

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

KEITH WILLIAM WARTH,

Case No. 88-580-D

Chapter 7

Debtor.

**ORDER - OBJECTION TO CLAIM OF EXEMPTIONS**

On June 9, 1988, a hearing was held on objection to claim of exemptions. Steven R. Hahn appeared on behalf of Debtor and Kevin R. Query appeared on behalf of creditor Farmers Home Administration (hereinafter "FmHA"). At the close of said hearing, the Court took the issue under advisement upon a briefing deadline of June 30, 1988. Briefs were timely filed and the Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B). The Court, upon review of the pleadings, arguments of counsel and briefs, now enters its findings and conclusions pursuant to F.R. Bankr. p. 7052.

**FINDINGS OF FACT**

1. On March 17, 1988, Debtor filed a Chapter 7 petition.
2. Debtor is a partner in Warth Brothers Farms, a partnership farming operation commenced in 1960, which has not been terminated and in which Debtor seeks to continue to participate.

3. On his schedule B-4, Debtor claimed as exempt \$10,000 of farm machinery utilized by the partnership farming operation.

4. On May 5, 1988, FmHA filed a proof of claim against Debtor of \$160,827.01. Said obligation arose from a personal guarantee of operating loans given to Warth Brothers partnership. FmHA obtained under written security agreements dated May 16, 1985, and February 2, 1987, an interest in, among other things, farm equipment owned and utilized by the Warth Brothers partnership. FmHA's security interest was perfected by filing a financing statement with the Iowa Secretary of State on May 2, 1985.

5. On May 16, 1988, FmHA filed an objection to claim of exemptions. In said objection, FmHA asserted that as a partnership creditor, it had a superior interest in the farm machinery to that of Debtor.

#### DISCUSSION

The issue in this case is whether an individual debtor can claim an exemption in partnership property. A starting point is the Uniform Partnership Act, adopted in Iowa at Iowa Code Chapter 544. Said Act sets out the partners' rights in specific partnership property as follows:

544.25 Nature of a partner's right in specific partnership property.

1. A partner is co-owner with the other partners of specific partnership property holding as a tenant in partnership.

2. The incidents of this tenancy are such that:

a. A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with the other partners to possess specific partnership property for partnership purposes; but the partner has no right to possess the property for any other purpose without the consent of the other partners.

b. A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

c. A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

...

Iowa Code §544.25 (1987).

Section 522(b) of the Bankruptcy Code only provides exemptions for individuals. A partnership is a distinct entity, separate from the partners who compose it. Jensen v. Wiersma, 185 Iowa 551, 170 N.W. 780 (1919). Title to partnership property does not belong to the individual partners, but rather to the partnership entity. Id. at \_\_\_\_\_ 170 N.W. at 780. Only after the partnership has ceased activity and all partnership debts have been paid may an individual partner claim ownership of partnership property. Dixon v. Kopljar, 102 F.2d 295, 297 (8th Cir. 1939); Brindle v. Hiatt, 42 F.2d 212, 213 (8th Cir. 1930);

see Gibson v. Deuth 270 N.W. 2d 632, 635 (Iowa 1978). Until this is done, an individual partner has no property right from which to claim an exemption. Accordingly, it is generally recognized that individual partners cannot exempt partnership property in a bankruptcy proceeding. See In re Johnson, 19 B.R. 371, 374 (Bankr. D. Kan. 1982). Collier on Bankruptcy is in accord:

Under the former Act, when a partnership existed, the problem of whether the members of a bankrupt partnership could claim exemptions from the partnership assets depended upon state law. In states in which the Uniform Partnership Act was in effect a partner could not claim exemptions in firm property. In the absence of such law, the same result was often reached because the firm was an entity and partners were held to have no interest in partnership assets until all creditors had been paid.

The Code ... adopts the rule that individual partners may not exempt partnership assets.

3 Collier on Bankruptcy, ¶522.05[3] at 522-20,21 (15th ed. 1987)

In the case at bar, the machinery claimed as exempt by Debtor is owned by the Warth Brothers partnership. FmHA holds a first security interest in said machinery. There is no indication that the partnership has ceased activity or paid its debts. In fact, the partnership has not been terminated and Debtor seeks to continue to participate as part of the partnership. Therefore, since the partnership has neither ceased activity nor paid its debts, Debtor cannot claim exemptions in the partnership property.

**CONCLUSION AND ORDER**

WHEREFORE, based on the foregoing analysis, the Court concludes that Debtor may not claim exemptions in the machinery because it is property of the Warth Brothers partnership.

IT IS ACCORDINGLY ORDERED that FmHA's objection to claim of exemptions is sustained.

Dated this 8<sup>th</sup> day of September, 1988.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT  
THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION

IN RE:

KEITH WILLIAM WARTH,

Debtor.

CIVIL NO. 88-164-D-1  
88-580-D H  
RULING ON APPEAL FROM  
BANKRUPTCY COURT

On September 8, 1988, the United States Bankruptcy Court entered its order concluding that the debtor may not claim exemptions in machinery which is the property of the Warth Brothers partnership. The FmHA's objection to the claim of exemptions was sustained.

The debtor appealed, asserting in his statement of issues that the court erred in determining that a member of a partnership does not have the right to claim as exempt items of property which are known as partnership property in the State of Iowa.

The court by order entered on December 6, 1988, provided that the parties might file briefs in accordance with a schedule consistent with Bankruptcy Rule 8009. No briefs have been filed and the time for filing briefs has expired.

The matter is deemed submitted for ruling.

The court finds substantial support in the record for the findings of fact and the conclusion of the bankruptcy court that the debtor had no right to claim as exempt items of property owned by the Warth Brothers partnership.

The court affirms the bankruptcy court's order entered on September 8, 1988.

IT IS SO ORDERED.

Dated this 19<sup>TH</sup> day of January, 1989.

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CHARLES R. WOLLE, JUDGE  
UNITED STATES DISTRICT COURT

AO 450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA - DAVENPORT DIVISION

IN THE MATTER OF  
KEITH WILLIAM WARTH,

JUDGMENT IN A CIVIL CASE

V.

Plaintiff,

FARMERS HOME ADMINISTRATION,

CASE NO. 88-164-D-1

Defendant.

**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

xx **Decision by Court.** This action came to trial or hearing before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Court finds substantial support in the record for the findings of fact and the conclusion of the Bankruptcy Court that the debtor had no right to claim as exempt, items of property owned by the Warth Brothers partnership. The Court AFFIRMS the Bankruptcy Court's Order entered on September 8, 1988.

March 3, 1989  
Date

JAMES R. ROSENBAUM  
Clerk

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*(By) Deputy Clerk*



UNITED STATES DISTRICT COURT  
Office of the Clerk  
SOUTHERN DISTRICT OF IOWA  
131 East Fourth Street  
Davenport, Iowa 52805  
March 15, 1989

Robert St. Vrain, Clerk  
U.S. Court of Appeals  
1114 Market Street  
St. Louis, MO 63101

Re: Civil No. 88-164-D-1 Keith Win. Warth vs.  
FHA

Dear Mr. St. Vrain:

Enclosed please find two attested copies of the Notice of Appeal and two attested copies of the docket entries in the above-captioned case.

/xx/ Also enclosed are two. copies of:  
Order on Objection to Claim of Exemptions entered Bk Court 9-8-88;  
Order of Dist Court for filing of Briefs, 12-6-88; Order 1-19-89  
of Dist. Court Affirm. Bk. Court Order; Judgment entered 3-3-89.

/xx/ Also enclosed is a copy of the letter and Notice regarding ordering of the transcript, which is being mailed to the attorneys this date.

/xx/ Forms A & B have been mailed to the attorneys of record (Given to the attorney for appellant(s)). Copy of Pre-Argument Settlement Program and Settlement Conference Rule are being mailed to the attorneys of record this date.

/xx/ Filing fees have been paid.

/\_\_\_/ The appellant is pro se, in forma pauperis. We are forwarding the court file with this letter as it is a pro se appeal.

/ / The defendant has not as yet been served.

Mr. Robert St. Vram  
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Civ. 88-164-D-1

This action arose in the Southern District of Iowa,  
Davenport, Division, Judge Charles R. Wolle presiding.

A copy of this letter together with a copy of the  
Notice of Appeal and the docket entries is being mailed to  
the attorneys of record this date. Their names and addresses  
are listed on the front of the docket enclosed herewith.

Sincerely, JAMES R. ROSENBAUM  
Clerk, U.S. Dist. Court

BY: \_\_\_\_\_  
Deputy Clerk

JRR/dd

Enclosures

CC: Hon. C. R. Wolle  
U.S. Dist. Court

Hon. Russell J. Hill  
Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION

IN THE MATTER OF

KEITH WILLIAM WARTH,

Case No. 88-164-D-1

Plaintiff

v.

Farmers Home Administration,

Defendant.

NOTICE OF APPEAL

The Debtor appeals to the Circuit Court from the Judgment entered in this matter on March 3, 1989, dealing with the rights to claim as exempt items of property used in a partnership. The parties to the judgment appealed from and the names and addresses of their respective attorneys are as follows: Steven R. Hahn, attorney for Debtor, P.O. Box 517, Burlington, Iowa 52601; and Kevin R. Query, Attorney for Creditor, Farmers Home Administration, 115 U.S. Courthouse, Des Moines, Iowa 50309.

RUTHER, BAUER, SCHULTE, HAHN,  
SWANSON & CROWLEY

By \_\_\_\_\_  
Steven R. Hahn  
Sixth Floor Burlington Bldg.  
P.O. Box 517  
Burlington, Iowa 52601

Copies to:  
Mr. Kevin R. Query  
U.S. Trustee  
A. Fred Berger, Trustee