

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
 :
FRED SCHNIPKOWEIT, JR. : Case No. 87-2952
 :
Debtor. :
 : Adv. No. 88-0009
FEDERAL DEPOSIT INSURANCE :
CORPORATION, :
 :
Plaintiff, : Chapter 7
 :
v. :
 :
FRED SCHNIPKOWEIT, JR. and :
JOYCE SCHNIPKOWEIT, :
 :
Defendants. :

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ORDER - TRIAL ON COMPLAINT TO DETERMINE SECURED STATUS

On July 6, 1988, a trial was held on the complaint to determine secured status. David L. Davitt appeared on behalf of the Federal Deposit Insurance Corporation (hereinafter "FDIC") and Wythe Willey appeared on behalf of Defendants. At the close of said trial, the Court took the matter under advisement upon a briefing deadline of July 22, 1988. Both parties have timely filed briefs and the Court considers the matter fully submitted.

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

FINDINGS OF FACT

1. On March 4, 1967, Debtor executed and delivered a security agreement covering all equipment and all extensions and renewals thereof to the First National Bank of Tipton (hereinafter "Bank"). Debtor signed said security agreement to secure payment of various promissory notes signed by either Debtor or his wife. Debtor previously had provided Bank with a financial statement indicating he was the sole owner of all the farm machinery.

2. On March 23, 1972, Defendant Joyce Schnipkoweit made, executed, and delivered to Bank a spouse's joinder in and guarantee of indebtedness which contained language subordinating to Bank any of her interest in exempt property which was pledged as collateral for the loan.

3. FDIC became the owner and holder of promissory notes, a guarantee, and the security agreement executed by Defendants as a result of the closing of Bank.

4. After the closing of Bank, Debtor provided FDIC with financial statements, dated November 18, 1986, and May 26, 1986, indicating he owned all the equipment.

5. The farm machinery in question was purchased by Defendants for their farming operation. It was paid for by funds out of their joint checking account and by

borrowed funds for which Defendants were obligated until said debt was paid.

6. Defendants have carried on a joint farming operatin for over 20 years.

7. Debtor currently owes FDIC approximately \$72,300.00.

8. On his schedule B-2, Debtor claimed ownership in only one-half interest in his farm machinery and equipment. The total value of said machinery is approximately \$16,000.00.

9. Debtor discussed his financial dealings with Bank with his wife, and an understanding existed between them which permitted Debtor to grant liens to Bank on all of their crops and machinery.

10. Defendants did not dispute FDIC's lien on all their equipment until after Bank was closed and Debtor had failed to reach a settlement with FDIC.

DISCUSSION

The issue in this case is whether FDIC's security interest in Debtor's farm machinery extends to one-half of the value of the farm machinery or to its entire value. Initially, FDIC argues Debtor is the sole owner of said machinery while Debtor argues his wife owns a one-half interest. The Court concludes it is unnecessary to decide the ownership issue because even if Debtor's

wife does own a one-half interest, FDIC's security interest extends to the entire value of the farm machinery.

Iowa Code section 554.9203(1) requires a debtor to have rights in the collateral in order to encumber it. On its face, said section does not require a debtor to be the sole owner of the collateral. While this Court has not been able to locate any Iowa case law on point, numerous other courts have held that "rights in the collateral" should not be equated with ownership. See In re Atchison, 832 F.2d 1236, 1239 (11th Cir. 1987); Matter of Schultz, 63 B.R. 168, 172 (Bankr. D. Neb. 1986); General Motors Acceptance Corp v. Washington Trust Co. of Westerly, 386 A.2d 1096 (R.I. 1978). Thus, the issue becomes whether Debtor had rights in the collateral.

Under Iowa Code section 554.9112, a debtor may acquire rights in the collateral upon authorization of the actual owner. Towe Farms, Inc. v. Cent. Iowa Prod. Credit, 528 F.Supp. 500, 505 (S.D. Iowa 1981). Other courts have also ruled that an owner's permission to use goods as collateral does create rights in the debtor sufficient to create an enforceable security interest. Atchison, 832 F.2d at 1239 (citations omitted).

In the case at bar, Debtor owned at least one-half of the \$16,000.00 of farm machinery at issue. In

addition, an understanding existed with Debtor's wife which allowed him to use the farm machinery as collateral for his debts. As a result, the Court concludes Debtor had rights in all the collateral. Therefore, the liens Debtor granted to Bank, currently held by FDIC, extend to the entire value of the farm machinery listed on Debtor's schedules.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that since Debtor had rights in all the collateral, the liens Debtor granted extend to the entire value of the farm machinery.

IT IS ACCORDINGLY ORDERED that FDIC's lien extends to the entire \$16,000.00 of farm machinery listed on Debtor's schedules.

Dated this _____ day of October, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE