

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
RONALD DEAN HARRIS and : Case No. 88-1853-C H
FRANCES L. HARRIS, :
Debtors. : Chapter 7

ORDER--OBJECTION TO EXEMPTIONS

On November 3, 1988, a hearing was held on objection to exemptions. The following attorneys appeared on behalf of their respective clients: August B. Landis for Debtors; and Kevin R. Query, Assistant United States Attorney, for the Farmers Home Administration (hereinafter "FmHA"). At the conclusion of said hearing, the Court took the matter under advisement upon a briefing deadline of November 18, 1988. FmHA filed a brief and Debtors chose to rest on their pleadings. The Court considers the matter fully submitted. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The Court, upon review of the pleadings, arguments of counsel, and brief submitted, now enters its findings and conclusions pursuant to F.R.Bankr.P. 7052.

FINDINGS OF FACT

1. On August 26, 1988, Debtors filed a Chapter 7 petition.
2. On their schedule B-4, Debtors claimed as exempt \$19,840.00 of farm machinery and equipment.

3. FmHA holds an unpaid pre-petition claim against Debtors in the principal amount of \$238,956.81. Said claim is secured by a security interest in, among other things, Debtors' farm and other equipment which includes the farm machinery and equipment Debtors have claimed as exempt.

4. The security agreement between FmHA and Debtors provides under Part IV as follows:

Debtor hereby (a) agrees to assemble the collateral and make it available to Secured Party at such time(s) and place(s) as designated by Secured Party, and (b) waives all notices, exemptions, compulsory disposition and redemption rights.

5. On October 17, 1988, FmHA filed an objection to Debtors' exemptions and made two alternative objections. First, it argued liens in personal property arising from a consensual agreement create an implied waiver of any right to an exemption, and thus Debtors were prohibited by their implied waiver from claiming the exemption in the farm machinery and equipment. Second, FmHA argued the value of the property exceeded the \$20,000.00 maximum exemption allowed under Iowa Code §627.6(11).

6. On November 3, 1988, Debtors filed a resistance to said objection and argued: 1) any waiver of Debtors' exemption, either express or implied, is void as against public policy under applicable Iowa case law; and 2) the value of the farm machinery claimed as exempt is probably even less than \$19,840.00.

7. Don Horn Auctioneering Service appraised Debtors' farm machinery and equipment on or about May 27, 1987. The total appraisal was in the amount of \$26,465.00. Those items claimed as exempt totaled \$19,840.00. FmHA did not present evidence as to said values.

DISCUSSION

Two issues are presented in this case. The first concerns waiver of exemption rights and the second goes to value. The Court will separately address each issue.

A. Waiver of Exemption Rights

The first issue is whether Debtors can waive their statutorily granted exemption rights in personal property through either an express waiver provided for in the contract which creates the debt or an implied waiver arising from a consensual agreement to create a lien in Debtors' personal property.

Iowa exemption law serves five basic purposes:

1. To provide a debtor enough money to survive.
2. To protect his dignity and his cultural and religious identity.
3. To afford a means of financial rehabilitation.
4. To protect the family unit from impoverishment.
5. To spread the burden of the debtors' support from society to his creditors. (citations omitted)

Matter of Hahn, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980) (emphasis added). The Hahn court noted that "[i]n Iowa the Supreme Court early

stated that Iowa's exemption statutes are based on public policy to render each citizen independent and above want, shelter for a man and his family safe from abject poverty and beyond the reach of creditors who would turn them into beggars." Id. (citing Charles V. Lamberson, 1 Iowa 435 (1855)). In a long line of cases, the Iowa Supreme Court has repeatedly construed exemption statutes liberally "in favor of those claiming their benefits." Id. at 245 (citations omitted). Any creditor may file an objection to the list of property claimed as exempt within 30 days after the conclusion of the first meeting of creditors. Fed.R.Bankr.P. 4003(b). If there is a hearing, the objecting creditor has the burden of proving the exemption is not properly claimed. Fed.R.Bankr.P. 4003(c).

Iowa Code §627.6 provides:

A debtor who is a resident of this state may hold exempt from execution the following property:

. . .

11. If the debtor is engaged in farming and does not exercise the delay of the enforceability of a deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, any combination of the following, not to exceed a value of ten thousand dollars in the aggregate:
 - a. Implements and equipment reasonably related to a normal farming operation. This exemption is in addition to a motor vehicle held exempt under subsection 9.
 - b. Livestock and feed for the livestock reasonably related to

a normal farming operation.

Iowa Code §627.6(11) (1987). In the case at bar, Debtors claimed as exempt \$19,840.00 of farm machinery and equipment. Under Iowa Code §627.6(11), they are entitled as joint debtors to exempt up to \$20,000.00 of such machinery and equipment. FmHA timely filed an objection to said exemption on two alternative grounds: 1) citing North Dakota case law, FmHA alleged Debtors had waived their exemption right in this property through an implied waiver; and 2) the value of the machinery and equipment allegedly exceeds the \$20,000.00 maximum.

As noted earlier, Bankruptcy Rule 4003(c) places the burden of proof on FmHA. In support of its objection, FmHA cites United Bank of Bismarck v. Selland, 425 N.W.2d 921 (N.D. 1988). In Selland, a farmer borrowed money from a bank and in return granted bank a security interest in his farm machinery and equipment. Id. at 922. After defaulting and facing levy on the judgment entered against him, Selland attempted to claim an exemption in the collateral. Id. at 922-23. Selland's claim for exemption was denied by the county court and upheld on appeal by the North Dakota Supreme Court which held that a personal property security agreement creates an implied waiver of the right to claim statutory exemptions in the property. Id. at 924.

In order to reach this result, the court construed a North Dakota statute providing for no exemptions on purchase money security interest property to cover property covered by a non-purchase money

security interest. Id. at 924-25 (emphasis added). The court's rationale for such an interpretation was that:

[A]lthough the exemption statutes are designed to protect debtors from becoming destitute as a consequence of unforeseeable indebtedness, the statute should not be construed to deprive an individual of his rights of ownership in exempt property. Id.

FmHA next argues the Selland principle is also recognized by Iowa courts because the Iowa Supreme Court in In re Kline's Estate, 24 N.W.2d 481 (Iowa 1946), enforced a waiver of an exemption in a personal automobile. The Kline's Estate court stated that:

One has a right to waive an exemption in his own favor unless he also holds it for the benefit of others or unless such waiver is against public policy or some constitutional or statutory restriction.

Id. at 483 (citations omitted).

Upon review, this Court will not follow Selland or the principle it relies upon for a number of reasons. First, it is distinguishable as North Dakota law and contrary to Iowa law which has long held that agreements waiving statutory exemption rights are contrary to public policy. See Girard v. Anderson, 219 Iowa, 142, 148, 257 N.W. 400, 403 (1935) (agreements waiving statutory exemption laws invalid in Iowa); Curtis v. O'Brien and Sears, 20 Iowa 376, 377 (1866) (person contracting a debt cannot waive the benefit of Iowa's exemption laws even if the waiver is expressly provided for in the contract which creates the debt).

Second, this Court disagrees with the Selland court's extension of a purchase money statute to a non-purchase money situation. This Court's job is to interpret the laws, not to make them. The Iowa Legislature has passed a number of statutes which expressly provide for waiver of exemption rights including §627.3 (failure to claim exemption when required to do so in writing by levying officer), §627.5 (purchase money), and §561.22 (homestead exemption waiver can be contained in written contract if specific requirements are met). Obviously the Iowa Legislature knows how to provide for the waiver of exemption rights. However, it has not done so for either farm machinery and equipment or for implied waivers, and FmHA has cited no Iowa case law to the contrary.

Finally, this Court disagrees with FmHA's contention that Kline's Estate supports its waiver argument. Kline's Estate allows a person to waive an exemption at the time it could be claimed unless the person is holding it for the benefit of others or such waiver would be against public policy or some constitutional or statutory restriction. It gives a person the right, subject to exceptions, to choose not to claim an exemption as opposed to expressly or impliedly waiving the right to do so in the future. This crucial distinction makes Kline's Estate inapplicable in the case at bar because Debtors have claimed their exemption in the machinery and equipment. Further, even assuming arguendo Kline's Estate could somehow be construed to allow for express or implied waivers, the public policy exception in Kline's Estate is applicable in the case at bar. As

noted earlier in Hahn, one of the purposes of exemption laws is to give a debtor the means of financial rehabilitation. Debtors are farmers and need their claimed-as-exempt farm machinery and equipment in order to effectuate their fresh start. A decision upholding any alleged express or implied waiver would undoubtedly be contrary to public policy and such is clearly prohibited under Iowa case law.

In conclusion, the Court finds FmHA has failed to meet its Bankruptcy Rule 4003(c) burden of proving Debtors' exemption was improperly claimed on account of a waiver of such right.

B. Value

FmHA's second objection goes to value. Iowa Code §627.6(11) allows Debtors to exempt up to \$20,000.00 of farm machinery and equipment. Debtors valued their claimed-as-exempt machinery and equipment at \$19,840.00. FmHA argues the value is greater than \$20,000.00. Under Rule 4003(c), FmHA has the burden of proving Debtors' exemption is not properly claimed.

The only evidence of value of the items of farm machinery claimed as exempt was the evidence of an appraisal conducted by an independent appraiser on or about May 27, 1987. It is uncontradicted that the claimed items of farm machinery and equipment had a value of \$19,840.00 on said date, over a year before this case was filed. Accordingly, FmHA has not carried its burden of proof as to value and Debtors' claimed value of \$19,840.00 has been established by the preponderance of the evidence.

CONCLUSIONS AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that Debtors properly claimed the exemption in the farm machinery and equipment and the value of said exemption is in the amount of \$19,840.00.

IT IS ACCORDINGLY ORDERED that the Objection to Exemptions filed by the United States of America, on behalf of the Farmers Home Administration, is overruled.

Dated this _____ day of March, 1989.

Russell J. Hill
U.S. Bankruptcy Judge