

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
STEPHEN F. SESKER and : Case No. 87-3014-C
SANDRA L. SESKER, : Chapter 7
Debtors. :
: - - - - -

ORDER--MOTION TO AVOID LIEN AND OBJECTION TO EXEMPTIONS

On April 24, 1989, an evidentiary hearing was held on the motion to avoid lien and objection to exemptions. The following attorneys appeared on behalf of their respective clients: Jerrold Wanek for Debtors and Kyle Jennings for creditor Maxwell State Bank (hereinafter "Bank"). At the conclusion of said hearing, the Court took the matter under advisement.

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 and evidence admitted, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. On December 10, 1987, Debtors filed a Chapter 12 petition.
2. On their schedule B-2(i), Debtors listed the following pieces of farm machinery and equipment which they valued at \$18,875.00:

fuel tanks	\$ 200.00
500 gal. water tank	150.00
combine	6,000.00
planter	800.00
disc	1,250.00
chisel plow	500.00
1976 Case Tractor	7,000.00
1950 Farmall Tractor	500.00
wagon	200.00
9' blade	200.00
25' auger	200.00
58' auger	500.00
hoe	500.00
JD lawnmower	125.00
stock chopper	100.00
trailer	300.00
saddle tanks	50.00
tools	<u>300.00</u>
	\$18,875.00

On their schedule B-4, Debtors claimed said property as exempt under Iowa Code §627.6.

3. On February 16, 1988, Bank filed an objection to Debtors' claimed exemption in the farm machinery and equipment. In said objection, Bank argued the value of Debtors' farm machinery and equipment was \$29,725.00 instead of Debtors' assigned value of \$18,875.00.

4. On December 22, 1988, the Court entered an Order granting Debtors' motion to convert to Chapter 7.

5. On January 12, 1989, Debtors' filed their schedules and statement of financial affairs. On their schedule B-2(i), Debtors once again listed the previously mentioned farm machinery and equipment valued at \$18,875.00. On their schedule B-4, Debtors also claimed as exempt said farm machinery and equipment under Iowa Code

§627.6.

6. On January 20, 1989, Debtors filed a motion to avoid lien on said machinery and equipment under 11 U.S.C. §522(f). In said motion, Debtors stated Bank held a nonpossessory, nonpurchase-money security interest in Debtors' exempt tools of the trade.

7. On January 20, 1989, Bank filed a resistance to said motion and argued that all the property was not exempt because it had an aggregate value well in excess of the \$20,000.00 limit for joint debtors under §627.6(11).

8. On January 20, 1989, Bank filed an objection to Debtors' claimed exemption in the farm machinery and equipment valued at \$18,875.00 and one cow and two calves valued at \$1,000.00. Bank argued said property has a value significantly in excess of \$20,000.00 and thus Debtors cannot exempt all of the property under §627.6(11).

9. Debtors filed an appraisal on March 7, 1989, and Bank filed an appraisal on March 21, 1989. Said appraisals value Debtors' farm machinery and equipment as follows:

<u>Property</u>	<u>Debtors'</u> <u>Appaisal</u>	<u>Bank's</u> <u>Appraisal</u>
2 fuel tanks	400.00	400.00
500 gal. water tank	550.00	500.00
combine	1,750.00	4,000.00
planter	500.00	800.00
disc	1,000.00	1,200.00
chisel plow	350.00	350.00
1976 Case Tractor	6,500.00	9,000.00
1950 Farmall Tractor & Loader	550.00	700.00
wagon	350.00	350.00
blade (9')	225.00	500.00

auger (25')	150.00	300.00
auger (58')	150.00	900.00
hoe	350.00	500.00
J.D. Lawnmower/garden tractor	950.00	2,500.00
stalk chopper	50.00	500.00
trailer	150.00	150.00
cornhead (6-30")	1,125.00	1,200.00
bean platform (15')	<u>250.00</u>	<u>700.00</u>
	\$15,350.00	\$24,550.00

10. Neither of the parties' appraisals listed any value for Debtors' claimed as exempt saddle tanks and tools which Debtors previously valued at \$50.00 and \$300.00, respectively, on their schedule B-2(i). In the Debtors' motion to avoid lien, the Debtors did list the saddle tanks and tools as property on which the Bank held a lien.

11. Debtors employed Robert A. Daily to conduct Debtors' appraisal. Mr. Daily has a degree in farm management, owns and operates an auction business, and buys and sells used farm equipment. He performs several appraisals a month but is not a full-time appraiser. He has been in the used farm machinery business since 1974.

12. Mr. Daily has known Debtors for approximately ten years. He conducted Debtors' farm auction one year ago at which time he went through all of Debtors' farm machinery and equipment.

13. Mr. Daily did not go to Debtors' farm to view the machinery and equipment in making the instant appraisal. Debtors furnished Mr. Daily with a list of equipment, and Mr. Daily could recall the specific items as listed.

14. Mr. Daily attends all the local farm sales. He did not

use valuation manuals as he does not believe they are accurate for local conditions.

15. Bank employed Dennis C. Newel, Agra Partners Central, Inc., West Des Moines, Iowa, to conduct its appraisal. Mr. Newel is a professional appraiser and has ten years of experience as an appraiser.

16. Agra Partners is not involved in the purchase and sale of farm equipment, but Mr. Newel is employed on a part-time basis by a farm implement dealer. Mr. Newel referenced farm sales, equipment sales, and reference manuals in making his appraisal.

17. Mr. Newel did not see several items of equipment and relied upon Mr. Daily's appraised figures. Mr. Newel's appraisal used boilerplate language in identifying the sources of his information in making the appraisal. Some of the listed sources were not actually employed by Mr. Newel in the appraisal process.

18. Two of the major pieces of machinery, the combine and 1976 Case tractor, are in poor mechanical condition and require major work to put them in serviceable condition. The lawn tractor is also in poor mechanical condition.

19. Bank did not present any evidence as to the value of Debtors' claimed-as-exempt livestock consisting of one cow and two calves which Debtors previously valued at \$1,000.00 on their schedule B-2(h). In the Debtors' Motion to Avoid Lien, the Debtors did not list this claimed-as-exempt livestock as property on which the Bank held a lien.

20. Debtors did not claim as exempt the 6-30" cornhead or the 15' bean platform nor did they list said property on their schedule B-2(i). In addition, in their motion to avoid lien Debtors did not list the 6-30" cornhead or the 15' bean platform as property on which the Bank held a lien. In spite of this, both parties valued said property as part of their respective appraisals.

21. Bank holds a nonpossessory, nonpurchase-money security interest on all of Banks' farm machinery, equipment and livestock.

DISCUSSION

Two issues are presented in this case. The first is whether Debtors are entitled to exempt all their farm machinery, equipment and livestock under Iowa Code §627.6(11). The second is whether Debtors can avoid Bank's lien on the farm machinery and equipment.

A. Exemption

Iowa Code §627.6 sets out many exemptions a bankruptcy debtor may claim. Under §627.6(11), a debtor who is engaged in farming can claim as exempt:

[A]ny 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. . . .
- b. Livestock and feed for the livestock reasonably related to a normal farming operation.

Iowa Code §627.6(11). Since Debtors have filed a joint petition,

they are entitled to a maximum exemption of \$20,000.00 under §627.6(11). Bankruptcy Rule 4003(c) provides that the objecting party has the burden of proving the exemptions are not properly claimed.

In the case *sub judice*, the Court finds that the Bank did not meet its burden of proving that the exemptions are not properly claimed and accepts the Debtors' appraisal filed March 7, 1989. However, because the Debtors did not claim the 6-30' cornhead or the 15' bean platform as exempt nor list this property on their schedule B-2(i), the Court finds that the cornhead and bean platform are not exempt under Iowa Code §627.6(11). Further, because the Debtors did list the saddle tanks and tools as exempt and value them on schedule B-2(i), and the Bank did not present any evidence as to the value of the saddle tanks and tools, the Court finds that the saddle tanks and tools are exempt under Iowa Code §627.6(11) at the value assigned to them by Debtors on schedule B-2(i). The total exemptions Debtors are entitled to under Iowa Code §627.6(11) are thus as follows:

<u>Property</u>	<u>Value</u>
2 fuel tanks	400.00
500 gal. water tank	550.00
combine	1,750.00
planter	500.00
disc	1,000.00
chisel plow	350.00
1976 Case Tractor	6,500.00
1950 Farmall Tractor & Loader	550.00
wagon	350.00
blade (9')	225.00
auger (25')	150.00
auger (58')	150.00
hoe	350.00
J.D. Lawnmower/garden tractor	950.00

stalk chopper	50.00
trailer	150.00
saddle tanks	50.00
tools	300.00
livestock (one cow and two calves)	<u>1,000.00</u>
	\$15,325.00

B. Lien Avoidance

Bankruptcy Code §522(f) allows a debtor to avoid a lien which impairs a properly claimed exemption if such lien is:

- (2) a nonpossessory, nonpurchase-money security interest in any --
 - . . .
- (B) Implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor. . .
 - .

11 U.S.C. §522(f)(2)(B). In interpreting said subsection, the Eighth Circuit has held "tools" and "implements" include large pieces of farm machinery. In re LaFond, 791 F.2d 623, 627 (8th Cir. 1986).

Debtors have the burden of demonstrating that all the elements of lien avoidance under §522(f) are satisfied. In re Shands, 57 B.R. 49, 50 (Bankr. D.S.C. 1985). With respect to this burden, one court has stated:

[I]n order to obtain the requested relief, the debtors have the burden of demonstrating that:
 1) they have exemptions which have been granted;
 2) the lien being avoided is a judicial lien or nonpurchase-money security interest; 3) such lien or interest impairs the above exemptions; and therefore 4) as a matter of law they are entitled to have such liens or interests avoided under §522(f).

In re Clark, 11 B.R. 828, 831 (Bankr. W.D. Pa. 1981).

In the case *sub judice*, the lien is not avoided under §522(f) on the 6-30" cornhead and the 15' bean platform because the Court has found that these items are not exempt under Iowa Code §627.6(11) and the Debtors did not list them on their motion to avoid lien filed January 20, 1989. In addition, the exempt livestock clearly remains subject to the Bank's lien because Debtors did not list this livestock on their motion to avoid lien filed January 20, 1989.

For the machinery and equipment the Debtors are entitled to exempt under Iowa Code §627.6(11), all of the elements of lien avoidance are satisfied. Specifically, the Debtors have exemptions on this machinery and equipment which the Court has granted. In addition, the lien on this machinery and equipment is a nonpurchase money security interest. Finally, the security interest impairs the exemptions. Therefore, the Debtors are entitled to have the lien avoided under §522(f) as a matter of law and the Court finds that the Bank's lien is avoided under §522(f) on all of the machinery and equipment that is exempt under Iowa Code §626.6(11).

CONCLUSIONS AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that:

- 1) The Debtors are entitled to exemptions and lien avoidance on the following property:

<u>Property</u>	<u>Value</u>
2 fuel tanks	400.00
500 gal. water tank	550.00
combine	1,750.00

planter	500.00
disc	1,000.00
chisel plow	350.00
1976 Case Tractor	6,500.00
1950 Farmall Tractor & Loader	550.00
wagon	350.00
blade (9')	225.00
auger (25')	150.00
auger (58')	150.00
hoe	350.00
J.D. Lawnmower/garden tractor	950.00
stalk chopper	50.00
trailer	150.00
saddle tanks	50.00
tools	<u>300.00</u>
	\$14,325.00

2) Debtors are entitled to an exemption of \$1,000.00, but no lien avoidance, on the livestock consisting of one cow and two calves.

IT IS ACCORDINGLY ORDERED that Bank's objection to claimed exemptions is denied as described above and Debtors' motion to avoid lien is granted as described above.

Dated this 25th day of July, 1989.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE