

In the United States Bankruptcy Court

for the Northern District of Iowa

JOHN C. WAGNER and
DEBRA K. WAGNER
Debtor(s).

Bankruptcy No. 99-02428-C

Chapter 13

ORDER RE MOTION TO AVOID LIENS

On June 15, 2000, the above captioned matter came on for hearing on Debtors' Motion to Avoid Liens. Debtors John and Debra Wagner were represented by attorney Thomas Fiegen. Creditor Chelsea Savings Bank ("the Bank") was represented by attorney H. Raymond Terpstra II. After the presentation of evidence and argument, the Court took the matter under advisement. The time for filing briefs has passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K).

STATEMENT OF THE CASE

Debtors seek to avoid the Bank's liens on exempt farm machinery. They assert the liens are avoidable pursuant to 11 U.S.C. § 522(f)(2)(B) and are non-purchase money security interests. The Bank asserts purchase money security interests in items claimed exempt because the most recent loan enabled Debtors to repurchase the machinery at their auction.

FINDINGS OF FACT

Debtors received loans from Chelsea Savings Bank, secured by liens in their machinery and equipment. Prepetition, Debtors and the Bank agreed that Debtors would auction their farm equipment and machinery to pay operating loans. All of the machinery was to be sold. Debtors are listed as owners in all pre-auction advertising. Debtors' Exhibit B. The Bank did not take possession of the machinery at any time. The Bank does not allege that title to the machinery changed hands.

Before the March 27, 1999 auction, Debtors informed the Bank that they wanted to buy back some machinery. The Bank agreed and established prices that Debtors could bid on certain items at the auction. If a bid went higher than the set price, Debtors agreed to let the item of machinery sell. Debtors asked an acquaintance, Steve Schuette, to bid for them at the sale. Mr. Schuette was provided a list of the machinery and the prices set by the Bank. Mr. Schuette was successful in buying back five pieces of machinery on Debtors' behalf:

1) John Deere 4020 Tractor	\$ 8,500
2) 1990 Kiefer Trailer	2,600

3) Mustang skid loader SN4611	2,600
4) Gehl Rake SN4498	1,400
5) John Deere 40 Manure Spreader	1,050
Total	\$ 16,150

Bank's Exhibit 5.

On April 1, 1999, Debtors wrote a check to the auctioneer for \$16,150 to pay for the machinery. On April 6, 1999, the auctioneer wrote a check to the Bank for the auction proceeds totaling \$45,885.11. On April 7, 1999, the Bank loaned Debtors \$16,150 to cover their check to the auctioneer. The loan was secured by the machinery Debtors repurchased at the auction. The new note had a different interest rate, amortization and maturity date than the original notes. Without the Bank loan, Debtors would have been unable to pay for the repurchased machinery.

The Bank presented testimony that it had a purchase money security interest in the Gehl Rake before the auction. Neither party is certain of the purchase money status of the Bank's security interests in other machinery before the auction. In their post-hearing brief, Debtors state they are not trying to avoid the Bank's lien on a baler and the Kiefer trailer. Their Motion states they seek to avoid liens on all pieces of equipment except a baler and a manure spreader.

From the record as a whole, the Court concludes that, of the machinery Debtors repurchased at the auction, Debtors concede the Bank's lien on the Kiefer trailer is not avoidable. Debtors also concede the Bank has a nonavoidable, purchase money security interest in the John Deere 336 square baler. There is insufficient evidence in the record to find the Bank holds a pre-auction, purchase money security interest in the Gehl rake. Thus, the Court will consider whether the Bank's loan for Debtors' purchase of their equipment at their auction gave rise to purchase money security interests. The specific items of equipment in controversy are: 1) John Deere 4020 Tractor, 2) Mustang skid loader SN4611, 3) Gehl Rake SN4498, and 4) John Deere 40 Manure Spreader.

PURCHASE MONEY SECURITY INTEREST

Debtors may avoid a lien if the lien impairs an exemption and it is a nonpossessory, nonpurchase money security interest in tools of the trade. 11 U.S.C. § 522(f)(1)(B)(ii). Debtors claim exempt the four above-listed items of machinery which they repurchased at their auction as tools of the trade which they use for farming. The Bank does not have a possessory interest in the machinery. In order for Debtors to avoid the Bank's liens, they must also be nonpurchase money security interests.

The Bankruptcy Code does not define "purchase money security interest." In re Hansen, 85 B.R. 821, 824 (Bankr. N.D. Iowa 1988). Therefore, Iowa law determines if one exists. Id. at 824. 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 sec. 554.9107(b). Debtors bear the burden of proof on all lien avoidance issues. In re Indvik, 118 B.R. 993, 1005 (Bankr. N.D. Iowa 1990).

The Uniform Commercial Code does not define "'rights in collateral,' leaving it to the courts to do so." Equip. Finance Group, Inc. v. Traverse Computer Brokers, 973 F.2d 345, 348 (4th Cir. 1992). "Rights in the collateral" include debtor's possession and title to the goods. In re Standard Foundry Products, Inc., 206 B.R. 475, 478-79 (Bankr. N.D. Ill. 1997). The timing of the transaction must be examined to determine whether the Bank's loan was "so used". In Corim, Inc. v. Belvin, 414 S.E.2d 491 (Ga. Ct.

App. 1991), the parties discussed a loan to purchase a cotton picker before an auction. Id. at 492. The debtor purchased the cotton picker at the auction and received the bank's loan ten days later. Id. The opinion holds that although ten days passed between the purchase and the loan, the loan and the purchase were a single transaction and a purchase money security interest was created. Id.; see also, 2 G. Gilmore, Security Interests in Personal Property 782 (1965) (stating "if the loan transaction appears to be closely allied to the purchase transaction, that should suffice").

ANALYSIS

To satisfy sec. 554.9107(b), the Bank's loan must enable Debtors to acquire rights in or the use of the machinery, and the loan must be "so used." To determine whether the Bank's loan was "so used," the timing of the Bank's loan must be examined. Debtors paid for the machinery six days before receiving the Bank's loan. After determining how much Debtors spent at the auction, the Bank issued a loan to Debtors. Debtors could not have paid the auctioneer without the Bank's loan. These facts establish that the Bank's loan and Debtors' check were "closely allied" and constituted one transaction. Therefore, the Bank's loan was "so used" as it enabled Debtors to pay for the machinery.

The Bank's loan created a security interest in Debtors' machinery. While the Bank's loan enabled Debtors to pay for the machinery and created a security interest, the loan gives the Bank a purchase money security interest only if Debtors acquired rights in or use of the machinery.

Debtors repurchased their machinery at their auction. The auctioneer sold the machinery as Debtors' agent. In re Rine & Rine Auctioneers, Inc., 74 F.3d 848, 850 (8th Cir. 1996). The auctioneer did not acquire rights in Debtors' machinery. Therefore, Debtors could not acquire any rights from the auctioneer by paying him for the machinery. Mr. Schuette was the highest bidder on Debtors' machinery. He bid on behalf of Debtors, acting as their agent. Immediately after the auction, Debtors informed the auctioneer that Schuette had bid on their behalf. Schuette's involvement with Debtors' machinery ended at that time. Schuette did not intend to take and did not take possession of or title to Debtors' machinery at any time. Consequently, he did not acquire rights in Debtors' machinery. As Schuette acquired no rights, he had none to convey and Debtors could not acquire rights in the machinery from him.

In summary, the auction did not affect Debtors' rights in the machinery in any way. Debtors did not give up any rights in their machinery during the auction process, nor did the auctioneer or Mr. Schuette convey any rights to Debtors. Further, the machinery remained on Debtors' acreage. The Bank did not take possession or affect Debtors' use of the machinery. Debtors did not acquire use of the machinery as they had use of the machinery at all times, before and after the auction.

Although the Bank's loan enabled Debtors to pay the auctioneer for the machinery, it did not enable Debtors to acquire additional rights in or use of their machinery. Before the auction, the Bank did not have a purchase money security interest in the John Deere 4020 Tractor, Mustang skid loader SN4611, Gehl Rake SN4498, or John Deere 40 Manure Spreader. Through the auction, the Bank gained merely nonpurchase money security interests in these items. These liens impair Debtors' tools of the trade exemptions. Pursuant to § 522(f)(2)(B), Debtors may avoid the Bank's liens on these four items of machinery.

CONCLUSION

Pursuant to § 522(f)(1)(B), Debtors may avoid the Bank's nonpurchase money security interest in exempt tools of the trade. The Bank's liens on the John Deere 4020 Tractor, Mustang skid loader

SN4611, Gehl Rake SN4498, and John Deere 40 Manure Spreader which Debtors repurchased at their auction are nonpurchase money security interests. To the extent these items are exempt, the liens are avoidable.

WHEREFORE, the Bank's liens on the items of machinery and equipment Debtors bought at their auction, the John Deere 4020 Tractor, Mustang skid loader SN4611, Gehl Rake SN4498, and John Deere 40 Manure Spreader, are nonpurchase money security interests.

FURTHER, to the extent Debtors have properly claimed these items exempt as tools of the trade, the Bank's liens are avoided.

SO ORDERED this 27th day of July, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge