

In the United States Bankruptcy Court

for the Northern District of Iowa

PAUL ALLEN KNODE
DANETTE ILENE KNODE

Debtor(s).

Bankruptcy No. 97-01814-C

Chapter 7

ORDER RE DEBTORS' MOTION TO AVOID LIEN ON EXEMPT PROPERTY

This matter came on for hearing before the undersigned on March 17, 1998 on Debtors' Motion to Avoid Lien on Exempt Property. Debtors Paul and Danette Knode were represented by Attorney Henry Nathanson. Attorney Patricia Kamath appeared on behalf of Mark McCool. After the presentation of argument of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(K).

STATEMENT OF THE CASE

Debtors move to avoid the judgment lien of Mark McCool under §522(f). They argue that his lien, arising from debt predating the acquisition of the homestead, impairs an exemption to which they would otherwise be entitled under Iowa Code sec. 561.16. Mr. McCool objects to the Motion to Avoid Lien and filed a Motion to Dismiss Debtors' Motion to Avoid Lien. He argues that this Court's Order filed November 24, 1997 sustaining his Objection to Exemption is dispositive of Debtors' motion to avoid his lien on their homestead.

FINDINGS OF FACT

The relevant facts are not in dispute. The parties filed a Stipulation of Facts which essentially mirrors the Court's findings in its November 24, 1997 Order. Mr. McCool received a judgment of \$8,900 on March 16, 1993 against Debtor Danette Knode. The judgment was based on debt arising from legal services performed for Ms. Knode between September 1987 and March 1989. Mrs. Knode purchased her homestead on March 31, 1992 with her former husband. She received sole title to the property from her former husband as part of the stipulation in their June 1994 dissolution of marriage.

Debtors were married on September 16, 1996. They reside together at the homestead property. They claim the property exempt as their homestead on Schedule C. Mr. McCool timely filed an objection to exemption which the Court sustained. The Court held that Debtors' real estate claimed exempt as their homestead is not exempt from the debt owed to Mr. McCool which predated Mrs. Knode's acquisition of the property. Debtors have appealed this ruling to the District Court.

CONCLUSIONS OF LAW

Debtors' motion to avoid lien relies on §522(f) which states:

Notwithstanding any waiver of exemptions, . . . 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, if such lien is -

(1) a judicial lien . . .

According to §522(b)(2), "an individual debtor may exempt from property of the estate . . . any property that is exempt under . . . State or local law . . ." Iowa has opted out of the federal exemption scheme. Iowa Code §627.10; In re Wooten, 82 B.R. 84, 85 (Bankr. N.D. Iowa 1986). Under Iowa law, "the homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary." Iowa Code §561.16. A "special declaration of statute to the contrary" appears at Iowa Code sec. 561.21(1) which states:

The homestead may be sold to satisfy debts of each of the following classes:

1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

To avoid a lien under §522(f), the court must determine whether the debtor would have been entitled to the relevant exemption in the absence of the lien. Owen v. Owen, 500 U.S. 305, 311 (1991). The state of affairs considered by the court is hypothetical, not actual. Id. "Thus, the court must essentially treat the judicial lien as non-existent until the date of the bankruptcy at which time there is a hypothetical attempt to levy on the property by the trustee." In re Morgan, 149 B.R. 147, 153 (B.A.P. 9th Cir. 1993).

Debtors' brief cites cases from other jurisdictions including Florida, Virginia and Wisconsin, and dicta from In re Macke, 136 B.R. 209, 211 (Bankr. S.D. Iowa 1992), for the proposition that Owen prevents Iowa Code sec. 561.21 from excepting certain liens from §522(f) lien avoidance. This Court, however, has held to the contrary.

In In re Streeper, 158 B.R. 783, 788 (Bankr. N.D. Iowa 1993) (Edmonds, J.), this Court followed the analysis set out in Owen and concluded that a lien based on debt contracted prior to acquisition of the homestead is not avoidable under §522(f). The Court stated:

A debtor is not entitled to an exemption under Iowa Code sections 561.16 and 561.21(1) for debt contracted prior to the acquisition of the homestead. The homestead is nonexempt from antecedent debt regardless of whether the creditor has reduced the debt to judgment. The same analysis is applicable to debt incurred for materials furnished for the improvement of the homestead under Iowa Code § 561.21(3). The debtor would not be entitled to the homestead exemption even in the absence of a judicial lien. A homestead subject to a lien for the types of debt in § 561.21(1) or (3) would not be exempt if the lien were avoided. Therefore, the lien would not be avoidable under § 522(f).

Id.(citations omitted) (emphasis in original); see also In re McCammant, No. 91-3633-CH, slip op. at 5 (Bankr. S.D. Iowa Apr.15, 1994) (Hill, J.) (adopting reasoning set forth in Streeper); Matter of Nunn, No. 95-00831-DJ, Tape # 233A 22.8 (Bankr. S.D. Iowa, July 11, 1995) (Jackwig, J.) (concluding that since the debtors would not have been entitled to homestead exemption due to an antecedent debt even if the court had avoided the lien, the creditor's objection to the exemption is sustained and the debtors' motion to avoid lien is denied), aff'd, No. 3-95-CV-10126 (S.D. Iowa Dec. 12, 1995).

This Court came to the same conclusion in In re Shanahan, No. 94-11127KC, slip op. at 5 (Bankr. N.D. Iowa Nov. 17, 1994) (Kilburg, J.), on facts indistinguishable from the facts in this matter. In Shanahan, an attorney had rendered services prior to the debtor's acquisition of a homestead and subsequently reduced the debt to judgment. The Court held:

In response to the question posited in Owen, whether avoiding the lien would entitle Debtor to an exemption, the answer is no. Debtor cannot claim his homestead exempt from the antecedent debt even in the absence of Mr. Swift's judicial lien. . . . [T]he homestead exemption does not operate against debts contracted prior to the acquisition of the homestead. "[A] valid exemption under state law is a prerequisite to receiving relief through lien avoidance in states where the uniform federal exemptions do not apply." In re Myers, 56 B.R. 423, 425 (Bankr. S.D. Iowa 1985). Debtor may not utilize § 522(f) to avoid Mr. Swift's lien.

Id.

The Eighth Circuit Court of Appeals, in an unpublished decision which has persuasive value on this material issue, recently affirmed a case in which this Court refused to avoid a lien based on a debt "incurred for work done or materials furnished exclusively for the improvement of the homestead." Meseraull v. Rick Miller Constr., Inc., 82 F.3d 421, 1996 WL 185736, at *1 (8th Cir. Apr. 19, 1996); Iowa Code §561.21(3). The court stated that under Iowa law, homesteads are not exempt from sec. 561.21(3) debt. Id. at *2. "Accordingly, [the creditor's] lien does not impair an exemption to which [the debtor] would be entitled but for the lien, as even if [the] lien were avoided, [the debtor's] homestead would not be exempt from her debt to [the creditor]." Id. The court concluded that the debtor had not met her burden of establishing that she is entitled to avoid the lien. Id.

In its Order filed November 24, 1997, this Court came to the same conclusion regarding the exempt status of the homestead as regards Debtor Danette Knode's debt to Mr. McCool. The parties agree the debt owed by Mrs. Knode to Mr. McCool predates the acquisition of the homestead. Under Iowa Code sec. 561.21(1), the homestead may be sold to satisfy such preacquisition debt. Because the homestead is not exempt from this debt, Mr. McCool's judgment lien based on the debt is not avoidable under §522(f). Hypothetically treating the lien as nonexistent, the homestead remains liable for the underlying debt. Therefore, Debtors have failed to meet their burden of establishing that they are entitled to avoid Mr. McCool's lien.

WHEREFORE, Debtors' Motion to Avoid Lien on Exempt Property is DENIED.

FURTHER, Debtors' real estate claimed exempt as their homestead is not exempt from Mr. McCool's claim which predated Mrs. Knode's acquisition of the homestead.

FURTHER, Debtors may not avoid the judgment lien based on that preacquisition debt.

SO ORDERED this 3rd day of April, 1998.

Paul J. Kilburg
U.S. Bankruptcy Judge