly rebuild. They testified that they have contacted an agent who has been looking for an acreage to meet their needs. They are hopeful of purchasing land but would explore renting property to raise crops or hogs if a purchase is not realistic. Debtors testified that as of the time of trial, they had not located any specific property because their finances would not allow them to do that at this time. They stated that they would ideally like to start with 40 to 60 acres and begin with a crop operation with some hogs. They testified that retaining the equipment which is the subject of this Motion will help provide a start-up in that operation.

Both Mr. and Mrs. Smith testified that they would like to return to farming as soon as possible. At the present time, they do not have a source of capital with which to purchase property. Mr. Smith testified that there is a possibility that an uncle could provide financing though he would prefer not to make such a request.

CONCLUSIONS OF LAW

A debtor in Iowa may only claim exemptions under Iowa law. In re Myers, 56 B.R. 423, 425 (Bankr. S.D. Iowa 1985); Iowa Code

sec. 627.10. A valid exemption under state law is a prerequisite to receiving relief through § 522(f)(1) lien avoidance. Myers, 56 B.R. at 425. State law governs the availability and scope of exemptions; federal law determines the availability of lien avoidance. In re Thompson, 884 F.2d 1100, 1102 (8th Cir. 1989). Debtor has the burden of proving entitlement to the lien avoidance protection of § 522(f)(1). In re Streeper, 158 B.R. 783, 786 (Bankr. N.D. Iowa 1993); In re Winkowitsch, No. 93-60712LW, slip op. at 2 (Bankr. N.D. Iowa Sept. 20, 1993).

It is well established that § 522(f)(1) allows debtors to avoid liens which impair an exemption to which Debtors would in fact be entitled but for the lien itself. Owen v. Owen, 111 S. Ct. 1833, 1836 (1991); Streeper, 158 B.R. at 786. The Court must determine whether Debtors are entitled to claim the farm equipment, implements and tools exempt, and if so, whether the Bank's lien impairs that exemption. Streeper, 158 B.R. at 786.

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).

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. In re LaFond, 791 F.2d 623, 626 (8th Cir. 1986).

Debtors must generally be engaged in farming at the time of filing bankruptcy. They may, however, still claim an exemption in farm equipment if they have temporarily ceased farming as of the filing date, if they intend to return to farming. In re Bishop, No. 93-60176LW, slip op. at 3 (Bankr. N.D. Iowa June 29, 1993); Indvik, 118 B.R. at 1005; Myers, 56 B.R. at 426; In re Hahn, 5 B.R. 242, 245 (Bankr. S.D. Iowa 1980). The key factor is the intention of the debtors to resume their farming operations. In re Ackerman, No. 94-21846KD, slip op. at 5 (Bankr. N.D. Iowa Apr. 12, 1995) (considering intent to continue masonry business); Indvik, 118 B.R. at 1008 (explaining that debtor's desire and intent to return to farming, when credible, allow the court to avoid liens impairing debtor's interest in exempt tools of the farming trade). Iowa courts give great weight to debtors' stated intentions regarding their return to farming. Myers, 56 B.R. at 426; Pease v. Price, 101 Iowa 57, 59, 69 N.W. 1120 (1897); Hickman v. Cruise, 72 Iowa 528, 529, 34 N.W. 316, 317 (1887).

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. In re Kleve, No. 95-50141XS, slip op. at 5 (Bankr. N.D. Iowa Oct. 24, 1995). Debtors may claim an exemption for farm equipment even though they derive income from off-farm jobs. In re Fink, No. 95-51926XS, slip op. at 5 (Bankr. N.D. Iowa Feb. 8, 1996); Hahn, 5 B.R. at 245. The Court looks at the extent of involvement each spouse has in the farming operation when two debtor spouses are both making a claim of exemption under section 627.6(11)(a). Bishop, slip op. at 4.

Debtors' farming operation continued until just before they filed their petition in bankruptcy. It is not clear when Debtors will be able to resume farming activities. They are uncertain about financing and admittedly do not have any present funds with which to commence a farming operation. They presently do not have any land though they anticipate starting with a limited farming operation on 40 to 60 acres.

It is well settled that Iowa's exemption statute is to be liberally construed in favor of debtors. Allison-Bristow Comm. School Dist. v. Iowa Civil Rights Comm'n, 461 N.W.2d 456, 458 (Iowa 1990); In re Eby, 76 B.R. 140, 141 (Bankr. S.D. Iowa 1987) (construing Iowa Code § 627.6(11)(a)). This gives the Court some latitude in making the determination as to whether Debtors' desire and intent to continue farming are credible. Debtors' farming operation only ceased in February, 1996, the same month they filed their bankruptcy petition. They have farmed since the 1970s, raising crops and hogs. Mr. Smith was mainly responsible for the farming operation. Although Mrs. Smith also worked in town, she contributed to the farming by handling the bookkeeping and doing chores related to the hog operation. Construing sec. 627.6(11)(a) liberally, the Court finds that both Debtors are "engaged in farming". The Bank has not disputed that the machinery, implements and tools claimed exempt are implements and equipment reasonably related to a normal farming operation under sec. 627.6(11)(a).

It is the ultimate conclusion of this Court that the Debtors intend to return to active farming in the future and that their temporary cessation from farming should not defeat their claim of exemption. As such, under § 522(b)(2)(A) and Iowa Code sec. 627.6(11)(a), both these Debtors are "engaged in farming" and are entitled to the statutory exemption for their farm machinery, implements and tools. Because Debtors are entitled to claim this exemption, they are also entitled to avoid the Bank's lien on the property under § 522(b)(2)(A).

WHEREFORE, Debtors' Motion for Avoidance of Lien is GRANTED.

FURTHER, the liens of Union State Bank on Debtors' farm machinery, implements and tools are avoided under 11 U.S.C. § 522(b)(2)(A).

SO ORDERED this 7th day of May, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge