

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of . Case No. 87-2982
BRUCE R. SIMMONS and . Chapter 7
KATHLEEN S. SIMMONS,
Debtors.

ORDER ON MOTION TO AVOID LIEN

On February 10, 1988, a telephonic hearing was held on the motion to avoid lien filed by Bruce R. and Kathleen S. Simmons (hereinafter "Debtors"), and the objection to Debtors' claim of exempt property filed by Farmers Home Administration (hereinafter "FmHA"). Gregory W. Peterson appeared on behalf of the Debtors and Kevin R. Query appeared on behalf of FmHA.

This is a core proceeding pursuant to 28 U.S.C. section 157(b)(2). The court having heard the arguments of counsel and having reviewed the file now enters its findings and conclusions.

FINDINGS OF FACT

1. Debtors filed their joint Chapter 7 petition on December 4, 1987.
2. Debtors have been engaged in farming since 1974.
3. On their schedule B-4, Debtors claimed as exempt \$20,000 of farm equipment, livestock, handtools, and feed for their livestock, all pursuant to Iowa Code section 627.6(11)

4. On their schedule B-2, Debtors listed \$9,300 as the value of their farm equipment, and \$11,820 as the value of their livestock consisting of 22 cattle, 13 calves, and 1 bull.

5. All of this property is reasonably related to a normal farming operation.

6. On December 24, 1987, Debtors filed a motion to avoid lien pursuant to 11 U.S.C. section 522(f)(2)(A) and (B). Said motion applied to Debtors' farm equipment, livestock, handtools and feed for livestock, all of which was listed in B-2 and claimed as exempt in B-4.

7. On January 11, 1988, FmHA filed an objection to claim of exemptions and argued Debtors were not entitled to claim livestock in excess of that which is necessary for household use.

8. On January 11, 1988, FmHA filed an objection to Debtors' motion to avoid lien and argued: 1) FmHA was given a lien in Debtors' \$5,000 IHC 986 tractor prior to the enactment of the Bankruptcy Code; and 2) Debtors claimed excessive amounts of livestock as exempt.

ISSUES

Two issues are presented in this case. The first is whether Debtors properly claimed their section 627.6(11) exemption. The second is whether Debtors can avoid lien on their claimed-as-exempt property.

DISCUSSION

Iowa Code section 627.6 (1987) sets out many exemptions a bankruptcy debtor may claim. Under section 627.6(11), a debtor who is engaged in farming can claim:

[A]ny combination of the following not to exceed a value of ten thousand dollars in the aggregate.

a. Implements and equipment reasonably related to a normal farming operation.

b. Livestock and feed for the livestock reasonably related to a normal farming operation.

Iowa Code §627.6(11).

In the case at bar, Debtors are entitled to a \$20,000 exemption under section 627.6(11) because they are farmers and they filed a joint petition. However, on their schedule B-4, Debtors claimed as exempt \$21,120 of property per section 627.6(11)--\$9,300 of farm equipment and implements, and \$11,820 of livestock. Thus, even though all the property is reasonably related to a normal farming operation, Debtors have exempted property valued at \$1,120 more than allowed. Therefore, Debtors must amend their schedule B-4 to reflect the \$20,000 of property they are entitled to exempt.

Since \$20,000 of this property is exempt, the second issue is whether Debtors can avoid lien on the exempt property. Bankruptcy Code section 522(f) allows a debtor to

avoid a lien which impairs a properly claimed exemption if such lien is:

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

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(B) implements, professional books, or tools, of the trade of the debtor or 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 interpreting section 522(f)(2)(A), the Eighth Circuit has held that lien avoidance is available for those animals held primarily for personal, family or household use. Matter of Thompson, 750 F.2d 628, 630 (8th Cir. 1984) (emphasis added). Furthermore, liens on livestock held for commercial use cannot be avoided under this subsection. *Id.* This court, in Matter of Scanlan, No. 86-2870-W, slip op. at 10 (Bankr. S.D. Iowa July 30, 1987) has ruled that two cows and two calves is a reasonable amount for the debtors' personal, family, or household use.

In the case at bar, Debtors seek to avoid lien on their farm equipment, implements, and livestock. Taking the

livestock first, Thompson makes it clear that Debtors can avoid lien only on those animals held primarily for personal, family or household use, the amount of which this court in Scanlon set at two cows and two calves. Therefore, Debtors, pursuant to section 522(f) (2) (A), can avoid lien on two of their twenty-two cattle and two of their thirteen calves.

Concerning lien avoidance on Debtors' farm equipment and implements, FmHA objected on the ground its security interest in Debtors' IHC 986 tractor was given prior to November 6, 1978, the date of enactment of the Bankruptcy Code. Liens granted prior to said enactment date cannot be avoided under section 522(f). U.S. v. Security Industrial Bank, 459 U.S. 70 (1982). Thus, avoidance of the tractor lien hinges upon a determination of the date said lien was given.

Debtors have the burden of demonstrating that all the elements of lien avoidance under section 522(f) are satisfied. In re Shands, 57 B.R. 49,50 (Bankr. S.C. 1985). With respect to this burden, one court has stated:

[I]n order to obtain the requested relief, the debtors have the burden of demonstrating that: 1) they have exemptions which have been granted; 2) the lien being avoided is a judicial lien or nonpurchase money security interest; 3) such lien or interest impairs the above exemptions; and 4) as a matter of law they are entitled to have such liens or interests avoided under § 522(f).

In re Clark, 11 B.R. 828, 831 (Bankr. W.D. Pa. 1981)
(emphasis added).

In the case at bar, Debtors have met the first three requirements in Clark. However, Debtors failed to meet the critical requirement of demonstrating they are entitled to have the tractor lien avoided as a matter of law. Security Industrial Bank holds that pre-Bankruptcy Code enactment-granted liens cannot be avoided. Debtors have offered no evidence indicating they granted FmHA the tractor lien after the Bankruptcy Code was enacted. In fact, Debtors' counsel stated during the hearing that the time said lien was granted was not important. Thus, Debtors failed to meet their section 522(f) burden to avoid lien on their tractor and, therefore, cannot avoid said lien.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the court concludes Debtors can: 1) exempt up to \$20,000 of farm property under Iowa Code section 627.6(11); 2) avoid lien on two cows and two calves; and (3) avoid lien on all farm equipment and implements except their IHC 986 tractor.

THEREFORE, IT IS ORDERED, that Debtors' motion to avoid lien is granted to the extent of the above conclusion.

Dated this 24th day of March, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE