

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of
VERN E. JOHN
GLADYS I. JOHN,

Case No. 87-2766-C

Chapter 7

Debtors.

ORDER ON APPLICATION TO VOID LIEN

On February 10, 1988, an application to exempt property filed December 21, 1987, by Debtors, and resistance thereto filed January 5, 1988, by creditor Rippey Savings Bank (hereinafter "Creditor"), came on for a telephonic hearing in Des Moines, Iowa. William C. Ostlund appeared on behalf of Creditor, and Reta Noblett-Feld and Edward Conrad, student legal intern, appeared on behalf of Debtors. At the conclusion of the hearing, the court took the matter under advisement and now considers it fully submitted.

ISSUES

On November 10, 1987, Debtors filed a joint Chapter 7 petition. In their schedules, Debtors claimed \$14,135 of farm machinery and equipment as exempt tools of the trade pursuant to Iowa Code section 627.6(17) [sic].

On December 21, 1987, Debtors filed an application to void lien on exempt property and requested the court, pursuant to 11 U.S.C. section 522(f)(2)(B), to void a nonpossessory, nonpurchase money security interest lien held by Creditor in Debtors' exempt farm machinery and equipment.

On January 5, 1988, Creditor filed a resistance to Debtors' lien avoidance application and argued Debtors were no longer farmers so they could not exempt the farm machinery and equipment in the first place, much less void the lien on such.

The issues in this case are: 1) whether Debtors qualify as farmers; and, if so, 2) whether Debtors can void Creditor's lien on exempt property.

FACTUAL BACKGROUND

Debtors have farmed all their lives and currently live in a rental farmhouse. Their last attempt at farming was in 1986. They do not have a contract to farm in 1988 and do not own a farm. However, Debtors do intend to go back to farming and want to custom farm. Debtors currently are living on social security. Those payments are insufficient to support them and, as a result, they intend to custom farm in order to supplement their income.

Debtors own \$14,135 of farm machinery and equipment which they have claimed as exempt. Creditor holds a properly perfected security interest in that property. However, the lien is a nonpossessory, nonpurchase money security interest, and Debtors are attempting to void that lien pursuant to section 522(f)(2)(B) because it impairs their exemption.

DISCUSSION

Pursuant to 11 U.S.C. §522(b) (1) Iowa enacted Iowa Code section 627.10 and provided for its property exemptions in lieu of the federal exemption. Accordingly, the definition of a farmer for purposes of Iowa's exemption statute is determined by Iowa law.

Iowa Code section 627.6(11) (1987) provides, as relevant herein, that if the debtor is engaged in farming, the debtor may claim as exempt, a combination of implements and equipment, and livestock and feed for the livestock, reasonably related to a normal farming operation, not to exceed a value of \$10,000.00 in the aggregate per debtor.

This court, in Matter of Myers, 56 B.R. 423 (Bankr. S.D. Iowa 1985), examined the definition of a "farmer" for purposes of Iowa's exemption statute. The court determined custom farming is farming under said exemption statute. Id. at 427. Further, the court noted a temporary cessation of farming does not defeat a claimed exemption if debtor intends to return to farming, and that debtors' intention to return must be given great weight. Id. at 426.

Under the facts and circumstances in the case at bar, Debtors are farmers under Iowa law. Even though Debtors have not farmed since 1986, they previously farmed all their lives and now intend to custom farm in the future. Therefore, pursuant to Iowa Code section 627.6(11), Debtors can exempt up to \$20,000 of farm machinery and equipment.

Although Debtors erroneously claimed their exemption under section 627.6(17) [sic] tools of the trade, the court will allow a proper section 627.6(11) farm machinery and equipment exemption for the claimed amount of \$14,135.

Since Debtors do qualify as farmers, the second issue is whether they can void Creditor's valid lien on their exempt farm machinery and equipment.

11 U.S.C. section 522(f) provides that a debtor may avoid the fixing of a lien on property that is otherwise exempt under federal or state law to the extent the lien impairs debtor's exemption if such lien is:

- (2) a nonpossessory, nonpurchase-money security interest in any -

....

- (B) Implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor;

In interpreting section 522(f) (2) (B), the Eighth Circuit has held that "tools" and "implements" include large pieces of farm machinery. In re LaFond, 791 F.2d 623, 627 (8th Cir. 1986)

In the case at bar, Debtors' farm machinery and equipment are exempt pursuant to Iowa Code section 627.6(11). In addition, Creditor holds a nonpossessory, nonpurchase money security interest lien which impairs

Debtors' exempt property. Therefore, Creditor's lien is void pursuant to section 522(f) (2) (B).

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes Debtors are farmers for purposes of Iowa's exemption statute and are entitled to exempt their farm machinery and equipment valued at \$14,135. The Court also concludes Debtors are entitled to void Creditor's lien on their exempt property.

THEREFORE, IT IS ORDERED, that Debtors' application to void lien on exempt property is granted.

Dated this 10th day of March, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE