

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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GARY SCOTT  
*Debtor(s).*

Bankruptcy No. 99-01344-C  
Chapter 7

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### ORDER RE TRUSTEE'S OBJECTION TO EXEMPTION

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The above-captioned matter came on for hearing on December 16, 1999 pursuant to assignment. Attorney Eric Lam appeared for Trustee Renee Hanrahan. Debtor appeared by Attorney David Nadler. The matter was submitted after which the Court took the matter under advisement. This matter is now ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(F).

#### STATEMENT OF THE ISSUE

On September 17, 1999, Debtor amended his exemption schedule and claimed as exempt in the amended Schedule C a 1998 Dodge Stratus. Thereafter, Trustee filed an adversary complaint against Arcadia Financial, Ltd. seeking to recover the 1998 Stratus and avoid Arcadia's lien on this vehicle. If successful on that issue, the Trustee argued that Debtor could not claim as exempt his interest in the 1998 Dodge Stratus pursuant to 11 U.S.C. §522(g)(1)(A) because the lien granted to Arcadia in the 1998 Dodge Stratus was a voluntary transfer. Based upon these allegations, the Trustee asks the Court in this objection to exemption to deny Debtor's exemption claim in this 1998 Dodge Stratus.

#### TRUSTEE'S OBJECTION TO EXEMPTION

The Court, in a separate ruling entered this date in Hanrahan v. Arcadia Financial, Ltd., determined that Arcadia's interest in this automobile is an avoidable preference. Having made that determination, this Court must now determine the extent of Trustee's interest in the motor vehicle.

Debtor claims he is entitled to exempt the first \$5,000 of the Car's value under Iowa Code sec. 627.6 (9)(a). Trustee asserts that the lien is preserved for the benefit of the estate, and Debtor's exemption is therefore junior to the estate's interest in the Car.

A debtor may only exempt property recovered by the avoidance of a preferential transfer if the transfer was involuntary and the trustee has not acted to recover the property. 11 U.S.C. §522(h). If a debtor voluntarily grants the security interest avoided, the debtor is not entitled to exempt the interest recovered. In re Howard, No. 96-22392, slip op. at 4 (Bankr. N.D. Iowa March 7, 1997); In re Beshears, 182 B.R. 235, 241 (Bankr. E.D. Ark. 1995); In re Flitter, 181 B.R. 938, 941 (Bankr. D. Minn. 1995).

This Court has previously held that a debtor is not entitled to exempt a security interest in a vehicle recovered by the trustee under §544. Howard, slip op. at 5. Debtor voluntarily granted Arcadia the lien that Trustee avoided. In addition, the trustee has acted under §547 to avoid Arcadia's lien. Debtor,

therefore, may not exempt the Car to the extent of the avoided lien. The lien is preserved for the benefit of the estate. 11 U.S.C. §551. Debtor is entitled to exempt up to \$5,000 of the remaining value, if any, not subject to the lien. Iowa Code §627.6(9)(a).

**WHEREFORE**, Trustee's interest in the lien is superior to Debtor's exemption interest in the Car.

**FURTHER**, in light of the Court's findings herein, Debtor is granted leave to amend Schedule C of his petition.

**SO ORDERED** this 3rd day of January, 2000.

Paul J. Kilburg  
Chief Bankruptcy Judge