

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
MARTY VAN VLIET, : Case No. 86-2409-C
dba Blueprint Cattle Company, :
Debtor. :

In the Matter of :
BETH DE JONG
dba Blueprint Cattle Company, :
Debtor. :

ORDER ON OBJECTION TO DEBTORS' CLAIMS OF EXEMPT PROPERTY

On December 19, 1986 objections to debtors' claims of exempt property filed on behalf of Pella National Bank on October 31, 1986 came on for hearing before this court in Des Moines, Iowa. Resistances to said objections were filed on behalf of both debtors on November 24, 1986. Donald F. Neiman appeared on behalf of Pella National Bank. Fred J. Kreykes appeared on behalf of both debtors.

Each debtor filed an individual petition for relief under Chapter 7 on September 3, 1986. Marty Van Vliet and Beth De Jong are the sole partners of the Blueprint Cattle Company partnership which is involved in breeding and raising purebred cattle. Marty Van Vliet claims two cows and one bull calf as exempt property pursuant to Iowa Code section

627.6(12)(b) (1986 Iowa Acts ch. 1216). Beth De Jong claims two cows as exempt property pursuant to the same statutory provision.

On October 31, 1986 the Pella National Bank filed objections to both claims of exemptions asserting that the cattle are assets of the Blueprint Cattle Company partnership and therefore not available as personal exemptions for the debtors. On November 24, 1986 the debtors filed resistances to the objections stating that the assets in question are individual rather than partnership assets.

At the time of hearing on December 19, 1986 the Bank filed briefs in support of its objections to exempt property. The debtors were granted two weeks to submit briefs and the option to request a further evidentiary hearing. The debtors filed a brief in support of exempt property on January 5, 1987 and indicated no need for a further evidentiary proceeding.

In their brief the debtors acknowledge that the property claimed as exempt is partnership property. The debtors' inventory reports likewise indicate that the livestock claimed as exempt is Blueprint partnership property. The debtors ask this court, however, to grant exemptions in whatever interest they may have in specific partnership property pursuant to Iowa Code section 544.25(2)(c).

The question of whether an individual debtor can claim an exemption in partnership property is governed by the Uniform Partnership Act, adopted in Iowa at Iowa Code

Chapter 544. That Act enumerates the partners' rights in specific partnership property as follows:

544.25 Nature of a partner's right in specific partnership property.

1. A partner is co-owner with the other partners of specific partnership property holding as a tenant in partnership.

2. The incidents of this tenancy are such that:

a. A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with the other partners to possess specific partnership property for partnership purposes; but the partner has no right to possess the property for any other purpose without the consent of the other partners.

b. A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

c. A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

Iowa Code § 544.25 (1985).

Section 522(b) of the Bankruptcy Code only provides exemptions for individuals. A partnership is a distinct entity, separate from the partners who compose it. Jensen v. Wiersma, 185 Iowa 551, 170 N.W. 780 (1919). Title to partnership property does not belong to the individual

partners, but rather to the partnership entity. Id. at ____, 170 N.W. at 780. Only after the partnership has ceased activity and all partnership debts have been paid may an individual partner claim ownership of partnership property. Dixon v. Kopljar, 102 F.2d 295, 297 (8th Cir. 1939); Brindle v. Hiatt, 42 F.2d 212, 213 (8th Cir. 1930). Until this is done, an individual partner has no property right from which to claim an exemption. Accordingly, it is generally recognized that individual partners cannot exempt partnership property in a bankruptcy proceeding. See In re Johnson, 19 B.R. 371, 374 (Bankr. Kan. 1982). Collier on Bankruptcy is in accord:

Under the Act, where a partnership existed, the problem of whether the members of a bankrupt partnership could claim exemptions from the partnership assets depended upon state law. In states where the Uniform Partnership Act is in effect a partner could not claim exemptions in firm property. In the absence of such law, the same result was often reached because the firm is an entity and partners were held to have no interest in partnership assets until all creditors had been paid.

...

The Code...adopts the rule that individual partners may not exempt partnership assets.

3 Collier on Bankruptcy ¶ 522.05[3] at 522-21 (15th ed. 1986).

In the instant cases, the property claimed as exempt is clearly listed as inventory of the Blueprint Cattle Company. The Pella National Bank holds a first security interest, in livestock, equipment and fixtures. There is no indication

that the partnership has ceased activity or paid its debts.

WHEREFORE, based on the foregoing analysis, it is hereby found that the debtors may not claim exemptions in the partnership property.

THEREFORE, the Pella National Bank's objections to debtors' claims of exempt property filed on October 31, 1986 are sustained.

Signed and filed this 19th day of February, 1987.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE