

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

DONALD W. CROZIER,
SHIRLEY M. CROZIER,
Engaged in Farming,
dba Crozier and Assoc., Inc.,

Case No. 87-81-C
Chapter 7

Debtors.

ORDER ON MOTION TO AVOID LIEN

On April 14, 1987 a motion to void lien on exempt machinery and equipment filed on March 4, 1987 came on for telephonic hearing in Des Moines, Iowa. Mingo Trust and Savings Bank (Bank) resisted the motion on March 12, 1987 and amended the resistance on March 24, 1987. Mark S. Lorence appeared on behalf of the debtors and Bruce J. Nuzum appeared on behalf of the Bank. At the hearing, the court ordered that stipulated facts and letter briefs be submitted by May 14, 1987. The stipulation of facts have been submitted; however, neither party submitted letter briefs.

The debtors filed a joint petition on January 12, 1987. They seek to avoid liens on equipment valued at \$20,000.00 and claimed exempt pursuant to Iowa Code section 627.6(11)¹

The Bank challenges the debtors' motion on two grounds. First, the Bank maintains that application of the 1986 amendments to the Iowa exemption statute (amendments), which raise the maximum limit for the farm machinery exemption from

¹ Some confusion has arisen concerning the correct numbering of the subsections under Iowa Code section 627.6. The confusion apparently has resulted from the striking of former subsection 5. All Iowa statutory citations in this order are taken from the official Iowa Code (1987) unless otherwise noted.

\$5,000.00 to \$10,000.00 is impermissible under the Fifth Amendment to the United States Constitution. Secondly, the Bank asserts Shirley Crozier is not a farmer and, therefore, is not entitled to claim her own farm machinery exemptions. The court rejects both arguments.

FINDINGS OF FACT

The debtors seek to avoid liens on equipment valued at \$20,000.00. Nothing before the court indicates when the debtors' obligations to the Bank arose. The amendments took effect May 31, 1986. For the purpose of this decision, the court will assume the obligations were created prior to the effective date.²

Before May 31, 1986, Iowa law provided for a maximum farm machinery exemption of \$5,000.00. Iowa Code section 627.6(10)(d)(1985).³ The Iowa legislature amended section 627.6 by increasing the maximum farm machinery exemption to \$10,000.00. 86 Acts, ch. 1216, section 6 (now codified at Iowa Code section 627.6(11)(a)).⁴

Donald and Shirley Crozier are joint obligors to the Bank under various promissory notes and security agreements. Mrs.

² Had the obligations arisen after the effective date of the amendments, there could be no question the amendments would be applicable. Further, there is no question of applicability of the amendments to the "gap period" between the date of enactment and the effective date given this court's ruling that the amendments are applicable to obligations that had arisen prior to the effective date. Cf. Matter of Eakes, No. 83-1647-C (Bankr. S.D. Iowa, filed August 21, 1984) aff'd sub nom. United States of America v. Eakes, No. 84-714-A Civ. (S.D. Iowa, January 18, 1985) (finding that the holding in United States v. Security Industrial Bank, et. al., 459 U.S. 70, 103 S.Ct. 407, 74 L.Ed.2d (1982), wherein the Supreme Court determined that section 522(f)(2) of the 1978 Bankruptcy Code does not apply retroactively to abrogate liens acquired before the Code's enactment, did not apply to liens acquired between the enactment date (November 6, 1978) and the effective date of the Code (October 1, 1979)).

³ The value of musical instruments, one motor vehicle and interest in certain wages and tax refunds was also included in the \$5,000.00 limitation. Iowa Code section 627.6(10) (1985).

⁴ Livestock and feed for the livestock may be claimed exempt along with implements and equipment but the combined value can not exceed \$10,000.00.

Crozier is responsible for keeping the farm operation's books. She works approximately twenty hours per week at an office and has performed limited farm work in the fields.

DISCUSSION

I.

The issue of whether the application of the amendments to obligations created prior to May 31, 1986 is permissible under the 5th Amendment has been resolved in this district by the appeal decision in the case of Matter of Reiste, No. 87-153-B (S.D. Iowa, filed May 11, 1987). Chief District Judge Harold D. Vietor upheld Bankruptcy Judge Michael J. Melloy's ⁵ ruling that retrospective application of the amendments did not constitute an uncompensated taking. Judge Melloy had incorporated by reference in the Reiste opinion the conclusions of law set out in In re Punke, 68 B.R. 936 (Bankr. N.D. Iowa 1987). The Reiste decision and conclusions of law pertaining to the takings issue found in Punke are incorporated by reference in the instant case.

II.

In deciding whether Shifley Crozier is a farmer for exemption purposes, the court must first determine what law controls. It is clear that lien avoidance under 11 U.S.C. section 522(f) is a matter of federal law, not state law. Matter of Thompson, 750 F.2d 628, 630 (8th Cir. 1984). However, section 522(f) permits debtors to avoid liens on property to the extent the

⁵ Sitting by designation.

liens impair exemptions to which the debtors otherwise would have been entitled under the federal exemptions or under applicable state law. 11 U.S.C. 522(b)(1) authorizes states to "opt out" of the federal exemption scheme. Iowa has done so by virtue of Iowa Code section 627.10. Therefore, the court must turn to Iowa law to determine whether Shirley Crozier is a farmer for purposes of Iowa's exemption statute.⁶

Iowa Code section 627.6(11) provides in part the following:

If the debtor is engaged in farming... (the debtor may claim] any combination of the following, not to exceed a value of ten thousand dollars in the aggregate (exempt]:

- a. Implements and equipment reasonably related to a normal farming operation. This exemption is in addition to a motor vehicle held exempt under subsection 9.

Id. (emphasis added).

Iowa's exemption statute is based upon the premise "that it is better that the ordinary creditor's claims should remain partially unsatisfied than that a resident of the state should be placed in such an impecunious position that he and his family become charges of the state." Note, Personal Property Exemptions in Iowa: An Analysis and Some Suggestions, 36 Iowa L.Rev. 76, 77 (1950). The Iowa Supreme Court has ruled that

⁶ It is important to note that the definition of farmer under 11 U.S.C. section 101(17) is not applicable to exemption and lien avoidance issues. See In re LaFond, 791 F.2d 623, 625-626 (8th Cir. 1986); Flick v. United States through Farmers Home Administration, 47 B.R. 44, 442-443 (W.D. Pa. 1985); In re Schuette, 58 B.R. 417, 420 (Bankr. D. Minn. 1986); Middleton v. Farmer State Bank of Fosston, 45 B.R. 744, 747 (Bankr. D. Minn. 1985); Matter of Decker, 34 B.R. 640, 641 (Bankr. N.D. Ind. 1983). But see, In re Holman, 26 B.R. 110, 111-112 (Bankr. M.D. Tenn. 1983); In re Liming, 22 B.R. 740, 742 (Bankr. W.D. Okla. 1982).

the purpose of the exemption statute "is to secure to the unfortunate debtor the means to support himself and the family; the protection of the family being the main consideration." Shepard v. Findley, 214 N.W. 676, 678 (Iowa 1927).

In construing Iowa's exemption laws, the court is mindful of the well settled proposition that Iowa's exemption statute must be liberally construed. Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971). Yet, this court must be careful not to depart substantially from the express language of the exemption statute nor to extend the legislative grant. Matter of Hahn, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980), citing Wertz v. Hale, 234 N.W. 534 (Iowa 1931) and Iowa Methodist Hospital v. Long, 12 N.W.2d 171 (Iowa 1944).

Although seemingly no Iowa cases address the specific issue in this case, the court has little difficulty finding Shirley Crozier a farmer under Iowa's exemption statute. The traditional image of a farmer is that of a man engaging in activities such as operating farm machinery and tending livestock. Until recently, very little attention has been given to the critical role women fulfill in family farm enterprises. In addition to participating in field work and animal husbandry, farm wives often are solely responsible for keeping the farm's books and performing domestic chores. Such tasks are as important to the operation of a farm as activities typically associated with farming. Indeed, the small farm in Iowa is truly a family operation. See, In re

Pommerer, 10 B.R. 935, 942 (Bankr. D.Minn. 1981) ("One would have to blind oneself to reality not to.... recognize that a small farm...is a family operation. (T]herefore, (a farm wife] must also be considered a farmer."). The stipulation of facts reveals that Shirley primarily is responsible for keeping books and has performed field work. Hence, she is a farmer.

The fact that Shirley has off the farm employment does not detract from her status as a farmer. In Matter of Myers, 56 B.R. 423 (Bankr. S.D. Iowa 1985), the court was presented with a situation wherein the debtors who were full-time teachers asserted they also qualified as farmers. The court noted that the Iowa Supreme Court has not adopted a principal occupation test nor a percentage of income test. Rather, the only requirement is that the work contribute to the debtor's support. Myers, 56 B.R. at 426. Shirley's work on the farm contributes to her and her family's support.

CONCLUSION AND ORDER

WHEREFORE, based upon the foregoing discussion, the court concludes that the debtors are entitled to exempt farm machinery valued at \$20,000.00 and that Shirley Crozier is a farmer for purposes of Iowa's exemption statute.

THEREFORE, the debtors' motion to avoid lien is granted.

Signed and dated the 3rd day of September, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE