

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of : Case No. 92-1400-C H  
THOMAS E. MOWRER and :  
MELANIE K. MOWRER, :  
 : Chapter 7  
Debtors. :  
 :  
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THOMAS E. MOWRER and :  
MELANIE K. MOWRER, : Adv. No. 92-92183  
 :  
Plaintiffs, :  
 :  
vs. :  
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RACCOON VALLEY STATE BANK, :  
 :  
Defendant. :  
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RACCOON VALLEY STATE BANK, :  
 :  
Plaintiff, : Adv. No. 93-93044  
 :  
vs. :  
 :  
THOMAS E. MOWRER and :  
MELANIE K. MOWRER, :  
 :  
Defendants. :  
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**ORDER--COMPLAINT TO DETERMINE VALIDITY,  
PRIORITY, AND EXTENT OF LIEN**

Trial on Complaint to Determine Validity, Priority, and Extent of Lien was held on June 14, 1993. Thomas E. Mowrer and Melanie K. Mowrer were represented by James H. Cossitt. Raccoon Valley State Bank (hereinafter "RVSB") was represented by Jonathan M. Kimple. Briefing deadlines were set for June 21, 1993, and the matter was taken under submission. Post-trial briefs have been filed and the matter is now fully

submitted.

This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(A), (B), (I), (K), and (O). Upon consideration of the evidence, briefs, pleadings and counsels' arguments, the Court now enters its findings of fact and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

#### **FINDINGS OF FACT**

1. On or about March 23, 1990, the Mowrers signed a mortgage with RVSB relating to certain real estate which qualifies as agricultural land as defined in Iowa Code § 172(c)(1).

2. The mortgage agreement provided as follows:

1. **OPEN-END FEATURE.** This mortgage shall stand as security for said note, and for any and all future and additional advances made to the Mortgagors by the holder of said note in such amount or amounts so that the total of such future additional advances outstanding and unpaid at any one time shall not exceed \$96,300.00 and Mortgagee is hereby given authority to make such future and additional advances to Mortgagors herein, upon their signed order or receipt, and secured as the original obligation herein. Such limitation upon the total amount of principal shall not be considered as limiting the amounts secured hereby if for accruing interest or for any amount for any protective disbursement advanced, or that may be taxed as costs to protect the security for loan or loans made, in accordance with the terms and provisions contained in this mortgage. THIS PARAGRAPH SHALL NOT CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL LOANS IN ANY AMOUNT.

3. Contained within the agreement was a waiver purporting to waive homestead rights to the property. The waiver appeared in the form of a stamp placed above the Mowrers' signatures. The waiver stamp stated in ten point type as follows:

I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale; and that by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract.

A portion of this stamp was illegible.

4. On May 1, 1992, the Mowrers commenced a Chapter 7 bankruptcy proceeding by filing a voluntary petition. The property in question was listed on Schedules A and C as exempt homestead real estate. Schedule C listed the value of the homestead as \$115,000, the total debt on the property as \$106,000, and claimed an exempt value of \$9,000. RVSB failed to file an objection to Debtors' claim for exemptions.

5. On September 17, 1992, the Mowrers filed Adversary No. 92-92183 to determine the validity, priority, and extent of any lien created by the mortgage. The Mowrers dispute the effectiveness of the homestead waiver due to noncompliance with Iowa Code § 561.21(2) and 561.22.

6. On April 2, 1993, RVSB filed a petition in the Iowa District Court for Boone County (now known as Adversary No. 93-93044) requesting a judgment against the real estate, a

foreclosure of the mortgage, a special execution and the appointment of a receiver.

7. Thereafter, Adversary No. 93-93044 was removed to this Court and consolidated with Adversary No. 92-92183.

### DISCUSSION

Iowa Code § 561.21 provides in relevant part:

The homestead may be sold to satisfy debts of each of the following classes:

2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt.

Iowa Code § 561.22 further provides:

If a homestead exemption waiver is contained in a written contract affecting agricultural land as defined in section 172C.1, or dwellings, buildings, or other appurtenances located on the land, the contract must contain a statement in substantially the following form, in boldface type of a minimum size of ten points, and be signed and dated by the person waiving the exemption at the time of the execution of the contract: **"I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale; and that by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract."** A principal or deputy state, county, or city officer shall not be required to waive the officer's homestead exemption in order to be bonded as required pursuant to chapter 64.

This statute was created in a legislative effort to

"elevate the farmers' awareness of their homestead exemptions when called upon to waive them in providing security in order to borrow money." West Des Moines State Bank. v. Mills, 482 N.W.2d 432, 433 (Iowa 1992). The Iowa Supreme Court further stated:

The amendment addressed a mere procedural step for those who undertake to waive homestead rights. To be sure, the procedural step was envisioned in the hope that it would encourage second thoughts about executing the waiver. But second thoughts about a waiver are removed from the homestead rights themselves. All the amendment did was to remove the requirement of specific additional wording in waivers. These words did not alone create or terminate a homestead; they were intended to remind the person signing the waiver that it was important.

Id. at 435.

In this case, the waiver stamp states the suggested language in 10 point type. However, Debtors argue that because certain words are illegible, the waiver fails to comply with Iowa Code Section 561.22. Iowa law provides only that the waiver substantially conform to the suggested statement. In fact, Mr. Mowrer admits that he was able to read the text except for the words "I" and "cases". The Court finds that, despite the missing words, the waiver stamp is still a statement in substantially the same form as that suggested by the Iowa Code and, therefore, complies with Section 561.22. The meaning of the statement is ascertainable and sufficiently advised the Mowrers of their homestead rights. Moreover, the

waiver is consistent with the legislative purpose behind the waiver provision.

Mrs. Mowrer argues that because she did not understand what rights she was waiving that she cannot be held to the waiver. Mrs. Mowrer also testified that she failed to read the agreement before signing it. Under Iowa law, a party to a written contract who is able to and has had the opportunity to read the contract, cannot later claim he or she did not understand the terms or conditions in an attempt to defeat said contract. Cronbaugh v. Farmland Mutual Insurance Co., 475 N.W.2d 652, 654 (Iowa App. 1991). The Court has found that a proper waiver was contained in the contract. Mrs. Mowrer signed directly below such waiver after an opportunity to read the agreement. Mrs. Mowrer chose not to do so or to ask any questions. The Court finds that Mrs. Mowrer cannot now claim not to have understood the homestead waiver. Moreover, the Court must find that based on her testimony, Mrs. Mowrer in fact, did understand in a basic sense that if the payments were not made, they would lose their property. There is additional evidence that Mrs. Mowrer had knowledge of the waiver contained in the agreement from a conversation prior to the signing of the agreement.

The Mowrers also contend that because RVSB failed to object to the exemption claim that they cannot now do so. The Supreme Court in Taylor v. Freeland & Kronz, \_\_\_\_ U.S. \_\_\_\_,

112 S.Ct. 1644, 118 L.Ed. 280 (1992), determined that a trustee may not contest the validity of an exemption after the 30 day period, even if the debtor had no colorable basis for claiming the exemption. The Court finds that the Mowrers waived their right to a homestead exemption in a pre-petition mortgage agreement. Therefore, any exemption rights that may have otherwise survived under Taylor are waived according to that pre-petition agreement, the validity of which is independent of RVSB's failure to file an objection.

RVSB seeks a judgment against the real estate in the amount of \$184,154.25 plus interest at a rate of 1 1/2 times the interest rate computed on the notes. RVSB also seeks expenses and attorney fees. The mortgage agreement provides that the mortgage shall stand as security for an amount not to exceed \$96,300.000. However, the agreement also states that this limitation upon principal does not limit amounts secured for accrued interest, protective disbursement advanced, or amounts taxed as costs to protect the security. In their answer, the Mowrers admitted paragraph 14 of the foreclosure petition (Adversary No. 93-93044) which stated that the base rate of interest on the promissory notes is 8.9% per annum. The Mowrers further admitted that the notes provided for a default rate of one and one-half times the interest rate for a total of 13.35% per annum. The Court finds that the Mowrers are currently in default. The Mowrers have waived their

homestead exemption up to the amount secured by the mortgage agreement. As such, the Court holds that the lien is valid to the extent of \$96,300.00 plus interest at a default rate of 13.35% per annum. As for the requested expenses and attorney fees, the Court finds that the request should be denied due to RVSB's failure to prove such amounts.

RVSB has requested the appointment of a receiver. 11 U.S.C. § 105 prohibits this Court from appointing a receiver. Therefore, RSVB's request is denied.

**ORDER**

IT IS THEREFORE ORDERED:

1. That the homestead waiver contained in the mortgage agreement is a valid waiver of the homestead exemption and complies with Iowa Code § 561.22.
2. That Raccoon Valley State Bank's failure to object to the claim of exemption does not invalidate its lien on the real estate.
3. That Raccoon Valley State Bank's prayer for judgment against Thomas E. Mowrer and Melanie K. Mowrer in rem against the real estate is granted in the amount of \$96,300.00 together with interest in the amount of 13.35% per annum.
4. That such judgment shall be decreed a lien upon the mortgage premises from March 23, 1990 and that said mortgage shall be foreclosed against such real estate with the interest and claims of Thomas E. Mowrer and Melanie K. Mowrer declared junior and inferior to such mortgage.
5. That Raccoon Valley State Bank's prayer that a special execution be issued in this matter for the sale of the above described real estate be granted and that if any part of said property be sold and



not redeemed under Iowa Code Chapter 628 a writ of possession shall issue in this matter to remove any and all persons from possession and place the person entitled to a sheriff's deed in possession thereof.

6. That Raccoon Valley State Bank's request for the appointment of a receiver is denied.

Dated this 30th day of July, 1993.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE