

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

IN the Matter of :
 :
DEAN EDWIN SPRINGER : Case No. 92-1239-C H
dba DPS INVESTMENTS : Chapter
dba DEAN'S LAWN CARE :
 :
Debtor. :
 :

**ORDER ON CLAIM OF EXEMPTIONS
AND MOTION TO AVOID LIEN**

On September 3, 1992, a telephonic hearing was held on the Trustee's objection to Debtors' claim of exemption and Debtor's motion to avoid lien and Creditor's objection thereto. John F. Sprole represented the Debtor and Robert D. Taha appeared as Trustee. David L. Wetsch, attorney for Ewing and Carol Miller, creditors who object to Debtor's motion to avoid lien, did not appear and previously filed a waiver of oral argument on the matter. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). At the conclusion of the hearing the Court took the matter under advisement. The Court considers the matter full submitted and now enters its findings and conclusions.

FINDINGS OF FACT

1. Between 1976 and 1983 the Debtor used as his residence the house at 916 East 17th Court, Des Moines, Iowa. During this time he applied for and was granted a homestead tax credit on this property.

2. Between 1983 and November 1991 Debtor rented this property and made his residence at 1621-23 East 9th Street. During this time he applied for and was granted a homestead tax credit on the property at 1621-23 East 9th Street.

3. On January 10, 1991 Ewing Miller, a Creditor of the Debtor, had a judgment entered against the Debtor in Polk County in the amount of \$26,497.96 together with interest and costs.

4. In November 1991 Debtor moved back into and used as his residence the house at 916 East 17th Court. On December 11, 1991 Debtor applied for a homestead tax credit and/or military tax exemption based on the 1992 valuation and payable in fiscal year beginning July 1, 1993.

5. The Debtor filed for protection under Chapter 7 of the Bankruptcy Code on April 16, 1992.

6. Debtor's Schedule C filed May 1, 1992 listed as exempt property his house at 916 East 17th Court, Des Moines.

7. On May 13, 1992 North American Savings Bank filed a motion for relief from stay to foreclose on the property known as 1621-23 E. 9th Street. Because no objections to the motion were filed, the Court granted the motion on May 27, 1992.

8. On June 8, 1992 Trustee objected to Debtor's claim of homestead exemption on the basis that Debtor had resided at 1623 East 9th Street for four years approximately five months prior to filing his bankruptcy petition.

8. On June 22, 1992, Debtor filed an objection to Trustee's objection. On July 24, 1992, Debtor filed a motion to avoid the lien on 916 East 17th Court, which attached as a result of the judgment entered in Polk County against Debtor in favor of Ewing J. Miller and Carol R. Miller.

9. On August 3, 1992, Ewing and Carol Miller filed a resistance to the Debtor's motion to avoid lien.

DISCUSSION

The essential issue is whether Debtor may claim his house at 916 E. 17th Court as exempt from judicial sale pursuant to Iowa Code § 561.16. Trustee argues Debtor may not under the rationale of Chariton Feed & Grain, Inc. v. Kinser, 794 F.2d 1329 (8th Cir. 1986).

Iowa Code § 561.16 in pertinent part provides:

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. Persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale. A single person may claim only one homestead to be exempt from judicial sale.

Iowa Code § 561.21(1) in pertinent part provides:

The homestead may be sold to satisfy debts ... contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

In Chariton Feed & Grain, Inc. v. Kinser, 794 F.2d 1329

(8th Cir. 1986) the court held that under Iowa law a debtor may not move her homestead from *whiteacre* to *greenacre* so as to defeat a creditor's judgment lien entered against *greenacre*, at a time when *greenacre* was not claimed as an exempt homestead. In balancing the rights of creditors and debtors, the court relied on Elston & Green v. Robinson, 21 Iowa 531 (1866) to conclude that a creditor's right to have her judgment lien protected outweighs a debtor's right to change her homestead. Chariton Feed, 794 F.2d at 1332.

Based on this authority, this Court concludes that the Debtor may not claim his home at 916 East 17th Court as exempt pursuant to Iowa Code § 561.16. The Millers' judgment was entered in Polk County in January 1991. Once the judgment was filed, it became a lien against Debtor's land in Polk County, except for Debtor's homestead. Chariton Feed, 794 F.2d at 1330 (citing Brown v. Vonnahme, 343 N.W.2d 445, 448-50 (Iowa 1984)). In January 1991 Debtor's homestead, his place of residence, was 1621-23 East 9th Street. Creditor's lien did not attach to that property, because exempt; but did attach to 916 East 17th Court because, at the time, that property was not and had not been for several years Debtor's homestead. Under Chariton Feed, Debtor may not now move his homestead to the detriment of Creditors' judgment lien.

ORDER

IT IS ACCORDINGLY ORDERED that Trustee's objection to exemption is sustained.

IT IS FURTHER ORDERED that Debtor's motion to avoid lien is denied.

Dated this 24th day of May, 1993.

RUSSELL J. HILL
U.S. Bankruptcy Judge