

UNITED STATES BANKRUPTCY COURT

For the Southern District of Iowa

In the Matter of

FRANK H. TORTAT,

Case No. 86-2721-C

JOANNE TORTAT,

Engaged in Farming,
Debtors.

Chapter 7

ORDER ON CREDITOR'S OBJECTION TO MOTION TO
AVOID SECURITY INTEREST

On April 14, 1987 on objection to motion to avoid security interest filed by the Production Credit Association of the Midlands (PCA) on January 16, 1987 came on for hearing in Des Moines, Iowa. John H. Neiman appeared on behalf of the debtors and D. Bradley Kiesey appeared on behalf of the PCA. Now that the briefs have been submitted by both parties, the court considers the matter fully submitted.

The debtors filed a joint petition for relief under Chapter 7 on October 8, 1985. The debtors are farmers. Pursuant to 11 U.S.C. section 522(f), they seek to avoid nonpossessory, nonpurchase money security interests the PCA has in the debtors' farm machinery valued at \$4,300.00 and in 12 cows and 10 calves-valued at \$3,850.00.

The PCA objects to the debtors' motion on a number of grounds. The debtors respond in part to the objections by arguing that the PCA is precluded from objecting to the motion because it failed to object to the debtors' claim of

exemptions within 30 days following the first meeting of creditors as required by Bankruptcy Rule 4003(b).

DISCUSSION

A. Cattle as Tools of the Trade

The PCA objects to the debtors' attempt to avoid its security interest in the debtors' cattle on grounds cattle cannot be considered tools of trade for purposes of 11 U.S.C. section 522(f)(2)(B). The PCA's objection is well taken.

11 U.S.C. section 522(f)(2) provides that a debtor may avoid the fixing of a lien on property that is otherwise exempt under federal or state law if such lien is:

(2) a nonpossessory, nonpurchase-money security interest in any--

(A) (A)nimals ... that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(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. section 522(b)(1) allows states to "opt out" of the federal exemption scheme. Iowa has done so by virtue of Iowa Code section 627.10.

Iowa Code section 627.6(11) permits farms debtors to hold as exempt from execution, any combination of the following not to exceed a value of \$10,000.00:

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.¹

The debtors argue that their livestock are tools of the trade and therefore, the liens on the livestock can be avoided under section 522(f)(2)(B). The obvious benefit of claiming cattle as tools of the trade is that animals are subject to a personal use limitation under section 522(f)(2)(A) whereas tools of the trade are not under section 522(f)(2)(B).

The Iowa Supreme Court has defined implements "to include a very wide range of implements reasonably fitted or employed as means of making [the] owner's labor in his chosen employment more effective." Baker ,v. Maxwell, 168 N.W. 160, 161 (Iowa 1918). Under this definition, a cow cannot be considered an implement. Cows are the subject of a farmer's labor, not a means of making the farmer's labor more effective. For instance, a milking device makes a dairy operator's labor more effective, the cow does not.

The fact that Iowa's exemption statute provides separate exemption categories for livestock and farm implements precludes the debtors from claiming cattle exempt as implements. In Farmers' Elevator & Live Stock Co. v. Satre, 195 N.W. 1011 (Iowa 1923), the Iowa Supreme Court held that an automobile and a truck were not exempt as tools or instruments since Iowa's exemption statute had separate provisions for tools of the trade and vehicles. In In re Eakes, 69 B.R. 497

¹ Some confusion has arisen concerning the correct numbering of the subsections under Iowa Code section 627.6. The confusion apparently has resulted from the striking of former subsection 5. All Iowa statutory citations in this order are taken from the official Iowa Code (1987) unless otherwise noted.

(W.D. Mo. 1987), a debtor claimed ten cows as exempt under Missouri's tools of the trade exemption. Under Missouri's exemption statute, the tools of trade and animals are placed in separate categories. The Eakes court found that the separate enumeration of animals and tools of the trade indicated that the legislature did not perceive animals to be included within the meaning of "tools of the trade." In rendering this decision, the court relied on the "'whole statute' rule of statutory construction (which] is based on the proposition that words and phrase (sic] of a statute are to be read in context with neighboring words and phrases in the same statute to produce a harmonious whole." Id. at 498, quoting, 2A Sutherland Stat. Const., section 46.05 (4th ed. Sands 1984).

Iowa's current exemption statute provides separate categories for implements and livestock. Under the principles set forth above, this court concludes that this statutory scheme evinces a legislative intent that livestock are not included within the meaning of "implements and equipment" under Iowa Code section 627.6(11)(a).

B. Size of Implements

The PCA argues that the meaning of "tools" and "implements" as set out in section 522(f)(2)(B) does not include farm implements that cannot be operated or lifted by one person. The PCA's assertion is without merit. The Eighth Circuit Court of Appeals has held that "tools" and

"implements" under section 522(f)(2)(B) encompasses large pieces of machinery. In re LaFond, 791 F.2d 623, 627 (8th Cir. 1986).

C. Availability of Credit

The PCA vigorously argues that by permitting the debtors to avoid liens on machinery, lenders will be less likely to extend credit to farmers. The PCA's argument is better directed at Congress as "[i]t is not the function of this court to question why Congress chose to permit debtors to avoid the particular liens enumerated in subsection (f)." Augstine v. United States, 675 F.2d 582, 586 (3rd Cir. 1982).

D. Timely Objection to Exemptions

The debtors argue that the PCA should be precluded from objecting to exemptions because the PCA did not object within thirty days of the first meeting of creditors as required by Bankruptcy Rule 4003(b).² The first meeting of creditors was held on November 12, 1986. The PCA objected to the exemptions by means of its objection to avoidance of lien dated January 2, 1987--well after the thirty day period had expired. Also the court notes that the PCA has not filed a motion under Bankruptcy Rule 9006(b) to enlarge the time within which to file such an objection.³ In many lien disputes similar to

² Bankruptcy Rule 4003(b) provides in part that:

The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) of the filing of any amendment to the list unless within such period, further time is granted by the court.

Local Rule 4005 provides that "[a]ny objection to debtor's claim of exemptions shall be filed no later than 15 days after the conclusion of the §341 Meeting of Creditors." Given the conflict between the notices routinely issued by the clerk's office, in accordance with Bankruptcy Rule 4003(b), and Local Rule 4005, the local rule is considered null and void. The court notes that in the proposed amendments to the bankruptcy rules, Bankruptcy Rule 4003(b) remains essentially unchanged from its present form. Proposed Bankruptcy Rule Amendments, Rule 4003(b) (1986).

³ Bankruptcy Rule 9006(b) provides in part that:

this one, debtors have questioned whether a creditor who fails to object timely to a debtor's claim of exemptions may object to the exemptions when resisting a motion to avoid liens.

A number of courts have addressed this issue and the results are varied. In the case of In re Grethen, 14 B.R. 221 (Bankr. N.D. Iowa 1981), the late Judge William W. Thinnes held that a creditor's knowledge of the fact the debtor planned to move to avoid liens under section 522(f) did not constitute "excusable neglect" for noncompliance with the time limit for objecting to exemptions. The court emphasized that the time limit was established to set a cutoff point at which debtors could be certain of the objections that had been made. The court also noted that if creditors were allowed to wait until section 522(f) actions were commenced, the time limitation rule would be undermined and more delay would result. See also, In re Keyworth, 47 B.R. 966, 970 (D.C. Colo. 1981)(to allow an untimely objection "would be to impermissibly amend Rule 4003(b) which is clear and unequivocal"); In re Blum, 39 B.R. 897 (Bankr. S.D. Florida 1984)(30-day objection period not met and no enlargement of time requested pursuant to Bankruptcy Rule 9006(b)(3)).

Other courts have held to the contrary. For instance, in In re Roehrig, 36 B.R. 505 (Bankr. W.D. Ky. 1983) the court found that failure to timely object to the debtor's exemption

[W]hen an act is required or allowed to be done at or within a specified period of time by these rules or by notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

claim did not mandate that the property be deemed exempt. The court reasoned that if the exemptions were allowed to stand, the debtor would be creating a class of exemptions apart from the federal exemptions set forth in section 522(d) or the state exemptions authorized by section 522(b). Id. at 507-508.

This court is persuaded by the reasoning set forth in the Grethen decision. Compliance with rules such as Bankruptcy Rule 4003(b) is imperative if onerous caseloads are to proceed as expeditiously as possibly. Moreover, a maxim of statutory construction is that a statute should be interpreted so as not to render one part inoperative. Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana, ___U.S.___ 105 S.Ct. 2587, 2595, 86 L.Ed.2d 168 (1985). Permitting a creditor who fails to object timely to exemption claims to make that objection in resistance to a section 522(f) motion renders Bankruptcy Rule 4003(b) meaningless. Finally, the concern expressed in the Roehrig opinion that strict adherence to the thirty day limit would create a new class of "exemption by declaration" is overcome by the recognized rule that there must be a good faith statutory basis for the exemption. In re Bennett, 36 B.R. 893, 895 (Bankr. W.D. Ky. 1984).

As stated above, the PCA has failed to comply with the thirty day requirement of Bankruptcy Rule 4003(b). The undersigned realizes that the practice of her predecessor had been to permit creditors to object to exemptions after the thirty day period had expired. No doubt the PCA as well as

many other creditors in the Southern District of Iowa have relied upon this practice. In fairness to the PCA, its objection will be considered timely filed. However, by virtue of this order, creditors are put on notice that, unless the requirements of Bankruptcy Rule 9006(b) are met, future failure to object to the debtor's exemption claims within the thirty day time period prescribed by Bankruptcy Rule 4003(b) will preclude consideration of such an objection in a section 522(f) action.

CONCLUSION AND ORDER

WHEREFORE, based upon the foregoing analysis, the court finds that the cows claimed exempt by the debtors do not fall within the farm implements and equipment exemption under Iowa Code section 627.6(12)(a), and that the debtors are entitled to avoid the PCA's liens on the remaining items listed in their motion pursuant to section 522(f)(2)(B).

THEREFORE, the PCA's objection as to the cows claimed exempt as farm implements and equipment is sustained. The debtors' motion to avoid liens on the other equipment is granted.

Dated this 29th day of June, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE

