

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

STEPHEN F. SESKER
SANDRA L. SESKER,

Case No. 87-3014-C
Chapter 12

Debtors.

ORDER — OBJECTION TO CLAIM OF EXEMPTIONS

Maxwell State Bank's Objection to Debtors' Claim for Exemption came on for hearing on February 16, 1988; Maxwell State Bank, herein the "Bank," appearing by its attorney of record, Jon P. Sullivan; the Debtors appearing by their attorney of record, Jerrold Wanek.

This is a core proceeding pursuant to 28 U.S.C. §157. The Court, having reviewed the file and the arguments and briefs of counsel, now enters its findings and conclusions pursuant to F.R. Bankr. P. 7052.

FINDINGS OF FACT

1. Debtors filed their petition pursuant to 11 U.S.C. Chapter 12 on December 10, 1987.

2. Debtors filed their Schedule B-4, Property Claimed Exempt, on the same date. This scheduled listed farming implements as exempt in the amount of \$18,875.00. The farming implements were fully itemized on Schedule B-2(i), which was also filed the same date.

3. On December 17, 1987, this Court issued its Order for a meeting of creditors and fixing times for filing complaints to determine dischargeability of Debtors.

4. This Order further provided that "unless the Court extended the time, any objection to the Debtor's claim of exempt property (Schedule B-4) must be filed within 30 days after the conclusion of the meeting of creditors."

5. Debtors filed their plan of reorganization on January 8, 1988. Article V thereof provided for lien avoidance of those liens on property claimed by Debtors as exempt property.

6. The First Meeting of Creditors, pursuant to 11 U.S.C. §341, was held on January 11, 1988. The Bank was represented at this meeting.

7. The Bank filed its objection to the claim of exemption on February 12, 1988.

8. Prior to the filing of objections to the claim of exemption, counsel for the Debtors and for the Bank communicated with each other regarding the value of Debtors' machinery. On or about January 19, 1988, counsel for the Bank advised counsel for the Debtors that the Bank objected to Debtors' values attributed to the machinery and that the Bank appraised the machinery at approximately \$10,000.00 more than did the Debtors.

9. On or about January 19, 1988, counsel agreed that the valuation issue would be voluntarily submitted to a third-party appraiser in the event the Debtors and the Bank could not agree upon an agreed valuation.

10. On February 10, 1988, counsel for the Debtors and the Bank communicated by phone. During that conversation, counsel for the Debtors did not reject the settlement proposals of the Bank and did not indicate that the Debtors were unwilling to continue the negotiations regarding the valuation issue.

11. On February 12, 1988, counsel for the Debtors advised counsel for the Bank that the Debtors were no longer willing to negotiate regarding the valuation of the equipment in that more than 30 days had passed since the first meeting of creditors.

12. In the course of the communications by and between counsel, the subject of the filing deadline for objecting to the Debtors' claim of exempt property was not mentioned or discussed.

DISCUSSION

Bankruptcy Rule 4003(b) allows a trustee or creditor to file objections to a debtor's claimed exemptions within 30 days after the conclusion of the section 341 meeting of creditors. The basic purpose of the 30-day requirement in Rule 4003(b) is to ensure timely notice to a debtor that the trustee or creditor objects to the claimed exemptions. See Matter of Young, 806 F.2d 1303, 1305 (5th Cir. 1986); In re Bidlofsky, 57 B.R. 883, 896 (Bankr. E.D. Mich. 1985). Even if a trustee or creditor does not timely file an objection to exemptions, the exemption issue is timely raised if the

court determines the actions of the trustee or creditor placed the debtor on notice, within the 30 days of the section 341 meeting, that the scheduled exemptions are disputed. See Bidlofsky, 57 B.R. at 896 (trustee's adversary complaints, filed 29 days after the section 341 meeting, gave debtor notice of the exemption dispute one day before the deadline for filing an objection to exemptions); In re Sterns, 52 B.R. 405, 411 (Bankr. S.D. Tex. 1985) (creditor's motion for relief from stay, filed 27 days before the section 341 meeting, gave debtor notice of the exemption dispute 57 days before the deadline for filing objections to exemptions).

In the case at bar, the section 341 meeting was held on January 11, 1988, which meant that under Rule 4003(b), the trustee or any creditor had until February 10, 1988, to file an objection to Debtors' claimed exemptions. On January 19, 1988, Bank's counsel notified Debtors' counsel that Bank objected to Debtors' values on claimed-as-exempt farm implements. On the same date, both counsel agreed the valuation issue would be voluntarily submitted to a third-party appraiser in the event Debtors and Bank could not agree upon a valuation. Thus, Debtors had notice of Bank's dispute with the exemption values 8 days after the section 341 meeting, which was 22 days before objections could no longer be timely filed. Therefore, even though Bank did not timely file its objection to exemptions, the Court considers

it timely raised because Debtor was placed on notice of Bank's objection well within the 30-day deadline.

The Court is aware that under Matter of Towns, 74 B.R. 563 (Bankr. S.D. Iowa 1987), a creditor who fails to timely object to debtor's claim of exemptions may not object to exemptions when resisting a motion to avoid liens. However, Towns is distinguishable from the case at bar because the debtor in Towns had no notice whatsoever of creditor's objection to exemptions until the creditor resisted debtor's motion to avoid liens almost 50 days after the 30-day deadline following the section 341 meeting had run. In the case at bar, Debtors had notice of Bank's objection 8 days after the section 341 meeting, which was 22 days before the 30-day deadline. Further, Debtors had entered into apparent good-faith efforts to negotiate and settle the valuation issues.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that the actions of Bank's counsel placed Debtors on notice that their claimed exemptions were disputed.

FURTHER, the equities of the case require the Court to treat Bank's objection to exemptions as timely filed.

IT IS ACCORDINGLY ORDERED that Bank's objection to Debtors' claim of exemptions is deemed timely filed.

RUSSELL J. HILL
UNITED STATES BANKRUPTCY JUDGE