

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In

re:

Chapter 7 Case

Gary O. Wangen,

BKY Case No. 3-92-33128

Debtor.

ORDER

This matter came before the court on hearing on motion for lien avoidance by Debtor. Roger E. Petersen appears for the Debtor. Thomas Manion appears on behalf of National Bank of Lanesboro (Bank). Based upon the files, records, and arguments of counsel, the Court makes its findings of facts and conclusions of law pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

FACTS

Debtor filed for relief under Chapter 7 on June 2, 1992. Debtor claimed his farm machinery, implements, various tools, and a pick-up truck as exempt property under MINN. STAT. Section 550.37, Subd. 5 and 6.(FN1) Debtor's Schedule C lists the following

(1)MINN. STAT. Section550.37, Subd. 5 and 6, provide:

Subd. 5. Farm machines and implements used in farming operations by a debtor engaged principally in farming, livestock, farm produce, and standing crops, not exceeding \$13,000 in value.

Subd. 6. The tools, implements, machines, instruments, office furniture, stock in trade, and library reasonably necessary in the trade, business, or profession of the debtor, not exceeding \$7,000 in value.

property as exempt and he now seeks to avoid the Bank's nonpossessory, nonpurchase-money liens under Section 522(f)(B)(2) on the same property:

1979 Ford 3/4 ton pick-up truck
1,200.00
Int'l 966 Diesel Tractor (1/2 interest)
1,750.00
Int'l 303 Combine w/ 3 row corn head
1,750.00
Oliver Tandem disc w/wings
800.00

Int'l 560 Tractor, 2 pt.
 600.00
 Sprayer - 300 gal. - no pump
 150.00
 Husky wagon running gear
 200.00
 Int'l 5-16's 3 pt. Model 550 Plow (1/2 interest)
 225.00
 Old running gear
 25.00
 Gravity Box w/gear - 200 bu.
 250.00
 J.D. Single Beater, #40 spreader
 300.00
 1 Diesel & 1 gas barrel, stands
 80.00
 2 PTO Farmhand Barge Boxes & Gears
 400.00
 Int'l Cultivator, 6 row rear mount
 200.00
 Int'l 6 row Planter
 100.00
 Case Double Disc Grain Drill
 100.00
 Gehl Chopper w/ corn & hay head
 225.00
 40' Elevator
 75.00
 4 Section Drag w/cart
 150.00
 Bale mover, 3 pt.
 60.00
 Misc. Tools
 300.00

Debtor has engaged in farming since 1976. Although he does not currently own farm land, he farmed his grandparents' 50-acre farm in 1992 by planting corn and baling hay, assists on his father's 347-acre farm, engages in crop farming by leasing land and does custom farm work for other farmers. He intends to continue farming indefinitely. Additionally, in the Spring of 1993, it is his intention to rent additional land in order to expand his farming operation.

He is and has been employed with Peterson Motors of Lanesboro, Minnesota, as a full-time mechanic for 23 years. Although he is employed full-time as a mechanic, he takes approximately two to three weeks off of work in the Spring and in the Fall of each year in order to pursue farming activities such as planting and harvesting.

National Bank of Lanesboro contends that Debtor is not entitled to avoid the liens because the Debtor has not been continuously and principally engaged in farming; and his principal occupation is as a mechanic. To support this contention, the Bank refers to Debtor's tax returns for the years 1989 and 1990 wherein Debtor's occupation is listed as "mechanic." (FN2) The Bank also

(FN2)Wangen's 1989 Federal Income Tax Return on line 7 lists

\$26,103 as income from wages, salaries and tips. The 1989 Schedule F for Farm Income and Expenses lists Total gross income from sales of livestock, produce, grains, other products raised in addition to agricultural program payments and other credits as \$46,812. Total farm expenses as \$41,252. Therefore, Debtor had a net farm profit and income of \$5,560.

Debtor's 1990 Federal Income Tax Return lists \$26,012 as wages. The 1990 Schedule F, Farm Income and Expenses, lists Total gross income from sales of livestock, produce, grains, other products raised, together with other agricultural program payments and credits in the amount of \$43,946. Total farm expenses as \$41,332. Therefore, the Debtor had a net farm profit and income of \$2,614.

A Federal Income Tax Return for the year 1991 was not provided.

asserts the Debtor resides in the town of Lanesboro, owns no farm land, and has a very limited farming operation. This minimal operation is represented by the following facts: Debtor does not own cattle, simply rents land for raising crops; the last time he lived on a farm was over 20 years ago; does custom farm work for other farmers; and only farms during the summer months. Therefore, according to the Bank, Debtor is not a farmer and is not entitled to the \$13,000 exemption under MINN. STAT. Section 550.37, Subd. 5. Rather, as asserted by the Bank at the hearing, Debtor is limited to tools of the trade as a mechanic; or alternatively, he is engaged in the trade of farming and is limited to the "tools of the trade" exemption under MINN. STAT. Section 550.37, Subd. 6, of \$7,000.00, if anything at all.(FN3)

II.

DISCUSSION

The Debtor brings his motion for lien avoidance pursuant to 11 U.S.C. Section 522(f) which 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

(FN3)Additionally, the Bank contends that it loaned Debtor money to plant a 1991 crop which was never planted, nor was the money returned to the Bank. This is subject to a separate adversary proceeding under 11 U.S.C 523 and need not be addressed here, but shall be resolved at another time and place.

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 debtor.

In order for the Bank's liens to be avoided under this section, the Court must find: (1) that the Debtor has an interest in the property in question; (2) that the Bank's liens impair an exemption to which the Debtor is otherwise entitled; (3) that the 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. Section 522(f)(2)(B) as quoted above. See: *In re Peters*, 60 B.R. 711, 715 (Bankr. D. Minn. 1986).

Here, the Debtor clearly has an interest in the property involved in this proceeding and the first element is satisfied. However, as to the second prerequisite, the Bank argues that Debtor is not entitled to the exemption because he is not principally engaged in farming under MINN. STAT. Section 550.37, Subd. 5. Therefore, the Debtor's exemption is limited to MINN. STAT. Section 550.37, Subd. 6, as tools and implements used in a trade, business or profession.(FN4)

(FN4)The "tools of the trade" test which this Circuit applies is: "the reasonable necessity of the item to the debtor's trade or business." *Production Credit Assn. of St. Cloud v. LaFond* (In re LaFond), 791 F.2d 623, 627 (8th Cir. 1986), citing *In re Seacord*, 7 B.R. 121 (Bankr. W.D.Mo, 1980).

The Eighth Circuit has stated regarding the term "principally engaged in farming:" "[A] more realistic definition should take into account the intensity of a debtor's past farming activities and the sincerity of his intentions to continue farming, as well as evidence that debtor is legitimately engaged in a trade which currently and regularly uses the specific implements or tools exempted and on which lien avoidance is sought." *Production Credit Assn. of St. Cloud v. LaFond* (In re LaFond), 791 F.2d 623, 626 (8th Cir. 1986)(FN5), citing *Middleton v. Farmers State Bank of Fosston*,

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B.R. 953, 955 (D. Minn. 1984); *In re Yoder*, 32 B.R. 777 (Bankr. W.D. Pa. 1983). Bankruptcy Courts in the District of Minnesota have consistently held that part-time or full-time employment in another profession outside of farming is not a bar to entitlement as a farmer under the Statute and for lien avoidance purposes. See: *In re Schuette*, 58 B.R. 417 (Bankr. D. Minn. 1986), where debtor who had previously been a dairy farmer was not performing dairy farming operations at bankruptcy, but was enrolled full-time in a vocational technical institute. However, he had expressed a desire to crop farm in the future. The Court found debtor qualified as a farmer because his "hiatus" from farming was only temporary.

See also: *In re Kuznia*, BKY 6-91-206 (Bankr. D. Minn. Judge Dreher 9/16/91), wherein debtors were formerly actively engaged in farming and were employed outside the home, but arranged in the future to lease land and do custom farming. Again, the Court found

(FN5)LaFond was decided under the 11 U.S.C. 522(d)(6) federal

tool-of-trade exemption statute.

Debtors' hiatus from farming was only temporary and, therefore, they qualified as farmers.

Additionally, Judge Kishel found that although debtor may be currently engaged in off-farm employment, he is not barred from asserting that he is presently engaged in farming for the purpose of claiming the exemption or invoking lien avoidance under 11 U.S.C. Section 522(f)(2)(B), so long as he continues farming operations at some colorable level and has a firm intention to continue and expand those operations when his finances recover. In re Moen, BKY 3-87-1536 (Bankr. D. Minn. Judge Kishel 10/8/87). In another case, Judge Kishel found the fact that in the recent past debtors have derived the bulk of their family support from non-farm income (part-time employment as a printer) is not controlling under Minnesota Statute; nor is the fact that debtor holds permanent outside employment. In re Mack, BKY 3-84-2301 (Bankr. D. Minn. Judge Kishel 5/9/85).(FN6) Of significance, in all of these cases,

the

debtors were, prior to their financial difficulties, full-time farmers. The financial difficulties were the driving force behind the debtors seeking part-time, full-time or other opportunities outside of the farm.

Here, Mr. Wangen has farmed since 1976. Pursuant to his Federal Income Tax Returns for 1989 and 1990, he has reported a small net income from farming. Historically, Debtor has never

(FN6)Interestingly, this is the only case the Bank cited in support of its response in opposition to the lien avoidance motion. However, this case seems to support the Debtor's position more than it supports the Bank's.

relied on farming as a means of support of his family, but rather has supported them as a full-time mechanic. As evidenced by his 1989 and 1990 income tax returns, the total family income and means of support was derived from Debtor's occupation as a mechanic, and was supplemented by Debtor's farming trade. Therefore, Debtor does not meet the qualification as principally engaged in farming under Minn. Stat. Section 550.37, Subd. 5.

However, Mr. Wangen testified that he sincerely intends to pursue farming in the future by renting additional land to plant and harvest crops. He intends to farm: his grandparents' farm, father's farm and engage in custom farming for other farmers. Furthermore, the farm implements and machinery are a reasonable necessity in Debtor's farming activities. Without the implements, machines and tools, Debtor is unable to pursue increasing his supplemental farming income and seasonal trade of farming. Based on those factors, Mr. Wangen is engaged in the trade or business of farming. Therefore, the farm equipment, implements, and tools are entitled to exemption under MINN. STAT. Section 550.37, Subd. 6.

Before moving on to the third prerequisite for lien avoidance, the question of whether Debtor's pick-up truck qualifies under MINN. STAT. Section 550.37, Subd. 5 or 6, must be resolved. The

test is whether the truck is a reasonable necessity to the debtor's trade or business. LaFond 792 F.2d at 627. Resolution of the question whether automobiles and trucks can be trade exemptions must be made upon the facts of each particular case and should be not upon their connection with the individual debtor. The vehicle must be primary to the business, not incidental to it. To be primary to a business, a vehicle must be used predominately in that business, such as a trucker who hauls goods, commodities, etc., from one place to another for a fee. In re Smith, 68 B.R. 581, 583 (Bankr. D. Minn. 1986). The vehicle must be essential in carrying out the trade. For example, the use of a garbage truck for collecting refuse or the use of a hearse by a mortuary.

Here, the Debtor is a crop farmer during the limited Minnesota planting season and uses his pick-up truck incidentally during the three-week planting and harvesting seasons. Debtor did not testify or allege that he uses his pick-up exclusively, solely and strictly for farming. The pick-up is more of a convenience in his farming operation than a necessity. Consequently, the truck is used minimally for farming and maximally for personal purposes. Therefore, the Debtor might be allowed to claim the pick-up truck as exempt under MINN. STAT. Section 550.37, Subd. 12a, but not under the tools of the trade or farm implements and machinery exemption statute. Accordingly, the Debtor's 1979 Ford pick-up truck does not meet the second element in order to qualify for lien avoidance under Section 522(f)(B)(2).

The third element has been met as to the farm implements and tools. Neither party disputes that the Bank's liens are nonpurchase-money, nonpossessory liens. Regarding the fourth element, the Court finds that all items listed above, with the exception of the pick-up truck, have been properly claimed as implements, machines and tools and come within the scope of 11 U.S.C. Section 522(f)(2)(B).

ACCORDINGLY, IT IS ORDERED:

1. The Debtor is entitled to avoid the liens of National Bank of Lanesboro in the total amount of \$7,000.00 on property he may select on the list stated above as tools of the trade.

2. The Bank's lien on the 1979 Ford Pick-up truck is not avoided.

Dated this ____ day of November, 1992.

Dennis D. O'Brien
United States Bankruptcy Judge