

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

LESLIE BUTLER,
SHEILA BUTLER,

Case No. 86-2252-C

Chapter 7

Debtors.

ORDER ON OBJECTION TO CLAIM OF EXEMPTION

On January 21, 1987 an objection to exemption filed by Mid-Am Credit Union (Mid-Am) on December 19, 1986 came on for hearing in Des Moines, Iowa. Susan L. Ekstrom appeared on behalf of Mid-Am and Anita L. Shodeen appeared on behalf of the debtors. The briefing deadline expired February 21, 1987. Only the debtors have submitted a brief. Therefore, the court considers the matter fully submitted.

The debtors filed a joint petition for relief under Chapter 7 on August 15, 1986. According to schedule B-4, they claim a homestead valued at \$15,000.00 as exempt.

On June 14, 1984, Leslie E. Butler executed a note in the amount of \$8,100.00 in favor of Mid-Am. Sheila Butler, wife of Leslie E. Butler did not sign the note. Mid-Am commenced an action on the note in the Iowa District Court for Wapello County. Sheila Butler was not made a defendant in the action. Mid-Am obtained a judgment on the note on May 6, 1986 in the amount of \$9,580.72. During March 1986, the debtors purchased the real estate that they claim as their homestead.

DISCUSSION

I.

The debtors claim Mid-Am is barred from making its objection for failure to object within thirty days of the first meeting of creditors as required by the order dated August 20, 1986 and Bankruptcy Rule 4003(b)(7).¹ Also the court notes that no motion has been filed under Bankruptcy Rule 9006(b) to enlarge the time within which to file such objection.² Yet, Mid-Am has objected to the debtors' homestead exemption claim after the time period specified in the order and the rules. 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 at a later point in time.

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

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 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).

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 (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.

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 the case of In re Roehrig, 36 B.R. 505 (Bankr. W.D. Ky. 1983) the court found that failure to object timely 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 at a later time 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 Mid-Am 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 that Mid-Am as well as many other creditors in the Southern District of Iowa have relied upon this practice. In fairness to the Mid-Am, its objection will be considered timely filed. However, by virtue of this order, Mid-Am 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 made at a later time.

II.

Mid-Am contends that the debtors are precluded from exempting the homestead because Leslie Butler's debt arose prior to the purchase of the homestead. Under Iowa law, a homestead "may be sold to satisfy debts ... contracted prior to its acquisition." Iowa Code section 561.21(1). This is an exception to Iowa's homestead exemption which provides:

The homestead of every person is exempt from judicial sale where there is no special declaration of the statute to the contrary, provided that persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale. For purposes of this section, 'household unit' means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

Iowa Code section 561.16.

The public policy underlying Iowa's homestead exemption is to provide to a family the security of a home that is beyond the reach of economic misfortune. Merchants Mut. Bonding Co. v. Underberg, 219 N.W.2d 19, 21 (Iowa 1980). Homestead laws are broadly and liberally construed in favor of exemption. Millsap v. Faulkes, 20 N.W.2d 40, 42 (Iowa 1945).

The prior debt exception to Iowa's homestead exemption is not applicable in this case. It is clear that Sheila Butler has no obligations to Mid-Am. She neither signed the note nor was made a party to Mid-Am's action on the note. Therefore her property cannot be subject to execution for Leslie's

debts. Merchants Mut. Bonding Co., 291 N.W.2d at 21. Moreover, the Butlers' homestead rights cannot be split to satisfy Mid-Am's claims. Id. That is, Leslie's interest in the homestead cannot be sold to satisfy debts to which Sheila is not obligated. As stated in Merchants, "if [one spouse's] homestead interest is not subject to execution, neither is [the other's]." Id.

CONCLUSION AND ORDER

WHEREFORE, based upon the foregoing analysis, the court concludes the debtors' homestead is exempt pursuant to Iowa Code section 561.16.

THEREFORE, Mid-Am's objection to the claim of exemption is overruled.

Dated this 28th day of July, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE