

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

BRENT HENNINGSON and
TAMI HENNINGSON-LANDGRAF
Debtor(s).

Bankruptcy No. 99-00864S

Chapter 7
Contested No. 9079

ORDER RE MOTION TO AVOID LIEN

On June 10, 1999, debtors filed a motion to avoid the lien of the Farm Service Agency in their farm machinery and equipment under 11 U.S.C. § 522(f)(1)(B). The United States, on behalf of FSA, resists on the ground that debtors are not engaged in farming. On August 18, 1999, Martha Fagg, Assistant U.S. Attorney, for FSA, and Donald H. Molstad, for the debtors, filed a stipulation of facts. FSA filed a brief. Debtors and FSA agree that the court may decide the matter on these submissions. The court has jurisdiction of this matter under 28 U.S.C. § 1334(a) and the district court's order of reference. This is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

Findings of Fact

The debtors and FSA stipulated to the following facts:

1. That the debtors began their farming operation in 1993.
2. That their farming operation consisted of raising crops and livestock.
3. That initially the debtors custom fed hogs for third parties but did not become involved in the ownership of hogs until 1998.
4. That the debtors' farming operation was originally financed by the purchase of an acreage from their father and mother-in-law, William and Vera Henningson in 1993.
5. That the debtor received loans from Farm Service Agency secured by the real estate, machinery and livestock beginning in 1993.
6. That FSA has a non-purchase money, non-possessory interest in the items claimed exempt by the debtors, to-wit:

Farm equipment - 4400 JD Combine with JD Bean head No. 213& JD Corn head No. 444; Bradford Wagon 300 bu; Parker Wagon No. 2000; 30 ft Ken Field Cultivator; Case 1835 Skidloader; stock Trailer; log splitter; misc. Tools; and 1991 Ford Pickup.

7. That on the date of filing the petition the debtors owned approximately 190 hogs which were subject to FSA's first security interest.
8. That prior to the filing of the petition, both debtors, at various times, worked off the farm to earn additional income.
9. That after the filing of the petition, the debtors removed themselves from the family home and moved to Hornick, Iowa.
10. That since the filing of the petition, the debtor in an attempt to restart his livestock operation has purchased six pigs.
11. That the debtor has attempted to commence custom farming and in an effort to do such custom farming has made contact with area neighbors. To date, he has talked to three neighbors, Michael Patterson, Larry Langraff and Kolby Kolbaum.
12. That at the present time the debtor has not obtained any contracts to custom farm.
13. That the debtors from the date of their marriage in 1993 have been engaged in farming and intend to continue on in their farming operation either by custom farming or by the rental of ground in 2000.
14. That as of April 9, 1999, there was no available ground for them to farm.
15. That the debtors raised crop and livestock in 1998.
16. That the debtors' intentions are to continue farming but at a smaller pace initially without the use of borrowed funds which they believe contributed to the bankruptcy filed herein.
17. That Debtor's schedule I, Brent Henningson lists his occupation as farmer/laborer and that his employer is TCC(meat storage) located at Flindt Drive in Storm Lake, Iowa. Tami Henningson-Landgraf lists her occupation as admitting clerk in a local hospital. She does not list her occupation as "farmer". Both Debtors receive monthly income from their current employers.
18. That on April 15, 1999, Brent Henningson transferred all his interest in Production Flexibility Contracts on 98.2 acres. Debtors have no other interest in crop land. FSA has a security interest on debtors' 4.9 acre homestead.

The court makes the following additional findings. Debtors filed a Chapter 7 bankruptcy petition on April 9, 1999. They scheduled a property interest in farm machinery and equipment valued at \$59,800, and claimed \$14,500 worth of that property exempt. Debtors received a discharge on July 15, 1999.

Discussion

The Bankruptcy Code permits a debtor to avoid a lien on property "to the extent that such lien impairs an exemption to which the debtor would have been entitled under [§ 522(b)], if such lien is . . . a nonpossessory, nonpurchase-money security interest in any . . . implements, professional books, or tools, of the trade of the debtor." 11 U.S.C. § 522(f)(1)(B)(ii).

The burden of proof of each element of lien avoidance under § 522(f) is on the debtors. In re Streeper, 158 B.R. 783, 786 (Bankr. N.D. Iowa 1993). One of the elements of lien avoidance is that the debtors would have been entitled to claim the property exempt but for the lien at issue. Id. Debtors may not establish this element by the exempt status of the property under § 522(l) for failure of anyone to object to the claim of exemptions. Id. at 787; In re Indvik, 118 B.R. 993, 1007 (Bankr. N.D. Iowa 1990). They must show that the lien impairs a validly claimed exemption as part of their lien avoidance motion.

In Iowa, each debtor engaged in farming may claim as exempt from execution implements and equipment reasonably related to a normal farming operation not to exceed in value \$10,000. Iowa Code § 627.6(11)(a). Whether debtors are engaged in farming under Iowa law is essentially the same test as whether farm machinery and equipment are tools of the debtors' trade under 11 U.S.C. § 522(f)(1)(B)(ii). In re Indvik, 118 B.R. at 1005. The court must consider the intensity of the debtors' past farming activities, the sincerity of their intentions to continue farming, and whether they are legitimately engaged in a farming activity which currently and regularly uses the specific implements exempted. Production Credit Assn. of St. Cloud v. LaFond (In re LaFond), 791 F.2d 623, 626 (8th Cir. 1986).

A temporary cessation of farming activity as of the date of a bankruptcy petition does not defeat a claim of exemption in farm tools and implements if the debtors have an intent to resume farming. In re Indvik, 118 B.R. at 1005. Debtors' prospects for doing so must be reasonable. In re Kleve, No. 95-50141XS, slip op. at 5 (Bankr. N.D. Iowa Oct. 24, 1995); Johnson v. Richardson (Matter of Richardson), 47 B.R. 113, 119 (Bankr. W.D. Wis. 1985). The reasonableness of the debtors' prospects is determined by the amount of time that has passed since the debtors have been actively farming and by "any circumstances which would or might preclude the debtors' future farming activities." In re Kleve, slip op. at 5.

Debtors in this case intend to continue crop farming, either on rented land or by doing custom farming. Custom farmers are engaged in farming for purposes of Iowa exemptions. In re Kleve, slip op. at 4 (citing Matter of Myers, 56 B.R. 423 (Bankr. S.D. Iowa 1985)). Debtors would like to resume a livestock operation on a smaller scale than they have had in the past. It appears that the specific implements claimed exempt are of the type that would be appropriate for debtors' plans. FSA does not dispute the sincerity of the debtors' intentions. It argues that debtors have not shown their prospects of returning to farming are reasonable, because they have no interest in crop land, have no contracts to do custom farming, and have merely purchased an "insignificant" number of pigs. The parties have stipulated that Brent Henningson listed his occupation as "farmer/laborer" on Schedule I, the schedule of debtors' current income, while Tami Henningson-Landgraf listed hers as "admitting clerk." The court construes this as an alternative argument by FSA that, even if the court finds Brent is engaged in farming, Tami has abandoned farming as her trade.

Addressing the last point first, the court believes that a debtor's statement of occupation on Schedule I should be given little weight in determining whether the debtor is engaged in farming for purposes of lien avoidance. The appropriate inquiry concerns the debtors' past farming activities and intentions for the future, as stated in LaFond. FSA has stipulated that both debtors have been farming since 1993, without making a distinction between the past involvement of one or the other. FSA has also stipulated that both debtors intend to continue farming. The court notes that the debtors' bankruptcy schedules listed jointly owned livestock and farm equipment and farm debts for which they were jointly liable. Holding an off-farm job is not fatal to a claim of exemptions as a farmer. In re Kleve, slip op. at 4-5 (citing Matter of Hahn, 5 B.R. 242 (Bankr. S.D. Iowa 1980)). It is common and often necessary for farm families to have off-farm income. See In re LaFond, 791 F.2d at 626 (quoting

bankruptcy court statement that "it is nearly impossible for most farmers to subsist without outside employment"). There is insufficient evidence to find that Tami has abandoned farming as her trade.

The parties have not stipulated when the debtors ceased farming. The petition was filed on April 9, 1999. Debtors still owned approximately 190 head of hogs on that date. They raised a crop in 1998. As of their date of filing, crop land was not available to them. FSA attached to its brief, as Exhibit 1, a U.S. Department of Agriculture form relating to a Production Flexibility Contract. FSA states that the document shows a transfer of debtors' last remaining interest in crop land on April 15, 1999.

Financial difficulties serious enough to cause a farmer to file bankruptcy often cause a disruption in farming activity. Indvik, 118 B.R. at 1008. FSA cites the case of Johnson v. Border State Bank (In re Johnson), 230 B.R. 608 (B.A.P. 8th Cir. 1999), in which the court found the debtor was not a farmer for lien avoidance purposes. In Johnson, the debtor had not actively engaged in farming since 1996. He owned land which had been used for hay and pasture sometime in the past, and owned cattle which were cared for by his father. This court believes the Henningsons' case is more similar to In re Smith, No. 96-20243KD (Bankr. N.D. Iowa May 7, 1996) (Kilburg, J.). In Smith, the debtors had actively farmed since the 1970s and did not cease operation until the month they filed their bankruptcy petition. It was uncertain when the debtors would be able to return to farming. They did not have financing and did not own any land. Nevertheless, the court found credible their expressed intent and desire to resume farming with a limited operation. Id., slip op. at 5.

The Henningsons have been farming steadily from 1993 until the date of their petition. They have not found farm ground to lease, but they lost their land only four months ago, earlier this crop year. They may not yet have had a fair opportunity to find new land. See Iowa Code §§ 562.5, 562.7 (farm tenancy normally terminates March 1 with notice to be served by September 1). Debtors have taken steps to resume a livestock operation. They apparently have access to a facility to keep pigs. They have begun making inquiries about custom farming. It is reasonable to expect they are more likely to obtain contracts if they have an assurance of retaining their equipment. Given the very short time that has elapsed since their bankruptcy filing, debtors have shown their prospects of resuming farming are reasonable.

IT IS ORDERED that debtors' motion to avoid the lien of the Farm Service Agency in the farm equipment claimed exempt is granted.

SO ORDERED THIS 30th DAY OF AUGUST 1999.

William L. Edmonds
U.S. Bankruptcy Judge