

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
 :
ADEN RAY STEWART and : Case No. 89-2754-C H
MADELINE VALIERE STEWART, : Chapter 7
 :
Debtors. :
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ORDER--FmHA OBJECTION TO CLAIM OF EXEMPTIONS

On April 3, 1990, an evidentiary hearing was held on Farmers Home Administration's objection to claim of exemptions. The following attorneys appeared on behalf of their respective clients: Steven R. Hahn for Aden Ray Stewart and Madeline Valiere Stewart (hereinafter referred to as "Aden and Madeline Stewart"); and Kevin R. Query, Assistant U.S. Attorney, for the United States of America on behalf of the Farmers Home Administration (hereinafter referred to as "FmHA"). At the conclusion of said hearing, the Court took the matter under advisement upon a briefing deadline. The Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B). The Court, upon review of the pleadings, evidence admitted, and arguments and briefs of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS

1. Aden and Madeline Stewart filed a petition praying for relief under Chapter 7 of the Bankruptcy Code on December 7, 1989.

2. Aden and Madeline Stewart claimed farm machinery in the amount of \$5,275.00 as exempt property on Schedule B-4.

3. FmHA objected to this claimed exemption on the basis that it was partnership property and as such Aden and Madeline could not claim it as a personal exemption.

4. Aden and Madeline are retired farmers after having farmed for 50 years.

5. Aden and Madeline have three sons, Dale, David, and Dean. Dale and his wife, Jerri, remained on the farm. Aden and Madeline have always actively involved the entire family in their farming operation.

6. On or about September 27, 1984, Aden, Madeline, Dale and Jerri Stewart visited the FmHA office in Mount Ayr, Iowa.

They had been farming under the name of Stewart Farms and had borrowed money from the Tingley Savings Bank, Ringgold County, Iowa, under the name of Stewart Farms.

7. The Tingley Savings Bank failed and the Federal Deposit Insurance Company, FDIC, became the receiver of the bank.

8. Stewart Farms thereby became obligated to FDIC in the amount of \$139,000.00 on chattels. Aden and Madeline Stewart owed FDIC \$75,000.00 on real estate.

9. The Stewart family was unable to reach an agreement with FDIC concerning said debt and went to FmHA for financial assistance.

10. FmHA regulations prevented FmHA from financing the Stewarts in the same manner that the Tingley Savings Bank had financed the Stewarts. FmHA offered the Stewarts three options: 1) have the partnership assume Aden's individual real estate debt and make Dale a partner on the real estate; 2) split the operation into individual operations; or 3) sell the entire operation to Dale, and have Dale operate as a solo operation. (Exhibit E).

11. During February 1984, Aden, Madeline, Dale, and Jerri Stewart contacted their personal attorney for the purpose of having a partnership agreement drafted. The Stewarts provided the necessary information, and on March 1, 1984, they signed a partnership agreement. (Exhibit A). FmHA did not have any participation in the preparation of this partnership agreement.

12. The partnership agreement recited that Aden, Madeline, Dale, and Jerri Stewart had been engaged in a joint farm operation and desired to continue that operation and enter into a lease agreement for the continued operation of the farm real estate.

13. The parties agreed that Dale and Jerri would furnish labor for the operation of a dairy and stock cattle operation and Aden and Madeline would furnish the land for that operation. The partners agreed to share in the major decisions involved in the farm operation which included the

dairy and beef herd operations and the maintenance of the hog and corn operation on the real estate. Aden and Madeline were to receive one-half of the milk check in lieu of cash rent.

14. This agreement provided that as of the date of the agreement, the partnership owned the livestock and machinery.

This agreement also provided that the partnership owned replacement machinery by purchase or trade, and any property acquired jointly by the mutual efforts of the parties.

15. The agreement provided that it is subject to the laws of the State of Iowa with regard to partnership. Regarding termination of the partnership, Clause 7 of the agreement provided in pertinent part:

...no termination of the partnership nor lease manner provided by §562.7 of the 1983 Code of Iowa, unless the parties shall all enter into a written agreement for the termination of said partnership under such terms and conditions as agreement shall be accomplished in any manner other than the all shall agree to...

16. There has never been a written termination of the partnership.

17. On May 1, 1984, FmHA granted an emergency loan in the name of Stewart Farms (Exhibit B). Aden, Madeline, Dale, and Jerri Stewart signed this note individually and as partners of Stewart Farms.

18. Stewart Farms conveyed a security interest in personal property, including farm machinery, owned by the partnership to secure loans by FmHA to Stewart Farms (Exhibit

C-1). The security interest was perfected by a financing statement filed with the Iowa Secretary of State. (Exhibit D).

19. Dale and Jerri Stewart filed a petition praying for protection under Chapter 7 of the Bankruptcy Code on May 15, 1989.

20. Dale and Jerri claimed farm machinery and equipment utilized by Stewart Farms as exempt property. FmHA failed to raise a timely objection to this claim of exempt property.

21. Thereafter, Dale and Jerri filed a motion to avoid lien and alleged that FmHA claimed a non-purchase, non-possessory lien on the farm machinery and equipment.

22. On October 23, 1989, a default order was entered granting Dale and Jerri's motion to void lien on the farm machinery and equipment.

23. Thereafter, Aden, Madeline, Dale, and Jerri Stewart divided the partnership property with knowledge of FmHA.

DISCUSSION

FmHA objected to the Aden and Madeline claimed exemption in farm machinery on the basis that the machinery was partnership property and as such Aden and Madeline could not claim it as a personal exemption. Individual partners cannot exempt partnership property in a bankruptcy proceeding. In re Warth, slip op. No. 88-0580-D, (Bankr. S.D. Iowa, September 1988).

The initial issue in this case is whether Aden/Madeline Stewart and Dale/Jerri Stewart formed a partnership. Iowa law regarding this issue is stated in Thorpe Credit, Inc. v. Wuchter, 412 N.W.2d 641, 647 (Iowa App. 1987):

A partnership is defined as "an association of two or more persons to carry on as co-owners a business for profit." Iowa Code §544.6. Four elements are necessary to create a partnership: 1) an intent by the parties to associate as partners; 2) a business; 3) earning of profit; and 4) co-ownership of profits, property and control. Farmers Grain Co., Inc., 401 N.W.2d 596, 598-99 (Iowa App. 1986). Under Iowa law, an intention to associate is the crucial test of the partnership. Chariton Feed & Grain, Inc. v. Harder, 369 N.W.2d 777, 785 (Iowa 1985). An intention to associate need not be in writing; an intent to associate may be gleaned from the conduct of the parties and the circumstances surrounding the transactions. Anderson v. Walker, 256 Iowa 1324, 1328-29, 131 N.W.2d 524, 526-27 (1964).

In the instant case, Aden/Madeline Stewart had an intention to associate as partners with Dale/Jerri Stewart. Aden and Madeline always actively involved the entire family in the farming operation and had been farming under the name of Stewart Farms and borrowed money from the Tingley Savings Bank under the name of Stewart Farms. Further, Aden/Madeline Stewart and Dale/Jerri Stewart chose to formalize the partnership arrangement by having their personal attorney draft a partnership agreement. On March 1, 1984, Aden, Madeline, Dale, and Jerri Stewart signed said partnership

agreement. The intent by Aden/Madeline Stewart and Dale/Jerri Stewart to associate as partners is clearly evidenced by the parties' conduct and the partnership agreement.

The Aden/Madeline and Dale/Jerri Stewart partnership is a business, for the earning of profit, with co-ownership of profits, property and control. This is evidenced by the partnership agreement which states that Aden, Madeline, Dale, and Jerri Stewart had been engaged in a joint farm operation and desire to continue that operation and enter into a lease agreement for the continued operation of the farm real estate.

The partnership agreement further provides that Dale and Jerri would furnish labor for the operation of a dairy and stock cattle operation and Aden and Madeline would furnish the land for that operation. Under the partnership agreement, the partners agreed to share in the major decisions involved in the farm operation, which included the dairy and beef herd operations and the maintenance of the hog and corn operation on the real estate. Further, under the partnership agreement, Aden and Madeline were to receive one-half of the milk check in lieu of cash rent. Finally, the agreement provided that as of the date of the agreement, the partnership owned the livestock and machinery and the partnership owned replacement machinery by purchase or trade, and any property acquired jointly by the mutual efforts of the parties.

In summary, the conduct of the parties and the

partnership agreement show that Aden/Madeline Stewart and Dale/Jerri Stewart formed a partnership under Iowa law.

The next issue is whether said partnership has terminated, thus allowing Aden and Madeline Stewart to exempt the farm machinery as individuals. The Aden/Madeline Stewart and Dale/Jerri Stewart partnership agreement provides in clause 7 that the partnership can only be terminated by complying with the provisions of Iowa Code §526.7 or entering into a written agreement for the termination of the partnership. The partnership agreement controls over the provisions of the Uniform Partnership Act [Iowa Code §554]. See In re Stanley - Southwest Investments, Inc., 96 B.R. 701, 704 (Bankr. W.D. Texas 1988); In re Imperial 400 Nat., Inc., 429 F.2d 671 (3rd Cir. 1970). The Stewart partners did not provide written notice of termination pursuant to §562.7 nor enter into a written agreement for termination of the partnership. Therefore, the Aden/Madeline and Dale/Jerri Partnership has not terminated.

The final issue concerns the effect of the October 23, 1989 default order in the Dale and Jerri Stewart bankruptcy, granting Dale and Jerri's motion to avoid lien on the farm machinery and equipment. Dale and Jerri Stewart filed a voluntary Chapter 7 petition on May 15, 1989. Dale and Jerri claimed farm machinery and equipment utilized by Stewart farms as exempt property. FmHA failed to raise a timely objection

to this claim of exempt property. Thereafter, Dale and Jerri filed a motion to avoid lien and alleged that FmHA claimed a non-purchase, non-possessory lien on the farm machinery and equipment. On October 23, 1989, a default order was entered granting Dale and Jerri's motion to avoid lien on the farm machinery and equipment.

Aden and Madeline Stewart assert that the October 23, 1989 default order precludes litigation of the issue of whether Aden and Madeline Stewart's farm machinery is exempt.

Under the doctrine of collateral estoppel, a prior adjudication precludes re-litigation of an issue if the following requirements are met: 1) the issue sought to be precluded must be the same as that involved in the prior action; 2) that issue must have been actually litigated; 3) it must have been determined by a valid and final judgment; and 4) the determination must have been essential to the prior judgment. Matter of Ross, 602 F.2d 604, 608 (3rd Cir. 1979); see also Harrison v. State Bank of Bussey, 440 N.W.2d 398 (Iowa App. 1989).

There was no actual litigation of the partnership exemption issue in the Dale and Jerri Stewart bankruptcy. The FmHA failed to timely raise an objection. Therefore, the October 23, 1989 default order granting Dale and Jerri's motion to avoid the lien on the farm machinery and equipment does not preclude the determination of whether Aden and

Madeline Stewart's farm machinery is exempt.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that Aden and Madeline Stewart may not claim exemptions in the farm machinery because it is property of the Aden/Madeline Stewart and Dale/Jerri Stewart partnership.

IT IS ACCORDINGLY ORDERED that FmHA's objection to claim of exemptions is sustained.

IT IS FURTHER ORDERED that the parties shall contact the Court to schedule a hearing on the motion to avoid lien filed January 25, 1990.

Dated this 11th day of June, 1990.

/s/ _____

Russell J. Hill
U.S. Bankruptcy Judge