

In the United States Bankruptcy Court

for the Northern District of Iowa

VAN RALPH BUTLER and
MARGIE ARLENE BUTLER
Debtor(s).

Bankruptcy No. 00-00037M

Chapter 7
Contested No. 5049

ORDER RE: MOTION TO AVOID LIEN

On March 23, 2000 debtors Van Ralph Butler and Margie Arlene Butler filed a motion to avoid liens of Farmers State Bank pursuant to 11 U.S.C. § 522(f). The Bank filed a resistance. Hearing on the matter was held June 20, 2000 in Mason City. Patrick G. Vickers appeared for the Butlers. Larry Eide appeared for the Bank. This is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

Findings of Fact

The Butlers have been engaged in farming. Van Butler has operated a construction business since 1978. Butlers scheduled machinery, equipment, tools and implements for both trades on their schedule of personal property. Van Butler claimed construction tools and equipment exempt as his tools of the trade, as described on the attached Exhibit A. Margie Butler claimed farming equipment exempt as tools of her trade, described as "Hinneker cultivator (2500.00), John Deere planter (2500.00), J&M Wagon (2000.00), Digger (2500.00), Chisel plow (300.00)." (Docket 1, Schedule C.) The farm equipment is more particularly described on the attached Exhibit B.

On June 20, 2000, the parties and the Chapter 7 trustee, Habbo Fokkena, filed a joint stipulation of facts with respect to the motion. (Docket 34.) The stipulation states that the only remaining dispute is whether one item of construction equipment, identified as a Pace brand trailer, is encumbered by a purchase money security interest. The court incorporates the parties' stipulation of facts as part of its findings:

A. On November 16, 1995, the Debtor Margie Butler borrowed \$4,800 from Farmers State Bank. That indebtedness was evidenced by a promissory note which was executed on that date.... The note provides that the indebtedness thereunder is secured by a certain security agreement dated February 28, 1995. A copy of said security agreement is attached hereto.... Farmers State Bank filed a financing statement with the Secretary of State on March 6, 1995....

B. The money loaned to Margie Butler pursuant to this promissory note was used to purchase the Pace trailer which is the subject of this dispute. Van Butler is obligated for the repayment of said note under the terms of a written guaranty.

C. The indebtedness owed by the Debtor Van Butler under the [November 16, 1995] promissory note ... is in the amount of \$1,200 together with interest thereon at a rate of 10.25 percent per annum from December 17, 1998. The value of the Pace trailer exceeds the amount of this indebtedness.

D. Under Iowa law the Pace trailer is not required to have a certificate of title but is required to have a registration. The trailer has no certificate of title. It does have a registration.

E. The Debtor Van Ralph Butler is entitled to exempt the Pace trailer in this bankruptcy proceeding.

Docket 34.

Van Butler and Margie Butler both signed the February 28, 1995 security agreement and the financing statement referred to in the stipulation. The security agreement is titled "Agricultural Security Agreement." The collateral described in the security agreement and the financing statement includes "All of Debtor's [sic] now owned or hereafter acquired farm products, equipment, machinery, tools, accounts, inventory, contract rights, fixtures, chattel paper, general intangibles," among other property.

Discussion

Butlers seek to avoid the Bank's liens as impairing their exemptions in tools and implements of their trades. Bankruptcy Code § 522(f) permits a debtor to avoid such a lien if it is a nonpossessory, nonpurchase-money security interest.

11 U.S.C. § 522(f)(1)(B)(ii). Bank contends that it holds a purchase money security interest in the Butlers' trailer. The debtors bear the burden of proof on all issues in a lien avoidance motion. In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990).

Perfection is not an issue between the parties. The trailer is an item of equipment, a classification of collateral included in both the security agreement and the financing statement. See Iowa Code § 554.9109(2) (defining "equipment"). Butlers do not dispute this. Their argument is, apparently, that the Bank's lien did not attach to the trailer because the security agreement is titled "Agricultural Security Agreement," and the trailer has been used only in Van Butler's construction business, not in the Butlers' farming operation.

A "security interest" is a lien created by agreement. 11 U.S.C. § 101(51). A purchase money security interest is a security interest "taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used." Iowa Code § 554.9107(b). A security interest becomes enforceable and attaches to the collateral only if--

- (a) ... the debtor has signed a security agreement which contains a description of the collateral ...;
- (b) value has been given; and
- (c) the debtor has rights in the collateral.

Iowa Code § 554.9203(1). A security agreement is an agreement which creates or provides for a security interest. Iowa Code § 554.9105(1)(I). A description of collateral is sufficient "if it reasonably identifies what is described." Iowa Code § 554.9110.

Unlike a financing statement, which serves a notice function, a security agreement serves the purpose of "providing signed evidence of an agreement and of obviating any statute of frauds problems with the debtor-creditor relationship." First State Bank v. Shirley Ag Service, Inc., 417 N.W.2d 448, 451 (Iowa 1987). "A security agreement is a contract between the secured party and the debtor, specifying what the security interest is." Id. at 452. The court applies general contract principles in construing the agreement between the parties. Id.

The note for the loan to purchase the Pace trailer provided that the note would be secured by a security agreement dated February 28, 1995. The parties intended the loan to be a secured loan. The security agreement attached to the stipulation is the security agreement referred to in the note. Stipulation, ¶ A. The security agreement covers all after-acquired equipment. The court finds and concludes that the Bank has a purchase money security interest in the Pace trailer. Butlers may not avoid Bank's lien under § 522(f).

Butlers contend that the word "agricultural" in the heading of the security agreement shows an intent to limit the types of collateral to those used in the farming operation. That would not necessarily be the effect of using a form titled "agricultural security agreement." It could merely describe the purpose of the loan for which the agreement was prepared. Debtors could grant a security interest in non-agricultural equipment to secure repayment of a farm operating loan. In the security agreement at issue, the collateral is described in paragraph 1.B. The descriptions are quite broad, in keeping with Iowa Code § 554.9110, which states that a description is sufficient "whether or not it is specific if it reasonably identifies what is described." The first type of collateral listed is "farm products," a term of art. See Iowa Code § 554.9109(3). The court concludes that this term does not modify the following terms, "equipment, machinery, tools." The collateral is not restricted to such items used in the farming operation. It includes "all" such property.

The purchase money note refers to the security agreement without limitation. A purchase money loan secured by the item that is being purchased is a common transaction. The loan was clearly intended to be a secured purchase money loan. If the parties had intended to exclude the trailer from the collateral, that would have been done expressly.

The motion to avoid the Bank's lien on the Pace trailer should be denied. The court will incorporate the parties' agreement as to the motion to avoid the lien on farm equipment as presented in a proposed order. The parties agree that the value of the farm equipment and machinery itemized in the attached Exhibit B exceeds the allowable exemption amount by \$2,000.00.

IT IS ORDERED that the Butlers' motion to avoid liens is granted in part and denied in part. The motion is granted as to the equipment listed on attached Exhibit A except for a Pace trailer.

IT IS FURTHER ORDERED that the motion to avoid liens is denied as to the Pace trailer.

IT IS FURTHER ORDERED that the motion to avoid liens is denied with respect to \$2,000.00 in value of the farm equipment and machinery itemized in the attached Exhibit B. The motion is granted with respect to the balance of said farm equipment and machinery.

SO ORDERED THIS 7th DAY OF JULY 2000.

William L. Edmonds
U.S. Bankruptcy Judge