

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

JOHNNIE E. FERRARI and
MARY JANE FERRARI,

Case No. 87-2841-C

Chapter 12

Debtors.

ORDER - MOTION TO AVOID LIEN

On April 11, 1988, a hearing was held on Debtors application (sic) to avoid liens, and resistance thereto by Boone State Bank & Trust Company (hereinafter "Boone State Bank"). Thomas P. Reznicek appeared on behalf of the Debtors and Jim P. Robbins appeared on behalf of creditor Boone State Bank.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The court having reviewed the evidence and heard the arguments of counsel now enters its findings and conclusions pursuant to F.R. Bankr. P. 7052.

FINDINGS OF FACT

1. Debtors filed their Chapter 12 petition on November 17, 1987.
2. Debtors listed implements and equipment related to their farming operation in their schedule B-4, and claimed them as exempt, pursuant to Iowa Code §627.6(11) (a).
3. The listed implements and equipment are subject to a valid, perfected security interest in favor of Boone State Bank.

4. This security interest is a non-possessory, non-purchase money interest.

5. Debtors filed their application, herein construed as a motion, to avoid liens on November 17, 1987, and prayed that Boone State Bank's lien on said implements and equipment be avoided pursuant to 11 U.S.C. §522(f).

6. Debtors have received financing from Boone State Bank for many years.

7. A financing statement was filed on October 18, 1966. The security interest was in Debtors' equipment, vehicles, machinery, farm products, and livestock. This financing statement contained an after-acquired property clause.

8. Boone State Bank's liability ledger shows that after March 11, 1976, there was always a balance owing to Boone State Bank by Debtors. Since 1977, Debtors' loans have either been renewed or rewritten at maturity. The original financing statements have been continued.

9. Although notes since 1979 have been labelled as renewals, new money was advanced, additional collateral was added, and Mary Jane Ferrari was added as an additional obligor on the notes and financing statements.

10. Those promissory notes marked "Paid" were paid by renewal of the note and not by payment in full of the principal and interest.

11. The machinery listed in Schedule B-4 does not have a value in excess of \$20,000.00.

DISCUSSION

Bankruptcy Code section 522(f) (2) (B) 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—

...

(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 the case at bar, Debtors seek to avoid lien on their farm implements and equipment. Boone State Bank objected on the ground its security interest in Debtors' farm implements and equipment 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, 82 (1982). However, courts have recognized an exception to this rule where pre-Code liens have been extinguished and replaced by loans and security agreements executed after the enactment date. See In re Avershoff, 18 B.R. 198 (Bankr. N.D. Iowa

1982); Matter of. Hallstrom, Case No. 86-370-C (Bankr. S.D. Iowa, filed September 8, 1986). Thus, avoidance of Boone State Bank's lien hinges upon whether a novation occurred after the enactment date.

With respect to novations, the Iowa Supreme Court has stated:

It is the general and well-recognized rule that the necessary legal elements to establish a novation are parties capable of contracting, a valid prior obligation to be displaced, the consent of all the parties to the substitution, based on sufficient consideration, the extinction of the old obligation, and the creation of new one.

Wade & Wade v. Central Broadcasting Co., 288 N.W. 439, 443 (Iowa 1939). The critical element is the intention of the parties to extinguish the existing debt by means of a new obligation. Tuttle v. Nichols Poultry & Egg Co., 35 N.W.2d 875, 880 (Iowa 1949).

A number of factors must be examined to determine whether new loan arrangements create a novation. Such factors include: whether new money was advanced; whether the debtors' payments were increased; whether additional collateral was provided by the debtors; and whether a new security agreement was executed. Matter of Ward, 14 B.R. 549, 553 (S.D. Ga. 1981); Averhoff, 18 B.R. at 202.

In the case at bar, the facts indicate that on notes between Boone State Bank and Debtors since 1979, new money was advanced, additional collateral was added, and Mary Jane Ferrari was added as an additional obligor on the notes and

financing statements. As a result of these events, the court concludes that Boone State Bank's pre-Code lien was extinguished by a novation which occurred after the enactment date of the Bankruptcy Code. Thus, the only remaining issue is whether Debtors are entitled to avoid lien under section 522(f).

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).

In the case at bar, Debtors have met all four requirements in Clark. Debtors properly exempted their farm implements and equipment. Boone State Bank has a nonpurchase money security interest lien which impairs Debtors' exemption. Finally, Debtors are entitled to lien avoidance as a matter of law for two reasons. First, section 522(f)(2)(B) allows lien avoidance on farm machinery. See LaFond, 791 F.2d at 627. Second, the novation makes Boone State Bank's lien post-Code and thus

eligible for lien avoidance. See Security Industrial Bank, 459 U.S. at 82. Therefore, since Debtors have met the four Clark requirements, they are entitled to avoid lien on their exempt farm implements and equipment.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the court concludes that since Boone State Bank's lien in Debtors' farm implements and equipment was extinguished by a novation and replaced by a post-Code lien, Debtors are entitled to avoid lien on their farm implements and equipment.

THEREFORE, IT IS ORDERED, that Debtors' motion to avoid lien is granted.

Dated this 6th day of May, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
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SUPPLEMENTAL ORDER - MOTION TO AVOID LIEN

On May 6, 1988, this court entered an Order granting Debtors' motion to avoid lien. The court now supplements said Order such that the actual event of lien avoidance may not occur until Debtors' discharge becomes effective pursuant to 11 U.S.C. section 1228. See Matter of Simmons, ___ B.R. ___ (Bankr. S.D. Iowa 1988).

IT IS ACCORDINGLY ORDERED, that Debtors' lien avoidance shall occur upon discharge under 11 U.S.C. section 1228.

Dated this 9th day of May, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE