

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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TIMOTHY H. LEMKER and JERI B. LEMKER  
*Debtors.*

Bankruptcy No. 97-00628S  
Chapter 7

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### MEMORANDUM DECISION RE: TRUSTEE'S OBJECTION TO EXEMPTION

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The trustee objects to Timothy Lemker's claim of exemption in a 1984 Ford pickup truck. Hearing was held May 27, 1997 in Sioux City. Trustee Wil L. Forker appeared pro se. A. Frank Baron appeared for debtor Timothy H. Lemker. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

#### Findings of Fact

The parties have stipulated to the relevant facts which I set out here verbatim and adopt as factual findings in this proceeding.

1. Debtors filed their Chapter 7 bankruptcy March 10, 1997.
2. At the time of the filing, Debtors owned a 1984 Ford F-150 pickup with a value of \$2,000.00. They also owned a 1989 Astro van with a value of \$3,000.00.
3. Debtor, Timothy Lemker, had entered into a loan agreement with Security State Bank on September 3, 1996, in which he borrowed \$1,000.00 and pledged as collateral the 1984 Ford F-150. Lemker delivered title to the Bank on or before the date of the loan. Attached [to the stipulation] is a true and accurate copy of said agreement.
4. The Security State Bank, hereafter the Bank, notated its lien on the title on March 17, 1997, which was after the filing of the bankruptcy petition. Attached [to the stipulation] is a true and accurate copy of said title.
5. At the time of the filing of the bankruptcy, the payoff on the note to the Bank was \$599.57, exclusive of interest.
6. The Debtors claimed the 1984 Ford F-150 and 1989 Astro van as exempt under Iowa Code §627.6(9)(b).
7. The Trustee objected to the claim of exemption of the Debtors in the 1984 Ford F-150, and the Debtors timely resisted. The Trustee is not objecting to the exemption claim of the 1989 Astro van.
8. The Trustee has filed an adversary action to avoid the lien of the Bank, Forker vs. Security State Bank, Adversary #97-9062-S, pursuant to 11 U.S.C. §544.

The note and security agreement and certificate of title referenced in paragraphs 3 and 4 of the stipulation are hereby admitted into evidence.

## Discussion

Lemker claims the vehicle exempt under Iowa Code § 627.6(9)(b) which permits an Iowa resident to claim exempt from execution a motor vehicle not exceeding a value of \$5,000. The statute states:

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

\* \* \*

9. Any combination of the following, not to exceed a value of five thousand dollars in the aggregate:
  - a. Musical instruments, not including radios, television sets, or record or tape playing machines, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
  - b. One motor vehicle.
  - c. 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. This exemption is in addition to the limitations contained in sections 642.21 and 537.5105.

Iowa Code Ann. § 627.6(9) (West Supp. 1997).

The trustee contends that Lemker's pickup truck is not exempt to the extent of the value of the unperfected lien held against it by Security State Bank. The parties agree that the debt owed the bank at the time of the bankruptcy filing was \$599.57 plus an undetermined amount of interest.

The debtor argues that the bank had no lien at filing because its lien was not noted on the debtor's certificate of title and that the bank can no longer obtain a lien because of the bankruptcy stay (see 11 U.S.C. § 362(a)(4) and (5) (1997)). Debtor disagrees with the trustee's assertion that bank has an unperfected lien in the truck. Debtor argues that a creditor obtains no interest in a vehicle absent notation of the lien on the title. Debtor says that this is a simple case of a debtor claiming a \$2,000 truck exempt to the full extent of its value.

The parties dispute the extent of the debtor's exemption in the truck because they believe that the court's determination of the exemption issue will have important ramifications on the pending lien avoidance action. In that adversary proceeding, the trustee seeks to avoid the bank's allegedly unperfected lien under 11 U.S.C. § 544(a) (1997). The trustee hopes to avoid the lien, preserve it and thereby succeed to the bank's interest in the truck. Debtor believes that if his claim of exemption in the truck is allowed to the truck's full value, the trustee will not be permitted to claim any rights in the truck under § 544.

The amount of a lien against a vehicle is relevant to the exemption that may be claimed in it. In a case of first impression in this court, the Hon. Michael J. Melloy determined that it is a debtor's equity in a vehicle that the debtor claims as exempt. *In re Smith*, Bankruptcy No. L88-01716W, slip op. (Bankr. N.D. Iowa June 8, 1989). Therefore, in determining the extent of the debtor's exempt interest in the pickup truck, I must consider the bank's lien.

I disagree with debtor's contention that the Uniform Commercial Code as adopted in Iowa does not apply to the creation of security interests in consumer-owned motor vehicles. See Iowa Code §

554.9104. The bank's security interest attached to debtor's truck. The bank gave value; the debtor owned the truck, and the debtor signed a written agreement giving the bank a security interest in the truck. Iowa Code § 554.9203(1) and (2). Perfection of bank's interest is not accomplished under the Uniform Commercial Code by the filing of a financing statement. Section 554.9302(3) of the Iowa Code states in part that:

The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to ... b. the following statutes of this state; sections 321.18, 321.20 and 321.50....

Iowa Code Ann. § 554.9302(3)(b) (1995 and West Supp. 1997) (emphasis added). However, § 321.50 itself makes clear that except as provided in chapter 321, the Uniform Commercial Code applies "to all transactions intended to create a security interest in vehicles..." Iowa Code Ann. § 321.50(5) (1985 and West. Supp. 1997). The method of perfecting such security interests is an exception to the coverage of the Uniform Commercial Code.

Section 321.50(1) provides that a security interest in a vehicle subject to registration in Iowa

is perfected by the delivery to the county treasurer of the county where the certificate of title was issued ... of an application for certificate of title which lists the security interest, or an application for notation of security interest signed by the owner ... and a fee of five dollars....

Iowa Code § 321.50(1). If the owner or the secured party possesses the certificate of title, it must be delivered to the county treasurer at the time the application is filed. Iowa Code § 321.50(1). If another holds the title, the treasurer notifies that entity to deliver it to the treasurer. Iowa Code § 321.50(2).

Unlike the Uniform Commercial Code, wherein attached but unperfected security interests remain enforceable against the debtor (see Iowa Code § 554.9203(1)), a secured party with a security interest in a motor vehicle has a limited time to perfect that interest, or the interest is lost. Section 321.50(6) of the Iowa Code states:

Any person obtaining possession of a certificate of title for a vehicle not already subject to a perfected security interest, except new or used vehicles held by a dealer or manufacturer as inventory for sale, who purports to have a security interest in such vehicle shall, within thirty days from the receipt of the certificate of title, deliver such certificate of title to the county treasurer of the county where it was issued to note such security interest and, if such person fails to do so, the person's purported security interest in the vehicle shall be void and unenforceable and such person shall forthwith deliver the certificate of title to the county treasurer of the county where it was issued. If no security interest has been filed for notation on the certificate of title, the certificate shall be mailed by the treasurer to the owner of the vehicle. For purposes of determining the commencement date of the thirty-day period provided by this subsection, it shall be presumed that the purported security interest holder received the certificate of title on the date of the creation of the holder's purported security interest in the vehicle or the date of the issuance of the certificate of title, whichever is the latter. Any person collecting a fee from the owner of the vehicle for the purpose of perfecting a security interest in such vehicle who does not cause such security interest to be noted on the certificate of title by the county treasurer shall remit such fee to the department of revenue and finance of this state.

The evidence is undisputed that Security State Bank received the debtor's certificate of title no later than September 3, 1996, the date of the loan and security agreement (Stipulation, 3). There was no prior lienholder. Bank did not deliver the certificate of title to the county treasurer within 30 days of its receipt of the title. It delivered the title to the treasurer on or about March 17, 1997, after the filing of debtor's bankruptcy petition. The Bank's security interest became void and unenforceable against the debtor after it failed to perfect its interest within the time allowed under Iowa law.

Debtor's claim of exemption in the vehicle is determined as of the date of his petition. 11 U.S.C. § 522 (b)(2)(A) (1997). As to the trustee, there was no enforceable lien against the truck on the date of bankruptcy. Debtor's equity in the truck on that date extended to its full value--\$2,000. Accordingly, the trustee's objection to the debtor's claim of exemption must be overruled.

IT IS ORDERED that trustee's objection to debtor's claim of exemption in a 1984 Ford pickup truck is overruled. The truck is exempt to debtor to the extent of \$2,000. Judgment shall enter accordingly.

SO ORDERED THIS 18<sup>th</sup> DAY OF JUNE 1997.

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 A. Frank Baron, Wil Forker and U.S. Trustee.