

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

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| In the Matter of | : | Case No. 93-1368-DH |
| | : | Chapter 7 |
| ROBERT B. KELLY, | : | |
| | : | |
| Debtor. | : | |

ORDER--OBJECTION TO CLAIM OF EXEMPTION

On November 5, 1993, a hearing was held on the Creditor's (John Deere Harvester Works ("John Deere")) Objection to Debtor's claimed Exemption. John Deere appeared by its attorney of record, Steven L. Nelson. Martha Easter-Wells appeared on behalf of the Debtor. At the conclusion of the hearing, the Court took the matter under advisement.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). The Court has jurisdiction pursuant to 28 U.S.C. § 1334. Upon review of the pleadings, evidence, and arguments of counsel, the Court now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. The Debtor, Robert B. Kelly ("Kelly"), was an employee of John Deere. Kelly became disabled in January 1984, which rendered him unable to work.
2. At the time Kelly became disabled, John Deere had in existence an agreement ("Labor Agreement") between itself and the Union. Since Kelly was a member of this union, Article IV of the Labor Agreement entitled Kelly to receive benefits in the event that he became disabled. The terms of the Labor Agreement permit John Deere to reduce the amount of Kelly's monthly Long Term Disability Benefit by the amount equal to the monthly disability benefits Kelly is entitled to under the Federal Social Security Act.

3. John Deere began paying disability benefits to Kelly beginning January 1984. One year later, Kelly was placed on long-term disability.

4. Kelly entered into a written agreement with John Deere in which John Deere agreed to waive the estimated monthly Social Security Disability Award deduction of \$600.00 so he could immediately receive the full amount of Long-Term Disability benefits of \$1,150.00 per month. Under this agreement Kelly was obligated to reimburse John Deere the total amount of Long Term Disability overpayment at the time he received his Social Security Disability Award.

5. On January 6, 1993, Kelly received an Award Certificate from the Social Security Administration for \$49,878.75. This amount represented the disability benefits Kelly was entitled to from July 1984 to November 1992.

6. John Deere notified Kelly in writing of the Long Term Disability overpayment which resulted from the Social Security Disability Award and demanded repayment. Upon Kelly's refusal to reimburse John Deere for the overpayment, John Deere filed a Complaint in the Circuit Court of Rock Island County, Illinois, in an attempt to enforce the December 13, 1984 agreement.

7. On May 24, 1993, Kelly filed a Chapter 7 Bankruptcy Petition. He claimed as exempt pursuant to Iowa Code § 627.6(8)(a), a savings account and a certificate of deposit in the amount of \$30,000 and \$6,000, respectively. On September 7, 1993, Kelly amended his petition to include 42 U.S.C. § 407 as an alternative statutory authority for an exemption of these funds.

8. John Deere objects to Kelly's claim of exemption and amended claim of exemption.

DISCUSSION

11 U.S.C. § 522 proscribes the availability of exemptions to an individual debtor in bankruptcy. 11 U.S.C. § 522(b) provides in relevant part:

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection . . . Such property is--

(1) property that is specified under subsection (d) of this section, unless the state law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or in the alternative,

(2) (A) any property that is exempt under federal law, other than subsection (d) of this, or state or local law that is applicable on the date of the filing of the petition . . .

Since Iowa has “opted out” of 11 U.S.C. § 522(d) exemptions, a debtor is entitled to federal law exemptions, other than the exemptions under 11 U.S.C. § 522(d), or state or local law exemptions. The legislative history of § 522(b) includes a list of some of the items that may be exempted under federal laws; this list includes social security payments under 42 U.S.C. § 407. H.Rep.No. 95th Cong., 2nd Sess. 360, reprinted in 1978 U.S. Code Cong. Ad. News § 963,6318.

42 U.S.C. § 407 provides:

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

The United States Supreme Court has held that § 407 imposes a bar against the use of any legal process to reach federal disability payments regardless of whether the recipient had agreed to reimburse the claimant with such benefits. Phillpott v. Essex County Welfare Board, 409 U.S. 413 (1973). In Phillpott, a county welfare agency sought to reach retroactive social security benefits under an agreement to reimburse made with a recipient of state financial assistance. Id. at 416. The United State Supreme Court noted that it saw no reason to place a State, performing its statutory duty to take care of the needy, in a preferred position as compared with other creditors. Id. The Court stated that the broad bar imposed by § 407 is “broad enough to include all claimants, including a state.” Id. at 417. In this case, a private company objects to exemption of social security benefits pursuant to § 407. This Court finds that the broad bar against the reaching of social security benefits provided by § 407 and referred to by the United State Supreme Court, also serves to bar a private company, such as John Deere, from using legal process to reach such social security benefits.

However, the protection afforded by § 407 only applies to “moneys paid”. Id. at 416. In Phillpott, the United States Supreme Court found that the disability benefits that were at issue were analogous to veterans' benefits exemptions which were reviewed in Porter v. Aetna Casualty Co., 370 U.S. 159 (1962). Id. In Porter the United States Supreme Court held that disability benefits deposited in a savings and loan association retained the “qualities of moneys” and had not become a “permanent investment.” Porter, 370 U.S. at 161-62. The Court found that the funds were subject to immediate and certain access, thereby retaining the “quality of moneys.” Id. As to whether the deposits were “permanent investments,” the Court noted they were not of a speculative character nor were they time deposits at interest. Id. ; see also, Carrier v. Bryant, 306 U.S. 545 (1939) (holding that negotiable notes and United States bonds purchased with veterans’ benefits and held as investments had no federal statutory immunity). Applying the reasoning of Porter, the Court also found that the funds on deposit that were the subject of dispute in

Philpott were readily withdrawable and retained the “quality of moneys” within the purview of § 407. Philpott, 409 U.S. at 416.

In the case at hand, the funds at issue are \$30,000 in a savings account and a certificate of deposit in the amount of \$6000. The Court finds that the \$30,000 in the bank account is readily withdrawable and retains the quality of money as required by § 407. Accordingly, John Deere is barred from reaching the \$30,000 savings account under federal law and the funds are exempt pursuant to 11 U.S.C. § 522(b)(2)(A).

However, whether the \$6000 certificate of deposit retains the quality of money is a more difficult question. The Court finds that a certificate of deposit is more similar to a negotiable note or a United States savings bond than to a bank deposit. Such a certificate of deposit is not subject to demand to the same degree as a bank account and does not have the same liquidity. Accordingly, the Court finds that the \$6000 certificate of deposit does not retain the “quality of money” and is not exempt under § 407.

Because this Court has determined that the certificate of deposit is not exempt under federal law, the question of exemption pursuant to Iowa Code § 627.6(8)(a) must be addressed. Iowa Code § 627.6(8)(a) provides for the exemption of the debtor’s rights in “[a] social security benefit, unemployment compensation, or a local public assistance benefit.” Assuming, without deciding, that an accumulated benefit such as this that has already been distributed to a recipient qualifies for exemption under Iowa law, the question remains whether Iowa law allows the retention of exempt status when the funds are converted to a certificate of deposit. Exempt wages which are invested in savings bonds lose their exempt status under Iowa law. Iowa Methodist Hospital v. Long, 12 N.W.2d 171, 175 (Iowa 1943). Recently, the Iowa Supreme Court held that personal earnings exempt from garnishment under § 642.21, which can be traced to a checking account or savings account, retain their exempt status under Iowa law upon the condition that the deposits can be traced from wages received within a ninety-day period preceding the levy. Midamerica Savings Bank v. Mische, 438 N.W.2d 837, 839-40 (Iowa 1989).

The Court finds that the social security benefit at issue in this case is analogous to personal wage earnings. However, the Court finds that the certificate of deposit would not retain any exempt status under Iowa law. In this case a certificate of deposit is more similar to a savings bond than funds placed in a checking or savings account. Accordingly, the \$6000 certificate of deposit is not exempt pursuant to § 627.6(8)(a).

ORDER

IT IS THEREFORE ORDERED that the \$30,000 bank account is exempt pursuant to 42 U.S.C. § 407 and the objection to claim of exemption is overruled as to that amount.

IT IS FURTHER ORDERED that the \$6000 certificate of deposit is nonexempt pursuant to 11 U.S.C. § 407 and Iowa Code § 627.6(8)(a) and the objection to claim of exemption as to the certificate of deposit is sustained.

Dated this 30th day of September, 1994.

RUSSELL J. HILL, JUDGE
United States Bankruptcy Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

ROBERT B. KELLY) 93-1358-H
Appellee,) NO. 3-94-CV-80185
vs.) ORDER
JOHN DEERE HARVESTER WORKS,)
Appellant.)

On January 9, 1995, the court held a hearing at the U.S. Courthouse in Davenport, Iowa, on the appeal of appellant John Deere Harvester Works from the decision of the bankruptcy court finding that the debtor's bank account was exempt. The court received oral argument of counsel, then ruled that the appeal was without merit. The court concluded that Bankruptcy Judge Russell J. Hill correctly addressed the issues raised in appellant's appeal and issued a well-reasoned decision holding the bank account in question is exempt.

Judge Hill issued a well-reasoned decision support by the evidence in this case. The decision of the bankruptcy court is affirmed.

IT IS SO ORDERED.

Dated this 13th day of January, 1995.

CHARLES R. WOLLE, JUDGE
UNITED STATES DISTRICT COURT