

In the United States Bankruptcy Court

for the Northern District of Iowa

MATTHEW J. SCHUSTER
LISA M. SCHUSTER
Debtor(s).

Bankruptcy No. 96-22380KD

Chapter 7

ORDER RE OBJECTION TO EXEMPTION

On March 5, 1997, the above-captioned matter came on for hearing pursuant to assignment. Debtors appeared with Attorney Francis Henkels. Creditor Citizens State Bank appeared, represented by Attorney Jay Willems. The specific matter before the Court is an Objection to Exemption filed by Citizens State Bank with a resistance filed by Debtors. 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).

STATEMENT OF THE CASE

Debtors filed their Chapter 7 Petition on September 19, 1996. The petition contains a Schedule C seeking statutory exemptions. Among the exemptions sought is farm machinery valued by Debtors in the amount of \$17,375. Additionally, Debtors seek exemption of a farrowing unit which they value at \$3,250. Finally, Debtors wish to exempt an Iowa State Income Tax Refund with a stated value of \$1,500.

The first meeting of creditors was held November 12, 1996. Secured creditor Citizens State Bank filed its objection to claim of exemption on December 20, 1996. The Bank asserts that prior appraisals valued the farm equipment far in excess of the values listed in Debtors' schedules. The Bank objects to Debtors' assertion that they only have a one-half interest in a farrowing unit they claim exempt and in which Citizens State Bank maintains a security interest. The Bank objects to Debtors claiming more than \$1,000 in tax refunds exempt. The Bank asserts that only Lisa Schuster had income tax withheld and, as such, she is the only individual authorized to claim this exemption in an amount not to exceed \$1,000.

Debtors filed a resistance on January 3, 1997 asserting that the Bank's objection to exemptions is untimely. At the hearing, Debtors presented evidence on valuation and argued that the values asserted by them are reasonable. The Court heard evidence on all issues and took the matter under advisement.

TIMELINESS OF OBJECTION TO EXEMPTION

Debtors argue that the Bank's objection to their exemption claims should be dismissed as untimely under Rule 4003(b). They assert that the time for filing the objection had lapsed and no previous extension of time was granted by this Court. Creditor Citizens State Bank acknowledges that its

objection was filed more than 30 days after either the first meeting of creditors or the amendment of Debtors' schedules.

The Bank attended the first meeting of creditors and it became apparent that insufficient time existed at the meeting to allow it to ask the numerous questions which it had for Debtors. Counsel for the Bank asserts that he immediately discussed with Debtors' counsel the need to continue Debtors' examination which had started at the first meeting of creditors. Counsel for the Bank asserts, and it is not disputed by Debtors' counsel, that a follow-up examination was agreed upon between them, with assurances that there would be no need for formal Court intervention.

The Bank questioned Debtors further on December 3, 1996 and subsequently filed its objection to claims of exemption within 30 days of the completion of that examination, on December 23, 1996. Counsel for the Bank asserts that the Bank did not formally seek Court approval for an extension of time to file its objections because the agreement between counsel indicated that this would not be necessary.

The Bank presents a compelling argument that its objection is timely because the follow-up deposition of Debtors, with consent of Debtors as discussed at the first meeting of creditors, was an extension of the first meeting of creditors. It is apparent that numerous §341(a) meetings were scheduled on the day in question and the Bank had numerous inquiries it wished to make of Debtors. Because of the need to move on with the other §341(a) exams, it was agreed between counsel for Debtors and counsel for the Bank that a follow-up session would be conducted in which the Bank would have sufficient time to explore its areas of concern. It does not appear, however, that the Trustee was actually involved in this process.

It is clear that counsel for the Bank acted in good faith and acted expeditiously without any prejudice to Debtors. The follow-up examination of Debtors was timely held on December 3, 1996 and the Bank filed its objection to exemptions on December 23, 1996. The record indicates an agreement existed between counsel that the Bank could continue its final examination of Debtors at a later date. Furthermore, Debtors were examined and testified at the December 3 deposition concerning their exemption rights. The agreement between counsel and Debtors' acquiescence in being examined constitutes action inconsistent with adherence to the Rule 4003(b) time constraints. The agreement and the following deposition show that Debtors waived the time limitation of Rule 4003(b). Further, the fact that the Bank did not request a formal extension of time from the Court, because of the agreement of counsel, constitutes excusable neglect. Based upon all of the circumstances of this case, the Court concludes that the Bank's objection to claim of exemptions was acceptably filed and is properly considered by this Court.

OBJECTION TO STATE INCOME TAX REFUND EXEMPTION

The Bank objects to Debtors' claim of an exemption of \$1,500 from an Iowa Income Tax Refund. It states that the exempt amount is not to exceed \$1,000 pursuant to Iowa Code sec. 627.6(9)(c). The Bank asserts that any refund to which Debtors are entitled is attributable solely to Lisa Schuster's income taxes as no income taxes were withheld from the earnings of Debtor Matthew Schuster.

The law is clear that a nonwage-earning spouse is not entitled to claim an exemption in the wage-earning spouse's tax refund under Iowa Code sec. 627.6(9)(c), even if a joint return was filed. In re Honomichl, 82 B.R. 92 (Bankr. S.D. Iowa 1987). Under Iowa Code sec. 627.6(9)(c), a debtor may hold exempt:

In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed one thousand dollars in the aggregate.

The court noted in Honomichl that the issue turns on state law. 82 B.R. at 94. A spouse has no inchoate right to the other spouse's personal property. Id. Where tax withholdings and refunds are derived solely from one spouse's wages, the other spouse has no interest in them. Id.

Debtors stipulate that only Debtor Lisa M. Schuster had earnings from which Federal and Iowa income tax was withheld during the 1996 calendar year. Any refund to which Lisa Schuster is entitled is attributable solely to her tax withholding. Debtor Matthew J. Schuster has no interest in her tax refund. For that reason, the objection of Creditor Citizens State Bank must be sustained. Debtor Lisa M. Schuster shall be allowed to claim an exemption in an amount not to exceed \$1,000 pursuant to Iowa Code sec. 627.6(9)(c). Debtor Matthew J. Schuster is not entitled to claim any tax refund exempt.

FARM MACHINERY

Debtors claim various machinery and equipment exempt with a total value of \$17,375. The parties agree that Citizens State Bank has a security interest in these items. The parties further stipulate that the security interests are non-purchase money security interests. They agree that Debtor Lisa M. Schuster is considered a farmer for the purposes of this hearing and is entitled to assert the farm equipment exemption.

The Bank objects that the value of the property in question far exceeds the applicable \$20,000 exemption for tools of the trade and further objects that the property is worth far more than the value placed upon these items by Debtors. The record establishes that the Bank has had a fairly long history of involvement with Debtors. In calendar year 1995, Debtors provided a financial statement to the Bank. The Bank sought and obtained an appraisal of the farm machinery from D. G. Starling & Associates. The 1995 appraisal was entered into evidence as Creditor's Exhibit #10.

Prior to this hearing, the farm machinery, as well as a farrowing house, were again appraised by D. G. Starling & Associates on February 28, 1997. Mr. Starling places a present value on the machinery of \$25,900. In addition, three items which were listed on security documents and appraised in 1995 were not found on Debtors' farm at the time of this appraisal. These items are two wagons and a three-bottom plow. The Bank asked the Court to place values on these items. The total appraised value of these three items in 1995 was \$1,800. However, the Court need not value these items now as Debtors will be claiming exemptions from property presently on the farm and appraised in February of 1997.

Citizens State Bank has filed a nondischargeability complaint against Debtors under both §523 and §707. The issue of missing property is more appropriately addressed in that adversary proceeding and is not necessary to a resolution of the underlying issues in this objection to exemptions.

Of the remaining farm machinery, the only item over which there is significant controversy is a grinder-mixer (I.H. Model 1240). This item was appraised at \$7,000 in January of 1995. This grinder-mixer was again appraised at \$7,000 by Mr. Starling in his most recent appraisal. Debtors, however, take the position that, at the time of filing, this grinder-mixer was inoperable. Mr. Schuster testified that since the filing of his Petition, he has completely rebuilt this grinder-mixer and installed new hammers, a new monitor, and new augers. Debtors presented evidence (Debtors' Exhibit H) which

establishes that repairs were done to the grinder-mixer in October of 1996. The total payment for parts and labor was approximately \$1,600. Mr. Schuster testified that without the repairs, the value of the grinder-mixer was between \$500 and \$1,000. Based upon the repairs made and the prior appraisals of this item of property, the Court concludes that at the time of the filing of the Petition, the mixer-grinder had a fair market value of \$5,500.

The appropriate valuation of property of the estate is made at the time of the filing of the Petition. A valuation of a lien interest pursuant to 11 U.S.C. §506(a) is properly based on the retail value of the collateral without deduction for costs of sale. In re Trimble, 50 F.3d 530, 531-32 (8th Cir. 1995). This Court has previously cited this valuation method with approval. See In re Simon, No. 94-21591KD, slip op. at 4 (Bankr. N.D. Iowa Dec. 7, 1995).

The Court has examined the entire evidentiary record presented in this case. With the exception of the grinder-mixer previously discussed, the Court finds that the appraised values made by Mr. Starling on February 28, 1997 accurately reflect the fair market value of the items as of the time of the filing of the Petition. This is based upon the credibility of the witnesses as well as their background. Value is also based upon the consistency between this appraisal and the appraisal previously conducted by the same individual in January of 1995.

The Court accepts the values for all items listed in the Bank's Exhibit #15 at the values placed upon them by Mr. Starling with the exception of the grinder-mixer which is determined to have a fair market value at the time of filing of \$5,500. This places a total value on the appraised property of \$24,400.

The Court does point out that this does not include valuations placed upon the gravity flow wagon, the hay wagon, or the three-bottom plow. If these items are on the property and in the possession of Debtors, and Debtors choose to select any or all of these items as exempt, these items will be valued for the purpose of exemption as the values placed upon them by Mr. Starling in the January 13, 1995 appraisal.

FARROWING UNIT

Debtors listed in their Schedule C at the time of filing a farrowing unit exempt under Iowa Code sec. 627.6(10) with Debtors' interest being valued at \$3,250. While this is unresolved in the record, apparently Debtors now claim only a one-half interest in the farrowing unit and assert that the total value is \$7,500 of which Debtors' value for exemption purposes is \$3,250 (sic). The Bank objects both to the valuation placed upon this unit as well as Debtors' claim that they only own a one-half interest in this property. The Bank maintains that Debtors should be held accountable for their representations that they were the sole owners of this unit. The Bank also points out that Debtors represented to FHA in March of 1996 that the unit had a fair market value of \$20,000.

Again, this item was appraised by D. G. Starling & Associates on February 28, 1997. This farrowing house consists of sixteen farrowing units. The entire unit is considered movable although it is ordinarily placed upon a hard deck and bolted down. It is a prebuilt farrowing facility and was described as being somewhat similar in appearance to a mobile home.

Mr. Starling appraised this farrowing house in January of 1995, placing a fair market value on the unit at that time of \$20,000. The unit was again appraised by Mr. Starling on February 28, 1997 and he again placed a value upon this unit in the amount of \$20,000. Mr. Schuster testified that the interior of the farrowing house wore out and depreciated over a period of years. He testified that, as of the time

of filing, the inside of the farrowing house was completely ruined and had to be renovated. He testified that certain repairs were made after filing though apparently this has not been completed. Debtors did not present any documentary evidence indicating the cost incurred in this renovation or the extent of materials used to carry out this asserted renovation.

The Court has considered the valuations placed upon this farrowing unit by the parties. The Court has, in so doing, considered the appraisals of Mr. Starling, both in 1995 and again in 1997. The farrowing unit had a fair market value in 1995 of \$20,000. It appears that some renovation has occurred since the filing of the Petition. Based upon the testimony of the parties and giving all of the testimony as much weight as the Court deems appropriate, the Court concludes that the fair market value of the farrowing unit, as of the time of filing the Petition, is \$18,000. The Court makes no determination as to ownership of this unit but reserves the issue for resolution at a later time upon proper pleading.

Debtors may claim farm equipment exempt under Iowa Code sec. 627.6(11)(a) which provides that a debtor engaged in farming may exempt the equipment reasonably related to a normal farming operation not to exceed \$10,000 in value. In re Fink, No. 95-51926XS, slip op. at 4 (Bankr. Feb. 8, 1996). Section 522(m) doubles the amount of this exemption in a joint case. As it is stipulated that this is a joint case and both parties are farmers for the purposes of this case, Debtors are entitled to claim equipment reasonably related to their farming operation in an amount not to exceed \$20,000 in value. Debtors may claim items from the foregoing described property with a total aggregate value not to exceed \$20,000. In addition, the selection, as to the three presently non-appraised items, is controlled by the Court's foregoing discussion.

WHEREFORE, the Court finds, for the reasons set out herein, that the objection to exemptions is timely filed.

FURTHER, Debtor Lisa M. Schuster shall be allowed to claim an exemption in an amount not to exceed \$1,000 pursuant to Iowa Code sec. 627.6(9)(c) for her Iowa Income Tax Refund. Debtor Matthew J. Schuster is not entitled to claim any tax refund exempt.

FURTHER, the Court places a total value on the specified farm machinery of \$24,400.

FURTHER, the Court places a fair market value on the farrowing unit in the amount of \$18,000.

FURTHER, Debtors may select from the foregoing farm machinery and associated equipment items exempt in a value not to exceed \$20,000.

SO ORDERED this 2nd day of April, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge