

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT
OF IOWA

IN RE:

MARLEN NELLARD LUND Chapter 7
and KAREN RAE LUND

Debtors.
Bankruptcy No. 03-02022F

MEMORANDUM DECISION RE:
DEBTORS' MOTION TO AVOID SECURITY INTEREST

Debtors Marlen and Karen Lund ask the court to avoid the security interest of Security State Bank in farm machinery, equipment, and tools. Security State Bank (hereinafter "Bank") objects. Trial was held on July 10, 2003 in Fort Dodge. Nancy L. Thompson appeared as attorney for the debtors. Conrad F. Meis appeared as attorney for Bank. This is a core proceeding under 28 U.S.C. § 157(b) (2) (O) .

Findings of Fact

Marlen and Karen Lund, husband and wife, filed their joint petition on May 22, 2003. They claimed exempt their joint interests in specified machinery, equipment, and tools related to their farming operation. See Iowa Code § 627.6(11)(a). They now seek to avoid Bank's security interest in these items under 11 U.S.C. § 522(f)(1)(B)(ii). Bank objects, claiming that neither debtor is engaged in farming and therefore neither may avoid the Bank's lien.

Lunds live on a 120-acre farm near Goldfield, Iowa. The farm is owned by Marlen Lund's mother. Marlen Lund has lived there for 55 years. The Lunds have been married for 41 years. Marlen Lund has farmed the 120 acres since his father died in 1964. He has been a farmer most of his adult life. He has farmed as many as 1,100 acres. His last year of farming

was 2001. That year he planned on farming approximately 850 acres, but he was unable to plant a crop because the Bank terminated the line of credit for the farm operation.

Karen has helped in the operation of the farm. She has tilled the crop ground, hauled grain, obtained seed and supplies, walked bean fields, sprayed weeds, cut corn stalks, and disked fields in the fall. When the couple raised cattle, she helped to grind feed, helped to clean livestock areas, hauled manure, and delivered supplies. She has operated tractors, plows, discs, and has helped in cleaning machinery. Karen has marketed crops under her husband's direction. The time she has spent on farm chores has varied. During the fall harvest, she has worked as much as 50 hours per week. Marlen testified that in the past farm work has required both his and Karen's efforts. Both Lunds signed the promissory notes and security documents for Bank on the loans for operating the farm.

Marlen did the planting, made crop choices, and did the combining of the crops. He made the marketing decisions, but he kept Karen advised of them. When the couple farmed approximately 1,100 acres, Marlen hired a hand to help him haul grain. This was during 1988 through 1990. Also, Marlen made arrangements some years for the elevator to spray chemicals.

Both Marlen and Karen have off-farm employment. Marlen works in a factory. Karen is the owner of a small corporation which operates an exercise business. She is the only employee, but she operates with the help of volunteers who are compensated with free use of the exercise facilities. Customers normally pay \$25.00 per month to use the facilities. The number of customers ranges from 30 to 60, and averages about 25 per month. When Karen was needed on the farm, she would either close the exercise facility or keep it open in her absence with the help of the volunteers.

The couple intends to farm in the future. They will try

to farm in 2004. Marlen says they will be able to farm the 120-acre farm where they live and another 60 acres owned by his mother. In the past, he has rented his mother's farm ground either for cash rent or on a 50/50 crop-share basis. At present, the land is being rented to another. Marlen anticipates no problems in reaching a rental agreement with his mother. The couple plans to use the equipment for which they seek lien avoidance. They have not yet lined up financing for next year. Marlen says they will plant corn and beans. They cannot predict if they will make a profit.

Discussion

The Bankruptcy Code permits a debtor to avoid the fixing of a nonpurchase-money, nonpossessory security interest in implements or tools of the trade of a debtor to the extent the lien impairs an exemption to which the debtor would have been entitled. 11 U.S.C. § 522(f)(1)(B)(ii). Both debtors claim to be engaged in farming. They have each claimed as exempt \$10,000.00 worth of farm implements and equipment under Iowa Code § 627.6 (11)(a). They ask that the Bank's lien against the equipment be avoided. Bank does not dispute that its lien is nonpossessory and nonpurchase-money. The parties agree that the only dispute is whether Lunds are engaged in farming so as to make these implements the tools of a trade in which they are actually engaged. Bank contends that Karen Lund is not engaged in farming and that Marlen Lund's desire to return to farming is unrealistic. Indeed, Bank contends Marlen's intentions are not even sincere, and that Marlen's true goal is to sell the equipment if Bank's lien is avoided.

In determining whether a debtor is engaged in farming,

the court must take into account the intensity of a debtor's past farming activities and the sincerity of his intentions to continue farming. The court must also consider whether debtor is legitimately engaged in a trade which currently and regularly uses the tools and implements on which lien avoidance is sought. Production Credit Ass'n. of St. Cloud v. LaFond (In re LaFond), 791 F.2d 623, 626 (8th Cir. 1986) (citing Middleton v. Farmers State Bank of Fosston, 41 B.R. 953, 955 (D. Minn. 1984); In re Yoder, 32 B.R. 777 (Bankr. W.D. Pa. 1983)). A temporary cessation of farming activities does not defeat the claim of exemption if debtor intends to resume farming. Pease v. Price, 101 Iowa 57, 69 N.W. 1120 (1897).

The sincerity of a debtor's intention to continue farming can be measured, in part, by whether the intention is realistic. Also, in determining whether a debtor is a farmer, the court should consider whether any substantial portion of debtor's income is earned through the farming operation. Rasmussen v. Green Hills Production Credit Ass'n. (Matter of Rasmussen), 54 B.R. 965, 968 (Bankr. W.D. Mo. 1985).

In considering all of the evidence, I find that each of the debtors is engaged in farming and that the implements and equipment as to which they seek to avoid Bank's security interest are regularly used by them in their farming operation. Karen has worked many years with her husband in operating the farm. Her participation has been significant and necessary. Debtors have shown by a preponderance of evidence that each is engaged in farming. I find the cessation of their farming activities only temporary and that their intent to farm in the future is realistic and sincere. The cause of the cessation of their farming activity was beyond their control as Bank did not renew their financing.

That each debtor holds off-farm employment does not prevent either from being engaged in farming. They have in the past provided significant income for themselves by farming. That future net profits may be speculative does not militate against a finding that debtors are engaged in farming. Farming, especially for small operators, is not certain of profits. This is due partly, as Marlen testified, to the uncertainty of future costs and commodity prices, not to mention weather and other natural risks to profits.

Bank attempted to introduce into evidence debtors' federal tax returns for the years 1993 through 2000. The court sustained objection to the introduction of these returns because of Bank's failure to timely serve the proposed exhibits on debtors' attorney pursuant to Local Rule 9070- 1(d). The returns were offered in part to show that on the tax schedule showing profit or loss from the farming operation Marlen was the only taxpayer listed as the proprietor of the business. Although the returns were not admitted, this fact was elicited during Marlen's testimony. Even considering this fact, I do not consider it dispositive as to whether Karen is engaged in farming. It may be only one piece of evidence. I consider that the nature of her farming activities over time far outweighs it in reaching my determination that Karen is engaged in farming. The debtors did not prepare the return, although they signed it, relying on their accountant.

Moreover, I do not consider that the listing of only Marlen as proprietor on the return would be relevant to a material issue on a joint return. Also it does not negate Karen's status as a farmer.

Bank's security interest is nonpossessory and nonpurchase- money. It may be avoided under 11 U.S.C. § 522(f)(1)(B)(ii).

IT IS ORDERED that the Lunds' motion to avoid the

security interest of Security State Bank in their exempt machinery, implements, and tools is granted. The lien of Bank is avoided.

SO ORDERED THIS 14th DAY OF JULY 2003.

William L. Edmonds, Bankruptcy Judge