

In the United States Bankruptcy Court

for the Northern District of Iowa

MICHAEL JOHN VOGEL
MARSHA KAYE VOGEL

Bankruptcy No. 98-02634-C

Debtor(s).

Chapter 7

RENEE K. HANRAHAN TRUSTEE

Adversary No. 98-9312-C

Plaintiff(s)

vs.

MICHAEL JOHN VOGEL
MARSHA KAYE VOGEL

Defendant(s)

ORDER RE TRUSTEE'S COMPLAINT TO AVOID TRANSFER

This matter came before the undersigned on April 27, 1999 pursuant to assignment. Debtors Michael and Marsha Vogel appeared with attorney Henry Nathanson. Renee Hanrahan appeared as Chapter 7 Trustee. After the presentation of evidence and argument, 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)(B), (F), (H).

STATEMENT OF THE CASE

Trustee objects to Debtor Marsha Vogel's claimed exemption of a one-half interest in a 1996 Harley Davidson. She also seeks to avoid as a preferential or fraudulent transfer the retitling of the Harley in both Debtors' names. Debtors assert that retitling the Harley was a legitimate estate planning tool to allow them to maximize their exemptions.

FINDINGS OF FACT

Debtor Michael Vogel bought the 1996 Harley Davidson motorcycle in August 1995. The Retail Installment Contract shows Mr. Vogel traded in a 1980 Harley, receiving a trade-in allowance of \$6,700. Mr. Vogel financed the remainder of the purchase price, \$8,498.70, over 60 months with payments of \$180.53 per month to Perpetual Savings Bank. The Harley was titled solely in Michael Vogel's name.

Debtors started living together in April 1997 and were married in October 1997. Prior to their marriage, Debtors kept their finances separate. When Mr. Vogel was occasionally laid off from work, however, Marsha would help him pay his bills. The record shows four checks which Marsha wrote to Michael between June and November 1997 totaling \$775. She did not pay Perpetual Savings Bank

directly for the loan on the Harley. Rather, both Debtors testified that Marsha's payments to Michael during this time were loans to allow him to make the Harley payments.

After Debtors were married, they combined their finances, depositing their paychecks in one checking account and paying all their bills, including the monthly installment payment on the Harley loan, from that account. Mrs. Vogel usually wrote the checks to pay the bills. The schedules show Mrs. Vogel's net monthly income is \$1,738 and Mr. Vogel's is \$1,130.

Debtors filed their Chapter 7 petition on September 1, 1998. On advice of counsel, Mr. Vogel retitled the Harley in both Debtors' names on July 30, 1998. Debtors explain that this was done to allow each Debtor to claim half of the equity in the Harley exempt. Debtors have three other older vehicles in which they have little equity. Mr. Vogel testified that he felt that Mrs. Vogel had an interest in the Harley as marital property. Debtors did not disclose the retitling of the Harley on their schedules. Apparently, they did disclose it to Trustee at the § 341 meeting. The parties stipulate that Mr. Vogel was insolvent on the date that he retitled the Harley in both Debtors' names.

The Harley has a fair market value of \$12,000. The balance due on the loan secured by the Harley is \$3,908 which Debtors have reaffirmed. The total equity in the Harley is \$8,092. Each Debtor claims one-half the equity exempt, or approximately \$4,000.

Debtors claim certain accrued wages and tax refunds exempt under Iowa Code sec. 627.6(9)(c). Trustee objected that the total of these amounts exceeds the \$1,000 limit of sec. 627.6(9)(c) for each Debtor. The parties indicated at trial that these issues have been resolved. The Court need only address the exempt status of the Harley and whether Trustee can avoid the transfer arising from retitling the Harley in both Debtors' names.

EXEMPTION

Pursuant to Iowa Code sec. 627.6, a debtor in Iowa may claim exempt up to \$5,000 in the aggregate of an interest in a motor vehicle and up to \$1,000 in accrued wages or tax refunds. Trustee bears the burden of proving that Debtors' exemptions are not properly claimed. In re Krantz, 97 B.R. 514, 519 (Bankr. N.D. Iowa 1989).

This Court has previously ruled that a debtor must have a property interest in an item of property in order to claim it exempt. In re Brislawn, No. 97-10137KC, slip op. at 3 (Bankr. N.D. Iowa May 23, 1997) (considering ownership interests in vehicle); see In re Bierman, 133 B.R. 484, 487 (Bankr. N.D. Iowa 1991) (allowing exemption of interest in vehicle not noted on certificate of title); In re Couron, No. X90-00442S, slip op. at 3 (Bankr. N.D. Iowa July 16, 1990) (holding joint debtors must each have property interest in taxes withheld to claim tax refunds exempt); In re Honomichl, 82 B.R. 92, 94 (Bankr. S.D. Iowa 1987) (same). State law governs the resolution of property rights within a bankruptcy proceeding. Chiu v. Wong, 16 F.3d 306, 309 (8th Cir. 1994).

The Iowa Supreme Court has stated that a husband or wife has no inchoate right in the other spouse's personal property during the other's lifetime. Nichols v. Nichols, 526 N.W.2d 346, 349 (Iowa App. 1994) (citing Samson v. Samson, 25 N.W. 233, 236 (1885)). In dissolution actions, the Iowa District Court does take each party's separate property into consideration when making equitable divisions of property under Iowa Code sec. 598.21(a). Nichols, 526 N.W.2d at 349. This, however, does not create an ownership interest in the spouse's separate property by virtue of the marital relationship, as might be the case in "community property" states. Id.

In Bierman, this Court applied Iowa law to determine the extent of a debtor's property interest in a vehicle. 133 B.R. at 487. It noted that the certificate of title of a vehicle is prima facie evidence but not conclusive proof of ownership. Id. (citing Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393, 398 (Iowa 1977)). The Court found the debtor had an equitable interest in a vehicle titled solely in his father's name and that the interest was exemptible under Iowa Code sec. 627.6(9)(b). Bierman, 133 B.R. at 487. "It is true that debtor does not have legal title to a motor vehicle, but the statute does not appear to require legal title as a predicate to a claim of exemption." Id.

Under the foregoing, the Court concludes Mrs. Vogel has a property interest in the Harley. She did not obtain this interest by marriage. Instead, the record proves she paid on the Harley loan before and during her marriage to Mr. Vogel. Mrs. Vogel can exempt her interest in the Harley, whether equitable or legal, to the extent it is provable. See Bierman, 133 B.R. at 487.

Obviously, Mr. Vogel's investment in the Harley exceeds Mrs. Vogel's. He traded in an older Harley when he purchased the 1996 Harley and made payments on the loan prior to the time Mrs. Vogel started contributing to the payments. The record shows Mrs. Vogel paid \$775 from checks on her personal account towards Mr. Vogel's loan on the Harley. Additionally, Debtors shared expenses for the ten months after their marriage and before the date they filed their Chapter 7 petition. The Court will assume half of the payments during this time, or \$903 were attributable to Mrs. Vogel. Thus, Debtors have proved Mrs. Vogel's total property interest in the Harley is \$1,678, which may be exempted under Iowa Code sec. 627.6.

FRAUD

Trustee argues the transfer of title a few weeks before Debtors filed their Chapter 7 petition is grounds to deny Mrs. Vogel's claimed exemption of her interest in the Harley. Generally, conversion of non-exempt property to exempt property on the eve of bankruptcy is not a ground for setting aside the exemption unless there is "extrinsic evidence of fraud". In re Armstrong, 931 F.2d 1233, 1236 (8th Cir. 1991); Norwest Bank v. Tveten, 848 F.2d 871, 876 (8th Cir. 1988). Conversion does not of itself give rise to grounds for denying the claimed exemption. Krantz, 97 B.R. at 521. "The sort of indicia of fraud necessary to find fraudulent use of an exemption would be, inter alia, conduct intentionally designed to materially mislead or deceive creditors about the debtors' position, or use of credit to buy exempt property." Armstrong, 931 F.2d at 1237 (citations omitted). Converting a very great amount of property could also be an indication of fraud under Tveten as would the existence of conveyances for less than adequate consideration. Id.; see also Krantz, 97 B.R. at 523 (listing badges of fraud).

"[D]ebtors who seek the powerful remedy of discharge should not be permitted to fraudulently or unfairly manipulate the form and ownership of valuable assets which otherwise would be available for the satisfaction of creditors' claims, so as to shelter them from administration by the trustee." In re Schuster, 132 B.R. 604, 611 (Bankr. D. Minn. 1991). One court has noted that transferring property from one individual to that individual and his spouse is not a simple act of converting nonexempt to exempt assets. In re Porter, 37 B.R. 56, 69 (Bankr. E.D. Va. 1984). It is a transfer of property materially altering ownership rights. Id. The court stated a debtor may not transfer assets to another party in order to gain exempt status. Id.(holding transfer of real estate is voidable under §548(a)).

While eve-of-bankruptcy conversion of non-exempt property to exempt property is of itself acceptable, if extrinsic evidence of intent to defraud creditors is adduced, courts have disallowed the exemption claim, held the pre-bankruptcy transactions avoidable as fraudulent transfers or denied the debtor a discharge. In re Beckman, 104 B.R. 866, 870 (Bankr. S.D. Ohio 1989). In Beckman, the court avoided a purchase of a life insurance policy for the debtor-wife from property of the debtor-

husband as a fraudulent transfer. Id. at 872. The court focused on the debtor's lack of disclosure and deliberate concealment of ownership of the policy. Id. at 871. In In re Moore, 177 B.R. 437, 439 (Bankr. N.D.N.Y. 1994), the debtors converted life insurance policy proceeds and stock into an exempt annuity worth \$16,771. The trustee objected to exemption of the annuity and sought to avoid the transfer as fraudulent under §548(a). Id. at 440. The court found the debtors' actions did not rise to the level of fraud based on the totality of facts and circumstances. Id. at 443. Specific factors in this determination included the lack of concealment by debtors or conduct calculated to mislead creditors; the debtors revealed their actions in their petition and at the first meeting of creditors. Id.

In In re Compton, 70 B.R. 60, 61 (Bankr. W.D. Pa. 1987), the husband-debtor transferred exempt savings and stock from himself to himself and his wife a week before filing their joint Chapter 7 petition. The court found this constituted a fraudulent transfer under §548(a) because of lack of consideration (\$1.00, love and affection), the debtors' insolvency and the "eleventh hour" timing of the transfer. Id. at 63. In In re Thames, 21 B.R. 704, 706 (Bankr. D.S.C. 1981), the court found no evidence of intent to defraud where, on the advice of counsel, the debtor husband conveyed a one-half interest in his residence to the debtor-wife a month before filing a Chapter 7 petition. The court found no lack of consideration where the wife had paid part of the purchase price and contributed to making the mortgage payments. Id. at 707.

Trustee asserts Mrs. Vogel should not be allowed to claim her property interest in the Harley exempt based in part on the timing of the transfer of title. Debtors did not disclose the transfer in their schedules. They did, however, disclose it at the §341 meeting. They point out the transfer was done openly and publicly. As discussed above, Mrs. Vogel made payments on the Harley loan which gave her at least an equitable interest in the Harley. The circumstances do not support a finding of fraud. Mrs. Vogel is entitled to claim the Harley exempt to the extent of her provable interest, or \$1,678.

AVOIDANCE OF TRANSFER

Trustee seeks to avoid the transfer of title to the Harley from Mr. Vogel individually to both Debtors as a preferential or fraudulent transfer under §§547(b) and 548(a). Trustee has the burden to prove all facts necessary under these sections. In re Galbreath, 207 B.R. 309, 322 (Bankr. M.D. Ga. 1997).

PREFERENTIAL TRANSFER

A trustee may avoid a transfer of property to a creditor on account of an antecedent debt while the debtor was insolvent as a preferential transfer. 11 U.S.C. §547(b)(2); In re Mason, 189 B.R. 932, 935 (Bankr. N.D. Iowa 1995). The creditor must receive a distribution greater than could be received in a Chapter 7 case absent the transfer. Id. In Galbreath, the court found a payment under a postnuptial agreement from the debtor/husband to his wife was more in the nature of a gift than a preferential transfer. 207 B.R. at 324. In Butz v. Wheeler, 17 B.R. 85, 88 (Bankr. S.D. Ohio 1981), a husband's assignment of an interest in exempt tax refunds to his wife was not a preferential transfer under §547(b) because it was not made to a creditor on account of an antecedent debt.

Trustee has not established that Mrs. Vogel was a creditor of Mr. Vogel. It is difficult to apply the elements of a preferential transfer to the retitling of the vehicle in the names of joint debtors. Debtors characterized Mrs. Vogel's payments toward the Harley before their marriage as "loans." Considering the circumstances, however, including the joining of Debtors' finances after their marriage, Mrs. Vogel's payments on the Harley are better characterized as creating an equitable property interest in the vehicle, rather than an antecedent debt to her husband. Retitling the vehicle in both Debtors'

names is not a transfer to a creditor, but is rather a recognition of Mrs. Vogel's property interest. Trustee has not established the elements of a preference under §547(b).

FRAUDULENT TRANSFER

Trustee asserts a fraudulent transfer claim on the theory of constructive fraud under §548(a)(2). Trustee may void a transfer as fraudulent if a debtor did not receive reasonably equivalent value for the transfer and the debtor was insolvent at the time of, or made insolvent by, the transfer. In re Bargfrede, 117 F.3d 1078, 1080 (8th Cir. 1997). Reasonably equivalent value and insolvency of the debtor are two of the five elements of a fraudulent transfer under §548(a)(2). In re Grady, 202 B.R. 120, 123 (Bankr. N.D. Iowa 1996). The consideration for such a transfer does not necessarily need to be present consideration. In re Levy, 185 B.R. 378, 383 (Bankr. S.D. Fla. 1995).

The only element in issue is whether Mr. Vogel received less than reasonably equivalent value. Mrs. Vogel paid \$1,678 toward the Harley loan and has an equitable, and exemptible, interest in the Harley to that extent. This constitutes reasonably equivalent value for Mr. Vogel retitling the Harley in both Debtors' names. Putting Mrs. Vogel's name on the title recognizes her property interest in the Harley. She paid some of the payments on the loan. The fact that both Debtors' names are now on the title does not establish that both own equal shares of the vehicle. Rather, Mrs. Vogel paid \$1,678 toward the Harley and has an ownership interest in it only to that extent. Retitling the Harley does not constitute a constructively fraudulent transfer under §548(a)(2).

CONCLUSIONS

Trustee has failed to prove retitling the Harley in both Debtors' names was a preferential transfer under §547(b). Mrs. Vogel was not a creditor of Mr. Vogel and the transfer was not on account of an antecedent debt.

Debtors did not disclose the pre-bankruptcy retitling of the Harley in their schedules. They did, however, disclose it to Trustee at the §341 meeting. There is no evidence of deliberate concealment of the transfer by Debtors or other badges of fraud. The requirement that the transfer be accompanied by consideration is satisfied by Mrs. Vogel's contribution to monthly payments for the vehicle before and during the parties' marriage. Trustee has not met her burden of proof of fraudulent transfer under §548 (a).

Based on Mrs. Vogel's contribution toward payments on the Harley, the transfer resulting from retitling the Harley does not materially alter ownership rights. Rather, it more accurately reflects true ownership of the vehicle. Debtors were not unfairly manipulating the form or ownership of their assets so as to mislead creditors. The Court finds no extrinsic evidence of fraud in Debtors' conduct. Both Debtors are entitled to claim their interest in the Harley exempt under sec. 627.6(9)(b). Mrs. Vogel's interest is limited by the extent of her contribution toward payments on the Harley, or \$1,678. Mr. Vogel's interest covers the remaining equity in the vehicle.

WHEREFORE, Trustee's Objection to Debtors' Claim of Exemption is granted in part and denied in part.

FURTHER, Debtor Marsha Vogel may claim her interest in the 1996 Harley Davidson exempt in the amount of \$1,678.

FURTHER, Debtor Michael Vogel may claim his interest in the 1996 Harley Davidson exempt to the extent of the remaining equity in the vehicle as limited by Iowa Code sec. 627.6(9).

FURTHER, Trustee's Complaint to Avoid Transfer is DENIED.

FURTHER, retitling the Harley Davidson in both Debtors' names on July 30, 1998 does not constitute a preferential transfer under §547(b) or a fraudulent transfer under §548(a)(2).

SO ORDERED this 21 day of May, 1999.

Paul J. Kilburg
U.S. Bankruptcy Judge