

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

RONALD D. COOPER,  
AMELIA A. COOPER,  
Engaged in Farming,  
Debtors.

Case No. 87-828-W

Chapter 7

ORDER ON OBJECTION TO MOTION TO  
AVOID SECURITY INTEREST LIEN

On October 14, 1987 a rescheduled hearing on the Farmers Home Administration's motion to avoid security interest lien was held in Council Bluffs, Iowa. Charles L. Smith appeared on behalf of the debtors and Linda R. Reade, Assistant U.S. Attorney, appeared on behalf of the FmHA. The issues are: (1) whether the debtors are able to avoid liens on property belonging to a partnership; (2) whether the FmHA's objection on that ground is timely; and (3) the value of property in question.

A review of the file reveals the following:

1. On Schedule B-4, each of the debtors claimed a farm machinery exemption in the amount of \$6,100.00. The debtors' claim was made pursuant to Iowa Code section 627.6(11).<sup>1</sup>

<sup>1</sup> Iowa Code section 627.6(11) provides in pertinent part that:

If the debtor is engaged in farming... [the debtor may claim] any combination of the following, not to exceed a value of ten thousand dollars in the aggregate (exempt]:

- a. Implements and equipment reasonably related to a normal farming operation. This exemption is in addition to a motor vehicle held exempt under subsection 9.

...

2. The first meeting of creditors was held on April 13, 1987 in Council Bluffs, Iowa.

3. In an order dated April 2, 1987, the undersigned ordered that "[u]nless the court extends the time, any objection to the debtor'(s) claim of exempt property (Schedule B-4) must be filed within 30 days after the date set for the meeting of creditors."

4. On April 29, 1987 the FmHA filed an objection to property claimed exempt. None of the objections challenged the ability of the debtors to claim partnership property as exempt.

5. On May 26, 1987 a telephonic hearing on the FmHA's objection to property claimed exempt was held. The minutes of the hearing show that the matter was to be settled and that the valuation dispute would be resolved by use of a third party appraisal.

6. On that same day, the debtors amended their B-4 schedule. The amended schedules show that each of the debtors claimed a machinery exemption in the amount \$7,205.00. 7. On May 29, 1987 the debtors moved to avoid security interest liens in certain farm machinery they claimed exempt. The June 1, 1987 bar date notice stated that objections had to be filed within 15 days from the date of notice (June 16, 1987).

8. On June 3, 1987 the FmHA objected to the debtors' motion. None of the objections raised the partnership issue.

9. On July 6, 1987 the FmHA again objected to the motion. This objection contained the FmHA's contention that the debtors are precluded from avoiding liens on partnership property.

10. On July 7, 1987 a telephonic hearing on the motion was conducted pursuant to notice dated June 24, 1987. The minute order reflected that the matter would be rescheduled for a courtroom hearing and directed that the value dispute was to be resolved by third party appraisal.

#### DISCUSSION

The debtors argue that the FmHA is precluded from pursuing the partnership objection because it was not raised timely. Citing this court's decision of Matter of Towns, 74 B.R. 563 (Bankr. S.D. Iowa 1987), the debtors contend that objections to exemptions must be filed within thirty days of the first meeting of creditors. They point to the fact that the FmHA failed to file the partnership objection within the thirty day period.

One of the issues addressed in Towns was 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. This court examined two bankruptcy rules pertinent to the issue and a number of cases interpreting the rules. One of the rules, 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.

The other rule, Bankruptcy Rule 9006(b), states 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 therefor 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 excuseable neglect.

This court found that the time limit imposed by Rule 4003(b) was established to set a cutoff point at which debtors could be certain of objections. The Towns decision noted that the time limitation would be undermined and delay would result if creditors were allowed to make exemption objections after lien avoidance actions were commenced. This court concluded:

[B]y 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.

Towns, 74 B.R. at 567.

The Towns decision was signed and filed on June 10,

1987. That date establishes the point at which creditors are

expected to comply with the requirements of Rule 4003(b). A cutoff date was necessary since the undersigned's predecessor permitted creditors to object to exemptions after the thirty day period had expired.

In this case, the first meeting of creditors was held on April 13, 1987 and the debtors' motion to avoid liens was filed on May 29, 1987. These events occurred prior to the date Towns was filed. The FmHA will not be held to the Towns standards. Therefore, the FmHA's failure to raise the partnership issue in objecting to the debtors' exemption claim does not bar it from raising the issue in this lien avoidance action.

Having overcome the Rule 4003(b) problem, the FmHA now must encounter a more imposing obstacle--the fifteen day bar date for filing objections to the debtors' motion to avoid liens. In Matter of Peterman, 71 B.R. 624 (Bankr. S.D. Iowa 1987), this court held that creditors must comply with bar dates. This court reasoned:

The use of bar dates for objections and resistances is absolutely essential to efficient docket control in any judicial system and, especially, in the bankruptcy area which has experienced geometric increases in the number of petitions filed and concomitantly in the number of motions filed. This court can no longer enjoy the luxury of setting every matter for hearing and presiding while the parade of parties present stipulated or consent orders in the majority of the scheduled matters. Additionally, the "communication factor" inherent in the bar date provides a means by which most disputes may be identified as real or

imaginary before the court must become involved in the matter.

...

To allow the parties to rely upon issues raised in pleadings, objections or resistances that are not responsive to the particular motion would sap the administrative control of the docket overall and would obfuscate the issue under consideration in many situations. Most importantly, riddling the policy on bar dates with exceptions would likely result in inconsistent treatment of similarly situated litigants over time. Any exception to the enforcement of the bar date must be granted on compelling equitable principle. See Bankruptcy Rule 9006(b).

Peterman, 71 B.R. at 626 (citations omitted).

Under these principles, the FmHA cannot pursue the partnership issue. The FmHA raised this issue for the first time well after the fifteen day bar date for objections had expired. Further, the FmHA neither requested an extension of time within the fifteen day period to file the objection nor did it argue that its failure to timely object was the result of excuseable neglect as required by Rule 9006(b).

As a final matter, the FmHA maintains that the merits of the partnership issue can be reached by the court under the court's duty to ensure that there must be a good faith statutory basis for the exemption. See, Towns, 74 B.R. at 567. There is nothing in the record to indicate an absence of a good faith statutory basis for the debtors, exemption claim.

CONCLUSION AND ORDER

WHEREFORE, it is hereby found that the FmHA failed to object timely to the motion to avoid liens as required by the notice filed June 1, 1987.

THEREFORE, the FmHA's July 6, 1987 objection to the motion to avoid the security interest lien as it pertains to the partnership issue is denied.

IT IS FURTHER ORDERED that any valuation disputes are to be resolved by use of a third party appraisal.

Signed and filed this 14th day of January, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE