

In the United States Bankruptcy Court

for the Northern District of Iowa

RICK L. MEASE
MARY E. MEASE
Debtor(s).

Bankruptcy No. 97-10048-C

Chapter 7

ORDER

On November 23, 1999, the above captioned matter came on for hearing on Debtors' Motion to Avoid Lien. Debtors Rick and Mary Mease appeared by Attorney Kenneth Dolezal. Creditor Donald Janda appeared by attorney Jon McCright. After oral argument, the court took the matter under advisement. The time for submitting briefs has passed. The matter is now ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(K).

FINDINGS OF FACT

Debtors filed for relief under Chapter 7 of the Bankruptcy Code on January 8, 1997. Debtors listed their homestead on Schedule A as real property, but failed to claim it exempt on Schedule C of their bankruptcy petition. This Court granted Debtors' discharge on April 17, 1997. On June 19, 1998, Debtors' case was closed. On October 4, 1999, Debtors filed an Application to Reopen and a Motion to Avoid Liens. On October 11, 1999, Debtors filed an "Amendment to Schedule A, C, and D."

CONCLUSIONS OF LAW

Debtors seek to avoid judicial liens that have allegedly attached to their homestead. A debtor may avoid a judicial lien that impairs an exemption. 11 U.S.C. §522(f). A judicial lien impairs an exemption if the debtor would be entitled to an exemption "but for" the lien. Owen v. Owen, 500 U.S. 305, 312-13 (1991).

Debtors first claimed their homestead exempt after their case was administered, closed, and then reopened, when Debtors amended their schedules. Debtors did not file a motion with the Court to approve the amendment. Schedules may be amended by a debtor "as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a) (emphasis added). The extent to which a debtor maintains the right to amend after a case is closed is ambiguous and unresolved in this District. However, it is unnecessary to decide this issue. A late filed amendment to claim the homestead exempt would be ineffectual as regards Debtors' attempt to avoid judicial liens under §522(f), as discussed below. Therefore, the Court need not decide the propriety of Debtors' amendments in this opinion.

Iowa has elected to limit debtors to exemptions allowed under Iowa law. 11 U.S.C. §522(b)(1); Iowa Code §627.10. Under Iowa law, a debtor's homestead is generally exempt. Iowa Code §561.16. There

are, however, three types of debts that a homestead is liable for: 1) preacquisition debts; 2) debts created by a written contract that specifically subjects the homestead to satisfaction of the debt; and 3) debts incurred for the improvement of the homestead. Iowa Code §561.21. It appears that the latter two exceptions are inapplicable to this case. While it is unresolved whether any of the debts at issue are preacquisition debts, it is irrelevant to the outcome of the case for the reasons set out hereafter.

**If the Debts Arose Preacquisition, a Judicial Lien Does Not
Impair Debtors' Homestead Exemption**

Under Iowa law, the homestead is liable for preacquisition debt. Iowa Code sec561.21. Even absent a judgment lien, a debtor in bankruptcy is not entitled to a homestead exemption to the extent of the debtor's preacquisition debt. In re Schuldt, 91 B.R. 501, 502-03 (Bankr. S.D. Iowa 1988) (despite unsecured nature of debts, debtors not entitled to homestead exemption to the extent of preacquisition debt). Thus, under Iowa law, it is the debt, not the lien, that impairs a debtor's homestead exemption. As a result, the debtor would enjoy no greater exemption absent the lien. In re Streeper, 158 B.R. 783, 788 (Bankr. N.D. Iowa 1993); In re Knode, No. 97-01814-C, slip op. at 3 (Bankr. N.D. Iowa Apr. 3, 1998).

The District Court for the Northern District of Iowa has followed this reasoning in holding that a debtor cannot use §522(f) to avoid a judicial lien on the debtor's homestead arising from preacquisition debt. In re Ellingson, 82 B.R. 88, 91-92 (N.D. Iowa 1986). Therefore, if the judicial liens at issue arise from preacquisition debt, they do not impair an exemption that Debtors would be entitled to "but for" the liens. As a result, Debtors may not avoid the liens under §522(f).

**If the Debts are not Preacquisition,
There is no Judicial Lien to Avoid**

If the debt is not preacquisition, a judgment lien arising from the debt does not attach to the homestead. Iowa Code §561.16; Lamb v. Shays, 14 Iowa 567 (1863); Streeper, 158 B.R. at 789. Therefore, if the debts at issue are not preacquisition debts, there is no lien for the Court to avoid because it never attaches. Streeper, 158 B.R. at 789.

CONCLUSION

In conclusion, the Court cannot provide Debtors with relief under §522(f). Either there is no lien for the Court to avoid, or any lien in existence does not impair an exemption.

WHEREFORE, Debtors' Motion to Avoid Lien is DENIED.

SO ORDERED this 1st day of December, 1999.

Paul J. Kilburg
Chief Bankruptcy Judge