

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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GEORGE TRIPP and  
ROSE TRIPP

*Debtor(s).*

Bankruptcy No. 97-03430-W

Chapter 7

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HABBO G. FOKKENA Trustee

*Plaintiff(s)*

Adversary No. 98-9026-W

vs.

ROBERT E. ZEZULKA  
MARILYN ZEZULKA and  
CITIZENS SAVINGS BANK OF  
HAWKEYE IOWA

*Defendant(s)*

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### ORDER RE COMPLAINT TO AVOID SECURITY INTEREST

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This matter came on for hearing before the undersigned on April 1, 1998 on Trustee's Complaint to Avoid Security Interest. Citizens State Bank was represented by John Hofmeyer III. Habbo Fokkena appeared as Chapter 7 Trustee. The parties agreed to present the case on stipulated facts, briefs and oral arguments. After the presentation of arguments by 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

Trustee filed this action against Robert and Marilyn Zezulka and Citizens Savings Bank. The Zezulkas hold an unperfected purchase money security interest in cows sold by Debtors George and Rose Trip. The Bank holds a perfected blanket lien in Debtors' property, including the cows in question. Trustee wishes to avoid the Zezulkas' purchase money security interest and seeks a declaration that such interest has priority over the Bank's security interest, and should be preserved for the benefit of the estate. The Bank argues its perfected security interest has priority.

### FINDINGS OF FACT

The Court adopts the parties' "Factual Stipulation for Adversary Action" filed March 16, 1998. According to the Stipulation, Debtors entered into a security agreement with the Bank on August 5, 1993. The Bank perfected this interest by filing a UCC financing statement. Its lien covers all Debtors' property including after-acquired property.

Debtors purchased holstein cows from the Zezulkas in October 1996 for \$36,500. They gave the Zezulkas a purchase money security interest in the cows. The Zezulkas did not file a UCC financing statement. Their purchase money security interest is unperfected. Debtors sold cattle they had purchased from the Zezulkas a few days before filing their Chapter 7 petition. The net proceeds from the sale are \$8,152.64. The amounts due by Debtors to the Bank and to the Zezulkas each exceed the amount of proceeds at issue.

### CONCLUSIONS OF LAW

Under §544(a)(1), Trustee has "strong arm" powers to avoid unperfected liens. In re Double J Cattle Co., 203 B.R. 484, 487 (D. Wyo. 1995). Liens avoided under this, among other sections of the Code, are automatically preserved for the benefit of the estate under §551. Id. at 488; In re Wegner, 210 B.R. 799, 801 (Bankr. D.N.D. 1997).

Courts unanimously agree that preservation of an avoided lien under §551 does not improve its status. Wegner, 210 B.R. at 802; Double J, 203 B.R. at 488; In re Van de Kamp's Dutch Bakeries, 908 F.2d 517, 519 (9th Cir. 1990). A trustee who avoids an interest succeeds to the priority that interest enjoyed over competing interests. Van de Kamp's, 908 F.2d at 519. The trustee steps only into the creditors' shoes and only obtains the rights which the creditor retains. In re Kavalchych, 164 B.R. 1018, 1024 (S.D. Fla. 1994). Preserving the lien for the benefit of the estate does not enhance the lien's status; an unperfected lien is still unperfected. Id.

[W]hen under state law, the avoided lien which is sought to be preserved is inferior to subsequent valid liens, the inferior lien cannot be enhanced by its preservation under 11 U.S.C. §551. If the avoided lien will sink below other liens against the estate, the trustee who stands in the shoes of the inferior avoided lien will likewise sink while in those shoes, because §551 does not create a floating lien for trustees.

In re Delancey, 94 B.R. 311, 313 (Bankr. S.D.N.Y. 1988).

Lien avoidance is pointless when the lien sought to be preserved is inferior to other security interests. Stoebner v. Horizon Fabricators, Inc., 153 B.R. 840, 851 (D. Minn. 1993). A lien cannot be preserved for the benefit of the estate if senior liens exceed the value of the property. Id. Preservation under §551 has no practical value to the trustee in such a situation. In re Appalachian Energy Indus., Inc., 25 B.R. 515, 517 (Bankr. M.D. Tenn. 1982).

Whether a security interest is properly perfected is a question of state law. Double J, 203 B.R. at 487; Van de Kamp's, 908 F.2d at 519. In this case, Trustee concedes the Zezulka's purchase money security interest is unperfected. The parties' Factual Stipulation states, on page 3: "Absent the issue presented in this adversary action, BANK would be entitled to [the] proceeds [at issue]." In making this stipulation, Trustee acknowledges that the Bank's perfected security interest is superior to Zezulka's unperfected purchase money security interest. This comports with Iowa law.

Under Iowa Code sec. 554.9312(2), a properly filed and perfected purchase money security interest takes priority over an earlier perfected security interest. Production Credit Ass'n v. Farm & Town Indus., Inc., 518 N.W.2d 339, 344-45 (Iowa 1994). If a purchase money security interest is not perfected within twenty days after the debtor receives possession of the collateral, however, its superpriority over prior-in-time perfected security interests lapses. Iowa Code §§554.9312, 554.9304. Generally, upon lapse of a senior perfected security interest, the holder of a junior perfected security interest advances in priority. State Savs. Bank v. Onawa State Bank, 368 N.W.2d 161, 166 (Iowa 1985).

[A] creditor making a purchase money secured loan may obtain priority over prior creditors by filing a financing statement within twenty days after the asset is acquired by the debtor pursuant to [U.C.C. sec. 9-312(4)]. Failure to follow this simple procedure results in failure to attain priority status.

In re Wright, 192 B.R. 946, 949 (W.D. Wis. 1996) (considering Wisconsin statute similar to Iowa Code §554.9312).

The court in In re Appalachian Energy Indus., Inc., 25 B.R. 515 (Bankr. M.D. Tenn. 1982), considered the same situation this Court is faced with now. In Appalachian Energy, the parties stipulated that an unperfected purchase money security interest could be avoided by the trustee. Id. at 516. The issue was the order of priority between the trustee and a bank which held an earlier perfected security interest with an after-acquired property clause. Id. The parties stipulated that the bank perfected its lien before the purchase money security interest was granted, and that the purchase money security interest was not perfected. Id. at 517. The court concluded that the rights preserved for the benefit of the estate under §551 constituted an unperfected security interest junior to the bank's perfected security interest. Id. It held the bank's lien was superior to the trustee's interest in the unperfected security interest. Id. at 518.

Based on the foregoing, the Court concludes that the Bank's security interest is superior to the interest of the Zezulkas to which Trustee would succeed after lien avoidance under §544(a)(1) and preservation of the lien under §551. By avoiding the Zezulkas' security interest, Trustee would hold their interest as they held it: an unperfected purchase money

security interest inferior to the Bank's perfected security interest. The fact that §551 preserves liens for the benefit of the estate does not enhance the Zezulkas' security interest which Trustee seeks to step into. The Bank has priority and is entitled to the proceeds from the sale of cows which Debtors purchased from the Zezulkas. Avoiding Zezulkas unperfected lien is pointless because the Bank's senior lien exceeds the value of the sale proceeds, leaving no benefit to the estate after lien avoidance.

WHEREFORE, Trustee's Complaint to Avoid Security Interest is DENIED.

FURTHER, the security interest of Citizens Savings Bank is superior to that held by the Zezulkas.

FURTHER, Trustee is ordered to turn over to Citizens Savings Bank the sale proceeds he holds in the amount of \$8,152.64.

SO ORDERED this 13th day of April, 1998.

Paul J. Kilburg  
U.S. Bankruptcy Judge