

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

LARRY A. ACKERMAN, Case No. 87-2463-W
MYRTLE ANNETTA ACKERMAN
a/k/a Annetta (Ann) Ackerman, Chapter 7
f/d/b/a C B & O Trucking,

Debtors.

ORDER ON OBJECTIONS TO EXEMPTIONS, MOTION TO
AVOID LIENS AND MOTION TO REDEEM

On December 15, 1987 the objection to debtors' claim of exemption by State Bank and Trust of Council Bluffs (the Bank) came on for telephonic hearing in Des Moines, Iowa. On January 19, 1988 the Bank's resistance to motion to avoid lien and motion to redeem came on for telephonic hearing in Des Moines, Iowa. Joseph B. Reedy appeared on behalf of the debtors and Leo P. Martin appeared on behalf of the Bank. These matters have been submitted upon briefs, an affidavit and certain loan documents.

FINDINGS OF FACT

- 1 The debtors filed a joint petition for relief on October 2, 1987.
2. Pursuant to Iowa's exemption statute, the debtors each claim a \$3,500.00 exemption in a 1976 Kenworth tractor (truck) valued at \$7,000.00.
3. The debtors also each claim a \$2,500.00 exemption in a utility trailer valued at \$5,000.00.

4 The debtors seek to avoid the Bank's lien on the utility trailer.

5. The debtors seek to redeem the trailer by paying to the Bank, the value of the Bank's interest in the property which is \$814.00.

DISCUSSION

I.

The Bank first contends that the debtors cannot each claim an exemption in the same truck. The Bank, as the objecting party, carries the burden of proving the exemptions are not properly claimed. Bankruptcy Rule 4003(c).

The debtors claim an exemption to the truck under Iowa Code section 627.6(9)(b) which permits a debtor to exempt from execution:¹

9. Any combination of the following, not to exceed a value of five thousand dollars in the aggregate:

a. Musical instruments, not including radios, television sets, or record or tape playing machines, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

¹The debtors and the Bank assert in their briefs that the debtors' amended schedules show that debtors claim an, exemption in the truck under Iowa Code section 627.6(9)(b) However, an examination of the amended schedule B-4 shows the truck is being claimed under the tools of trade exemption set out in section 627.6(10). Since both parties base their arguments on the assumption the claims were filed under 627.6(9)(b), the court will treat the exemption claim as being made under this provision.

b. One motor vehicle.

C. In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed one thousand dollars in the aggregate. This exemption is in addition to the limitations contained in sections 642.21 and 537.5105.

Id. (emphasis added).

In construing section 627.6(9)(b), 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 or 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).

The parties do not cite nor has the court found any Iowa Supreme Court decisions that have addressed the issue of whether debtors may each claim an exemption in the same vehicle. There is nothing on the face of section 627.6(9) to indicate that debtors are precluded from "stacking" exemptions.

Cases from other jurisdictions have addressed the issue. In In re Janesofsky, 22 B.R. 473 (Bankr. D. Colo. 1982), joint debtors each claimed a \$6,000.00 exemption in a mobile home for a total \$12,000.00 claim. The Colorado

exemption statute provided for a mobile home exemption only to the extent of \$6,000.00. The trustee maintained that the debtors were entitled to only one exemption. Relying heavily upon the fact both debtors had an ownership interest in the mobile home and the rule of construction that exemption laws are to be liberally construed, the court rejected the trustee's argument and allowed the debtors to each claim an exemption.

A similar result was reached in In re Johns, 39 B.R. 488 (Bankr. C.D. Ill. 1984). There the court permitted joint debtors who owned the same vehicle to each claim an exemption in the jointly owned vehicle. The Illinois statute in question limited the vehicle exemption to \$1,200.00. The court permitted the debtor to exempt up to the value of \$2,400.00 in any one vehicle.

The court finds these cases to be persuasive. The debtors' schedules indicate they have a joint interest in the truck. Permitting the debtors to "stack" their exemptions in the truck comports with the well-settled proposition that Iowa's exemption statute must be liberally construed. Thus the debtors may each exempt \$3,500.00 in the truck for a total exemption of \$7,000.00.

The court notes that Larry Ackerman claims a 1973 Plymouth exempt under section 627.6(9)(b) and Myrtle Ackerman claims a 1976 Chevrolet truck exempt under the same provision. Section 627.6(9)(b) permits each debtor to

claim one motor vehicle exempt. Since the debtors have elected to stack their motor vehicle exemptions into one truck, they no longer may claim additional exemptions in the 1973 Plymouth and the 1976 Chevrolet truck.

II.

The Bank next challenges the ability of the debtors to claim the utility trailer as a tool of the trade under Iowa Code section 627.6(10). This provision provides that:

If the debtor is engaged in any profession or occupation other than farming, [the debtor may claim] the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate [exempt].

Id.

The Bank's argument is based solely on this court's decisions in Matter of Van Pelt, Case No. 86-2192-C (Bankr. S.D. Iowa, Order dated June 29, 1987) and Matter of Brittain, Case No. 87-299-C (Bankr. S.D. Iowa, Order dated June 30, 1987). In those cases this court concluded that Iowa's separate categorization of vehicles in section 627.6(9)(b) and tools of the trade in section 627.6(10) evinced a legislative intent that vehicles are not included within the meaning of "proper implements" or "tools of the trade" under section 627.6(10). The Bank argues that because the trailer is a "vehicle," the trailer cannot be claimed as a tool of the trade or an implement under section 627.6(10). This argument ignores the clear language of the

exemption statute.

Section 627.6(9)(b) speaks of motor vehicle. The Bank has made no showing that the trailer is motorized. "Motor vehicle" is defined elsewhere in the Iowa Code as a "self-propelled vehicle." See Iowa Code section 321I.1(7) (defining "motor vehicle" as used in Iowa's motor vehicle service contract statute). Likewise no showing has been made that the trailer is self-propelled. The vehicles involved in Van Pelt and Brittain were motorized vehicles--an automobile and a truck respectively. Thus, these cases are distinguishable. The "whole statute" rule of statutory construction simply does not apply to this case.

Finding that the Van Pelt and Brittain cases do not apply to this case does not resolve the lien avoidance dispute over the utility trailer. Whether the Bank possesses a purchase-money security interest in the utility trailer is not clear. In the debtors' motion to avoid liens, they contend the Bank holds a nonpurchase-money security interest. However, in their motion to redeem, they maintain the Bank holds a purchase-money security interest. The security document submitted by the Bank likewise is not clear. The note marked "Exhibit A" states that the purpose of the loan is to "buy trailer." The type of trailer is not specified. In another paragraph, a 1985 45' utility trailer and a 1982 42' trailer are listed as security for the note and valued at \$13,000.00 and \$8,500.00 respectively. It is difficult

to determine whether the utility trailer served as additional security for the loan or whether the trailer actually was purchased with loan proceeds. Finally, it should be noted that the debtors list only a 1984 utility trailer on Schedule B-4.

If the Bank does hold a purchase-money security interest, the debtors may not avoid the Bank's lien because only nonpurchase-money security interests may be avoided under 11 U.S.C. section 522(f)(2)(B). In the event the Bank holds a purchase-money security interest, the debtors cannot redeem the trailer under 11 U.S.C. section 722. That section permits debtors to redeem "personal property intended primarily for personal, family, or household use" As evidenced by the debtors' characterization of the trailer as a tool of the trade, the trailer is primarily intended for a business use.

CONCLUSION AND ORDER

WHEREFORE, for the reasons set forth above, the court finds that each of the debtors may claim an exemption in the Kenworth truck. However, the debtors may not also claim exemptions in the 1973 Plymouth and in the 1976 Chevrolet truck.

The court further finds that the utility trailer is exempt as a tool of the trade but the record is insufficient to determine whether the debtors may avoid the Bank's lien.

THEREFORE, the Bank's objections to the debtors' claims

of exemptions are overruled. The Bank's objections to the motion to avoid liens and motion to redeem are continued.

IT IS FURTHER ORDERED that the parties submit either a consent order or a stipulation of facts and briefs and arguments with respect to the continued matters by February 22, 1988.

Signed and filed this 2nd day of February, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE