UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

KENNETH D. GOOCH, dba K. G. Antiques, Debtors. — Case No. 86-2615-C

ORDER ON RESISTANCE TO MOTION TO AVOID LIENS

On April 14, 1987 a resistance to motion to avoid liens filed by the Hartford-Carlisle Savings Bank (Bank) on February 4, 1987 came on for h6aring-at Des Moines, Iowa. The debtor filed a motion to avoid liens on January 26, 1987. Robert M. Benton appeared on behalf of the Bank and James L. Spellman appeared on behalf of the debtor. The matter has been submitted on briefs. Only the bank has provided any loan and security interest documents.

The debtor filed an individual petition for relief on September 29, 1986. He is engaged in the business of buying and selling antiques. The debtor seeks to avoid the Bank's security interests in a number of items including the following:

Hylander trailer
Several parts, cabinets and varied parts
Rack and gas tank
Heater, gas hanging
Several large show cases
Small show cases
Lamp and light fixture parts, furniture
  Parts and pieces, hardware, mirrors
  Accessories
Marquis sign

The Bank concedes that the two storage safes, the lamp and light fixture parts, furniture parts and pieces, hardware mirrors and accessories are tools of the trade and therefore are subject to lien avoidance.

The Bank objects to lien avoidance on the remaining items on the grounds the Bank has a purchase money security interest in the Hylander trailer and that the other items do not qualify as tools of the trade under Iowa's exemption statute.

DISCUSSION

11 U.S.C. section 522(f) provides:

> Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection
>
> (b) of this section, 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; or…

The debtor shoulders the burden of proving the necessary elements of lien avoidance under section 522(f). In re Shands, 57 B.R. 49, 50 (Bankr. S.C. 1985); Matter of Weinbrenner, 53 B.R. 571, 578 (Bankr. W.D. Wisc. 1985). For

a debtor to prevail in a section 522(f) action, the court must find:

> (l)- that the debtors have an interest in the property in question; (2) that the' Bank's liens impair an exemption which the debtors are otherwise entitled to; (3) that these liens are nonpossessory, nonpurchase-money security interests in the property; and (4) that the property encumbered by the Bank's liens falls within 11 U.S.C. 522(f)(2)(B) ....

In re Peters, 60 B.R. 711, 715 (Bankr. Minn. 1986). See also In re Clark, 11 B.R. 828, 831 (Bankr. W.D. Pa. 1981).

With respect to the Hylander trailer, the debtor fails to meet the burden of showing that the Bank's lien is a nonpurchase money security interest. The debtor concedes that when the trailer was purchased in 1975, the Bank possessed a purchase money security interest in the trailer. The debtor goes on to argue, however, that the original purchase price was paid and that, if any balance remained, the purchase money status was lost because of advancements under new notes with new rates of interest. In support of his position, the debtor looks to the rule annunciated in In re Matthews, 724 F.2d 798 (9th Cir. 1984) and adopted by this district. See Matter of Buttler, No. 84-1716-C (Bankr. S.D. Iowa, June 26, 1985); Matter of Burson, No. 84-1205-W (Bankr. S.D. Iowa May 19, 1985); Matter of Crouse, No. 83-458-C (Bankr. S.D. Iowa July 16, 1984).

In Matthews the court found that a second loan made to a debtor was used to pay off an original loan. This second

loan, the court ruled, extinguished the lender's purchase money security interest. In Burson, supra, former Judge Stageman followed Matthews and held that because the proceeds of a renewal note were used to satisfy the original note, the purchase money nature of the security interest involved in the first note was lost. The original notes that were renewed in Burson were endorsed "paid by renewal." Though the debtor sets out the correct legal standards for determining whether the purchase money character was lost, there is no evidence before the court to indicate that the Bank's security interest in the trailer was indeed sacrificed. No evidence has been adduced showing that the debtor's original notes have been endorsed "paid by renewal" or that the original loans have been refinanced. Given that the debtor has failed to meet his burden under section 522(f), the Bank's objection to the debtor's motion as it relates to the trailer is sustained.

The second issue before the court is whether a number of items claimed as exempt by the debtor qualify as exemptions under Iowa law.

At the onset, this court notes that the Bank did not object to the debtor's claim of exemptions within thirty days of the first meeting of creditors as required by the order dated October 3, 1986 and Bankruptcy Rule 4003(b).[1] Also, no

[1] 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) or the filing of any amendments to the list unless within such period, further time is granted by the court.

Local rule 4005 provides that "[a]ny objections 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

motion has been filed under Bankruptcy Rule 9006(b) to enlarge the time within which to file such an objection.[2] Yet, the Bank has objected to the nature of the debtor's exemption claim in response to the debtor's motion to avoid liens. In many lien disputes similar to 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

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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).

[2] Bankruptcy Rule 9006(b) provides in part that:

> [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 92) 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.

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 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 Bank 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 Bank as well as many other creditors in the Southern District of Iowa have relied upon this practice. In fairness to the Bank, its objection will be considered timely filed. However, by virtue of this order, the Bank is 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.

With respect to the merits of the exemption issue, the proper point to begin the analysis is with 11 U.S.C. section 522(b)(1) which permits states to "opt out" of the federal exemption scheme. Iowa has done so by virtue of Iowa Code section 627.10. Iowa law therefore determines the contours of the tools of the trade exemption and hence the ability of a debtor to avoid liens on tools of the trade by means of section 522 (f) (2) (B) .

Iowa’s exemption statute in part provides:

> If the debtor is engaged in any profession or occupation other than farming, [the debtor may

> claim] implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate (exempt].

Iowa Code section 627 . 6(10).[3] Iowa's exemption statute is based upon the premise "that it is better that the ordinary creditor's claims should remain partially unsatisfied than that a resident of the state should be placed in such an impecunious position that he and his family become charges of the state.," Note, Personal Property Exemptions in Iowa: An Analysis and Some Suggestions, 36 Iowa L. Rev. 76, 77 (1950). The Iowa Supreme Court has stated that the purpose of the exemption statute "is to secure to the unfortunate debtor the means to support himself and the family; the protection of the family being the main consideration." Shepard v. Findley, 214 N.W. 676, 678 (Iowa 1927).

In interpreting Iowa's exemption statute, the court is mindful of the well-settled proposition that Iowa's exemption statute must be liberally construed. Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971). Yet, this court must be careful not to depart substantially from the express language of the exemption statute or to extend the legislative grant. Matter of Hahn, 5 B.R. 242, 244 (Bankr. S.D. Iowa 1980), citing Wertz v. Hale, 234 N.W. 534 (Iowa 131) and Iowa Methodist Hospital v. Long, 12 N.W.2d 171 (Iowa 1944).

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[3] 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.

"Implement" has been defined as "an item reasonably fitted or employed as a means of making labor more effective." Hahn, 5 B.R. at 245. It need not be shown that the implement claimed as exempt be a necessity to the debtor's employment. Baker v. Maxwell, 168 N.W. 160, 161 (Iowa 1918). The proper inquiry in each case is to determine whether the implements are proper implements in the reasonable conduct of the debtor's trade or profession.

In Hoyer v. McBride, 211 N.W. 847, 846 (Iowa 1927), the Iowa Supreme Court held that one heating stove and a larger than necessary cabinet qualified as a tool of the trade exemption with regard to a barber. Thus, this court has little difficulty in finding that the debtor's heater, cabinets and show cases are exempt.

This court also finds that the marquis sign falls under Iowa's exemption statute. Signs are one of the oldest forms of advertising. They identify an establishment and, in most cases, communicate to the public the nature of the establishment. Certainly a sign is a means of making the labor of buyer and seller of antiques more effective. Accordingly, the marquis sign qualifies as an exemption.

Finally, the court finds that the rack and gas tank do not fall within the tools of the trade exemption. These items are not reasonably fitted or employed as a means of making the labor of buying and selling more effective. Nor are they the proper implements reasonably related to the debtor's business.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing discussion the debtor has failed to demonstrate that the Bank's interest in the Hylander trailer is a nonpurchase money security interest. FURTHER, the rack and gas tank do not qualify as a tool of the trade under Iowa Code section 627.6(10).

THEREFORE, the Bank's resistance to the debtor's motion to avoid liens is sustained with respect to the Hylander trailer and the rack and gas tank. With respect to the other items in question, the resistance is denied.

Dated this 30th day of June, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE