

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of  
JOSEPH L. KENNEALLY and  
JOAN C. KENNEALLY,

Case No. 87-3052-CH  
Chapter 7

Debtors.

ORDER - MOTION FOR COURT ORDER DETERMINING SECURED STATUS  
PURSUANT TO 11 U.S.C. 506 AND BANKRUPTCY RULE 3012

On March 23, 1988, a hearing was held on Debtors' motion for court order determining secured status pursuant to 11 U.S.C. §506 and Bankruptcy Rule 3012. Robert D. Taha appeared on behalf of the Debtors, and Kevin R. Query appeared on behalf of the Small Business Administration.

This is a core proceeding pursuant to 28 U.S.C. §157(b)  
(2) (K)

Bankruptcy Rule 7001(2) provides that a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d), is an adversary proceeding. Rule 7001 also provides that an adversary proceeding is governed by the rules in Part VII. One of the Part VII rules is Rule 7003 which requires the filing of a complaint to commence an adversary proceeding. Thus, an adversary proceeding to determine the validity, priority, or extent of a lien must be commenced by filing a complaint.

In the case at bar, Debtors have labeled their motion as a motion to determine secured status pursuant to section

506 and a motion to determine the value of a claim secured by a lien on property pursuant to Rule 3012. However, Debtors' prayer is different. Debtors pray that the Court enter an order declaring the lien of the mortgage given to First National Bank of West Des Moines, and then assigned to the Small Business Administration, be declared void and of no effect.

The relief Debtors pray for is the subject of an adversary proceeding to determine the validity, priority, or extent of a lien. As such, it must be commenced by filing a complaint, not a motion. See Bankruptcy Rules 7001, 7003. Therefore, Debtors' must be overruled.

IT IS ACCORDINGLY ORDERED that Debtors' motion for court order determining secured status pursuant to 11 U.S.C. §506 and Bankruptcy Rule 3012 is overruled on the ground it was improperly commenced.

Dated this 22<sup>nd</sup> day of June, 1988.

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RUSSELL J. HILL  
UNITED STATES BANKRUPTCY JUDGE

