

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

CHESTER F. SUTHERLAND,  
NORMA L. SUTHERLAND,  
Engaged in Farming,

Case No. 86-2736-C

Chapter 7

Debtors.

ORDER ON RESISTANCE TO MOTION TO AVOID LIENS

On April 14, 1987 a resistance to motion to avoid liens filed by the Farmers Home Administration (FmHA) on March 5, 1987 came on for hearing in Des Moines, Iowa. The debtors moved to avoid liens on February 27, 1987. Linda R. Reade, Assistant United States Attorney, appeared on behalf of the FmHA and Richard B. Clogg appeared on behalf of the debtors. The FmHA filed a letter brief. The debtors did not. The briefing deadline has expired; therefore, the court considers the case fully submitted.

FINDINGS OF FACT

1. The debtors filed a joint petition for relief under Chapter 7 on October 9, 1986. They are farmers.
2. According to schedule B-4, the debtors claim, among other things, the following exempt:

Item

Value

Livestock	\$ 8,380.00
100 bales of hay and 200 bushels of corn	\$ 1,218.00
Machinery and equipment	\$ 7,805.00
Miscellaneous tools	\$ 1,560.00

3. The FmHA possesses a nonpossessory, nonpurchase money security interest in these items.

4. On May 31, 1986 the amendments to Iowa's exemption statute took effect. The amendments increased the maximum farm machinery exemption from \$5,000.00<sup>1</sup> to \$10,000.00<sup>2</sup> 86 Acts, ch. 1216, section 6 (now codified at Iowa Code section 627.6(11)(a)).<sup>3</sup>

5. The debtors' obligations to the FmHA arose prior to the effective date of the amendments.<sup>4</sup>

### DISCUSSION

<sup>1</sup> The value of musical instruments, one motor vehicle and interest in certain wages and tax refunds was also included in the \$5,000.00 limitation. Iowa Code section 627.6(10) (1985).

<sup>2</sup> Livestock and feed for the livestock may be claimed exempt along with implements and equipment but the combined value can not exceed \$10,000.00.

<sup>3</sup> Some confusion has arisen concerning the correct numbering of the subsections under Iowa Code 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.

<sup>4</sup> Had the obligations arisen after the effective date of the amendments, there could be no question the amendments would apply. Further, there is no question of applicability of the amendments to the "gap period" between the date of enactment and the effective date given this court's ruling that the amendments are applicable to obligations that had arisen prior to the effective date. Cf. Matter of Eakes, No. 83-1647-C (Bankr. S.D. Iowa, filed August 21, 1984) aff'd sub nom. United States of America v. Eakes, No. 84-714-A Civ. (S.D. Iowa, January 18, 1985) (finding that the holding in United States v. Security Industrial Bank, et. Al., 459 U.S. 70, 103 S. Ct. 407, 74 L.Ed.2d (1982), wherein the Supreme Court determined that section 522(f)(2) of the 1978 Bankruptcy Code does not apply retroactively to abrogate liens acquired before the Code's enactment, did not apply to liens acquired between the enactment date (November 6, 1978) and the effective date of the Code (October 1, 1979).

## I.

The FmHA argues that application of the 1986 amendments to the debtors' obligations to the FmHA is impermissible under the Fifth Amendment to the United States Constitution. The court disagrees. This issue has been resolved in this district by the appeal decision in the case of Matter of Reiste, No. 87-153-B (S.D. Iowa, filed May 11, 1987). Chief District Judge Harold D. Vietor upheld Bankruptcy Judge Michael J. Melloy's<sup>5</sup> ruling that retrospective application of the amendments did not constitute an uncompensated taking. Judge Melloy had incorporated by reference in the Reiste opinion the conclusions of law set out in In re Punke, 68 B.R. 936 (Bankr. N.D. Iowa 1987). The Reiste decision and conclusions of law pertaining to the takings issue found in Punke are incorporated by reference in the instant case.

## II.

The FmHA challenges the ability of the debtors to avoid liens on the livestock, hay and crops under 11 U.S.C. section 522(f). The FmHA's challenge is well taken.

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

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 this lien is--

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<sup>5</sup>

Sitting by designation.

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

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry 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 a dependent of the debtor.

Iowa Code section 627.6(11) permits farm 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.

11 U.S.C. section 522(b)(1) permits states to "opt out" of the federal exemption scheme. Iowa has done so by virtue of Iowa Code section 627.10. "Although a state may elect to control what property is exempt under state law, federal law determines the availability of a lien avoidance." Matter of Thompson, 750 F.2d 628, 630 (8th Cir. 1984). In Thompson, the Eighth Circuit Court of Appeals ruled that lien avoidance under section 522(f)(2)-(A) is available for those animals held primarily for personal, family, or household use. Therefore under this subsection, the debtors herein may avoid

the liens in the livestock and feed for livestock used for such purposes. Liens on livestock and feed held for commercial use cannot be avoided under this subsection.

Apparently the debtors seek to circumvent the personal use limitation contained in section 522(f)(2)(A) by claiming livestock and feed as tools of the trade under section 522(f)(2)(B) which contains no such limitation. Since Iowa elected to "opt out" of the federal exemption scheme, state law 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).

The Iowa Supreme Court has defined implements in terms of being "reasonably fitted or employed as making [t]he owner's labor in his chosen employment more effective." Baker v. Maxwell, 168 N.W. 160, 161 (Iowa 1918). Under this definition livestock and crops cannot be considered implements. Livestock and feed are the subject matter of a farmer's operation, not the means of making the farmer's labor more effective. For instance, a combine makes a grain farmer's labor in harvesting the crop more effective. The crop itself does not.

The framework of Iowa Code section 627.6(11) precludes the debtors from claiming livestock and feed 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 where one of them falls under another provision exempting vehicles. In

In re Eakes, 69 B.R. 497 (W.D. Missouri 1987), a debtor claimed ten cows as exempt under Missouri's tools of the trade exemption. Under Missouri's exemption statute, tools of the trade and animals are placed in separate categories. The court held 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 reaching this conclusion the Eakes 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. 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 and feed for livestock are not included within the meaning of "implements and equipment" under Iowa Code section 627.6(11)(a).

This court notes that the FmHA 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 17, 1986 and Bankruptcy Rule 4003(b).<sup>6</sup> Also, no motion has been filed under Bankruptcy Rule 9006(b) to enlarge the time

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<sup>6</sup> Bankruptcy Rule 4003(b) provides in part that:

within which to file such an objection.<sup>7</sup> Yet, the FmHA has objected to the amount 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

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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 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 exemption 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).

<sup>7</sup> 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 (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.

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

#### CONCLUSION AND ORDER

WHEREFORE, based upon the foregoing analysis, the court concludes the debtors are entitled to avoid the FmHA's liens in the livestock and feed for the livestock only to the extent the items are for personal, family or household use.

FURTHER, the debtors are entitled to avoid the FmHA's liens in the machinery.

THEREFORE, the FmHA's resistance to avoid liens is sustained to the extent the crops and livestock are not for personal, family, or household use.

Signed and filed this 30th day of June, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE