

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of :

RICHARD LEE SODAWASSER and :
JUDY KAY SODAWASSER, :
: :
Debtors. :

Case No. 88-950
Chapter 7

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ORDER - MOTION FOR RELIEF FROM STAY
AND MOTION TO VALUE COLLATERAL AND AVOID LIEN

On June 17, 1988, a hearing was held on the motion for relief from stay and motion to value collateral and avoid lien. Sara J. Weishar appeared on behalf of creditor Citizens Federal Savings and Loan Association of Davenport (hereinafter "Citizens Federal"), and Alan R. Haverkamp appeared on behalf of Debtors. At the conclusion of said hearing, the Court took the matter under advisement upon a briefing deadline of July 15, 1988. The parties have timely filed briefs and the Court considers the matter fully submitted.

On July 20 1988, the parties filed a stipulation providing that Citizens Federal's motion to lift stay would be treated as the filing of a claim. Thus, the Court is faced with the issue of whether Debtors can avoid Citizens Federal's lien on Debtors' exempt homestead, pursuant to 11 U.S.C. §506.

Rule 7001(2) of the Federal Rules of Bankruptcy

Procedure provides that an adversary proceeding is a proceeding "to determine the validity, priority, or extent of a lien or other interest in property...." Rule 7003 provides that an adversary proceeding is commenced by filing a complaint. Fed. R. Bankr. P. 7003. In the case at bar, Debtors' requested relief is a proceeding to determine the validity, priority, or extent of a lien. However, Debtors sought said relief through a motion, not by filing a complaint. Therefore, the Court concludes it lacks jurisdiction to consider Debtors' request for relief.

IT IS ACCORDINGLY ORDERED that Debtors' motion to value collateral and to avoid lien is overruled for lack of juris-diction.

IT IS FURTHER ORDERED that Debtors' shall have the opportunity to file an adversary complaint in order to properly place this matter before the Court.

Dated this _____ day of September, 1988.

Russell J. Hill
U.S. Bankruptcy Court