

# **In the United States Bankruptcy Court**

## **for the Northern District of Iowa**

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KEITH A. KONZEN  
*Debtor(s).*

Bankruptcy No. 96-21884-D  
Chapter 7

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### **ORDER RE TRUSTEE'S FINAL REPORT AND PROPOSED DISTRIBUTION AND DEBTOR'S OBJECTION THERETO**

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This matter came on for hearing on October 14, 1997 on Trustee's Final Report and Proposed Distribution and Debtor's objection thereto. Attorney Joseph Bitter appeared for Debtor Keith Konzen. Attorney Wesley Huisinga appeared for Trustee Sheryl Youngblut. After hearing arguments of counsel, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (B) and (K).

#### **STATEMENT OF THE ISSUE**

Trustee proposes to distribute funds from the estate to a priority claimant. Debtor asserts his counsel of record has a lien on the funds.

#### **FINDINGS OF FACT**

Trustee liquidated two nonexempt assets which were property of the estate: an IRA cashed in for \$1,600 and a 1987 Ford Escort sold for \$700. One creditor, Susan Konzen, filed a claim against the estate. The Final Report proposes distribution of these funds from the estate to Ms. Konzen after payment of administrative expenses. Administrative expenses equal \$1,122.03. The distribution to Ms. Konzen is estimated at \$1,191.09 on her total unsecured priority claim of \$21,000.

Debtor filed an objection to the Final Report. He asserts a lien exists in favor of Joseph Bitter, his counsel of record, on the property Trustee liquidated. Mr. Bitter did not file a claim in this case. The Statement of Attorney filed July 31, 1996 does not indicate Mr. Bitter took security for his attorney fees. The alleged lien is not disclosed on Schedule D as a secured claim nor anywhere else in Debtor's schedules.

Debtor previously resisted Trustee's Motion for turnover of the nonexempt assets asserting "we believe that we have a lien on said assets." The parties resolved the matter without a hearing. Trustee withdrew her Motion for Turnover stating that the assets had been turned over.

Mr. Bitter offered a Statement of Facts at the hearing. He states his fees will be in excess of \$3,000. Attached to the Statement are copies of a Security Agreement and a UCC financing statement. The

Security Agreement is undated and describes the collateral as follows: "All income tax refunds, the 1995 Harley Davidson motorcycle and any other non-exempt property." (Emphasis added.)

The Financing Statement was filed with the Iowa Secretary of State on July 29, 1996. It describes the collateral as follows: "All income tax refunds, the motorcycle and any other exempt property. The motorcycle is a 1995 Harley Davidson." (Emphasis added.) Debtor filed his Chapter 7 petition July 31, 1996.

Mr. Bitter describes the discrepancy in the collateral descriptions, with the financing statement listing "exempt property" and the security agreement listing "non-exempt property", as a scrivener's error and an inadvertence. He states the parties' intent was to include the term "non-exempt property".

### CONCLUSIONS OF LAW

The trustee in bankruptcy takes priority over unperfected security interests. Iowa Code §554.9301. State law determines perfection of security interests. In re Bellanca Aircraft Corp., 850 F.2d 1275, 1277 (8th Cir. 1988). The extent and validity of an attorney's lien in bankruptcy is determined by state law. In re Electronic Metal Prods., Inc., 916 F.2d 1502, 1504 (10th Cir. 1990).

Attorney Bitter is relying on the Security Agreement and Financing Statement described above as the basis for claiming a lien on the property liquidated by Trustee. Under the Uniform Commercial Code effective in most states, the collateral description in the security agreement defines the security interest as between the two parties to the agreement. Maxl Sales Co. v. Critiques, Inc., 796 F.2d 1293, 1298 (10th Cir. 1986). The collateral description in the financing statement is meant to give public notice of the security interest. Id.

Iowa Code sec. 554.9402(1) provides that a financing statement is sufficient if, among other things, it "contains a statement indicating the types, or describing the items, of collateral." Section 554.9110 states that "[f]or the purposes of [Article 9] any description of personal property . . . is sufficient whether or not it is specific if it reasonably identifies what is described." See In re Waters, 90 B.R. 946, 962 (Bankr. N.D. Iowa 1988).

According to Iowa law, the financing statement must reasonably identify the collateral. In re Branderhorst, 843 F.2d 311, 313 (8th Cir. 1988). It must describe the collateral by type or item. Id. Minor errors are excused if they are not seriously misleading. Id.; Iowa Code §554.9402(8). As a general rule, the description is sufficient if the property "is described in such a manner as to enable third persons, aided by inquiries which the instrument itself indicates and directs, to identify the property." First Nat'l Bank v. Francis, 342 N.W.2d 468, 471 (Iowa 1984). The test of the sufficiency of a collateral description is whether it does the job assigned -- to make possible the identification of the thing described. First State Bank v. Waychus, 183 N.W.2d 728, 730 (Iowa 1971).

In determining whether an error in the collateral description renders it insufficient, the courts ask whether an interested party searching records would be easily misled. In re Preston, 52 B.R. 296, 300 (Bankr. M.D. Tenn. 1985). In In re De Schamp, 44 B.R. 517, 520 (Bankr. N.D. Iowa 1984), this Court found that a financing statement was ineffective where, from the four corners of the document, it could not conclude that the financing statement put third parties on inquiry notice of the security interest claimed. In that case, the creditor claimed a security interest in construction equipment but the financing statement described the collateral as farm and ranch machinery and equipment. Id.

In In re Preston, 52 B.R. 296, 297 (Bankr. M.D. Tenn. 1985), a financing statement mistakenly identified the first of two trusts, although the second trust held the intended collateral. The court held that a subsequent lender would have had no notice of a lien on the second trust. Id. at 300. It pointed out that the purpose of the financing statement is to give notice to third parties. Id. at 301.

A supergeneric collateral description, such as "all personal property", is likewise insufficient under Iowa law. Merchants Nat'l Bank v. Halberstadt, 425 N.W.2d 429, 432 (Iowa App. 1988). It fails to describe the collateral by item or type and would circumvent the plain meaning of sec. 554.9402. Id. Such catch-all language is studiously designed to cover everything and describe nothing, and is insufficient to perfect a security interest. De Schamp, 44 B.R. at 521.

Applying the foregoing to the record, the Court concludes that the Financing Statement was both seriously misleading and studiously insufficient. The Security Agreement describes the collateral to include non-exempt property. The Financing Statement instead includes exempt property. Trustee or any other interested party would have no notice that non-exempt property is included in the collateral based on the four corners of the financing statement.

Even if the Court were to find as Debtor asserts that the parties' intent was to include non-exempt property, that description is overly broad and fails to sufficiently describe an item or type of collateral. Trustee was at no time put on notice that Attorney Bitter claimed a security interest in estate property. He failed to disclose such an interest in documents filed in the case. Trustee had no way of knowing Debtor's counsel claimed a security interest in the IRS and Ford Escort she liquidated, based on lack of disclosure in the case, as well as the failure of the financing statement to perfect the security interest.

The Court concludes that Attorney Bitter's security interest was insufficiently perfected. Therefore, Trustee takes priority over Debtor's claim. Attorney Bitter's claim is an unsecured claim. The proceeds from liquidation of the property shall be turned over as proposed by Trustee in her final report.

**WHEREFORE**, Debtor's Objection to Trustee's Final Report is OVERRULED.

**FURTHER**, Trustee's Final Report and Proposed Distribution is APPROVED.

**SO ORDERED** this 5th day of November, 1997.

Paul J. Kilburg  
U.S. Bankruptcy Judge