

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

**In re Edward Wundrow and Pamela Wundrow,
d/b/a Wundrow Family Farm, Debtors**
Bankruptcy Case No. 91-12895-7

In re Christina Wundrow, d/b/a Wundrow Family Farm, Debtor
Bankruptcy Case No. 91-12896-7

**In re Alan Wundrow and Darlene Wundrow,
d/b/a Wundrow Family Farm, Debtors**
Bankruptcy Case No. 91-12899-7

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

January 24, 1992

Terrence J. Byrne, for the debtors.
Christa A. Reisterer, for Farmers Home Administration.

Thomas S. Utschig, United States Bankruptcy Judge.

**MEMORANDUM OPINION, FINDINGS OF FACT,
AND CONCLUSIONS OF LAW**

This matter comes before the Court on motions by the debtors to avoid liens of Farmers Home Administration in farm machinery and equipment. Three separate motions in three bankruptcy cases are involved here. The Court will consider these motions together since the parties are related and the motions are grounded on identical factual bases. The debtors in each of the three cases are Christine Wundrow, Alan and Darlene Wundrow, and Edward and Pamela Wundrow, respectively. They are represented by Terrence J. Byrne. Farmers Home Administration (FmHA) has filed an objection to each of the three motions; it is represented by Christa A. Reisterer.

The relevant facts can be briefly summarized. The five debtors involved here, as well as Arnold Wundrow (Christina Wundrow's husband, now deceased), were partners in the "Wundrow Family Farm" partnership. Edward and Alan Wundrow are the sons of Arnold and Christina Wundrow. Arnold Wundrow's death on March 13, 1991, effected a dissolution of the partnership under Wisconsin law. See WIS. STAT. ANN. § 178.26(4) (West 1989). In the months following the dissolution, the debtors discussed dividing the partnership assets and also considered the possibility that Alan and Darlene Wundrow would continue to operate the farm alone. The debtors applied to FmHA for a loan restructuring in June of 1991, but were denied servicing due to the dissolution of the partnership. The FmHA is a secured creditor in this

action and part of its collateral is the farm machinery and equipment at issue in the debtors' lien avoidance motions.

The five remaining partners in the Wundrow Family Farm partnership signed a "Partnership Dissolution Agreement" on June 30, 1991, which by its terms was to take effect retroactively -- on March 13, 1991. The agreement provided that the partnership assets would be held under joint ownership and the ownership interest of the respective parties was stipulated to be as follows: Christina Wundrow - 1/3; Edward Wundrow - 1/6; Pamela Wundrow - 1/6; Alan Wundrow - 1/6; Darlene Wundrow - 1/6. The agreement further provided for the retroactive termination of the partnership as of March 13, 1991 -- the date of Arnold's death. The debtors each filed individual bankruptcies under Chapter 7 of the Bankruptcy Code on August 26, 1991. Alan and Darlene Wundrow and Edward and Pamela Wundrow each filed jointly as husband and wife. The three lien-avoidance motions at issue here were filed on September 12, 1991.

11 U.S.C. § 522(f) is the provision granting debtors in bankruptcy the right to avoid certain liens on otherwise exempt property. It provides:

(f) 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--

(1) a judicial lien; or

(2) a nonpossessory, nonpurchase-money security interest 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 the trade of a dependent of the debtor; or

(C) professionally prescribed health aids for the debtor or a dependent of the debtor.

11 U.S.C. § 522(f) (West 1991).

The relevant Wisconsin exemption provision to which the debtors are claiming entitlement is § 815.18(3)(b), which provides:

(3) Exempt property. The debtor's interest in or right to receive the following property is exempt, except as specifically provided in this section and ss. 70.20(2), 71.91(5m) and (6), 74.55(2) and 102.28(5):

(a) . . .

(b) *Business and farm property.* Equipment, inventory, farm products and professional books used in the business of the debtor or the business of a dependent of the debtor, not to exceed \$7,500 in aggregate value.

WIS. STAT. ANN. § 815.18(3)(b) (West. Supp. 1991). Each of the five debtors is claiming \$7,500 in farm machinery of the former Wundrow Family Farm partnership

as exempt.

The objection of the FmHA is twofold. First, it asserts that the debtors are not entitled to the exemptions because they are a partnership. This argument is grounded on the definition of "debtor" contained in the Wisconsin exemption statute: "[d]ebtor' means an individual. `Debtor' does not include an association, corporation, partnership, cooperative or political body." See WIS. STAT. ANN. § 815.18(2)(b) (West Supp. 1991). In support of its assertion that the Wundrow Family Farm partnership is still in existence, the FmHA cites WIS. STAT. § 178.25(2): "[o]n dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed." WIS. STAT. ANN. § 178.25(2) (West 1989). Finally as to this first ground, the FmHA cites WIS. STAT. 178.35 which provides in relevant part:

[i]n settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are (a) the partnership property, (b) the contributions of the partners necessary for the payment of all the liabilities specified in sub. (2).

(2) The liabilities of the partnership shall rank in order of payment, as follows: (a) those owing to creditors other than partners

(3) The assets shall be applied in the order of their declaration in sub. (1) to the satisfaction of the liabilities.

WIS. STAT. ANN. § 178.35 (West 1989). The FmHA argues that, since liquidation as provided in this provision has not occurred, the winding up is not completed and the partnership is thus not terminated. Since they are still a partnership, the argument concludes, the debtors are not entitled to any exemptions under Wisconsin law.

The FmHA's second ground for its objection is that the debtors are no longer farmers. It bases this argument on the fact that Edward, Pamela, and Christina Wundrow sought to be removed from the FmHA loan so the farm could be operated solely by Alan and Darlene. This fact was noted in the debtors' brief. This argument presumably applies only to the exemptions claimed by Edward, Pamela, and Christina Wundrow.

The Court has considered the arguments upon which both grounds for the FmHA's objection are based and finds them to be without merit. As to the first ground, the debtors correctly point out that a complete liquidation of partnership assets is not required in order for winding up and termination to occur. As cited by the debtors, the case of In re Trust Estate of Schaefer states that "[p]artners, or those claiming through a deceased partner, may agree to settle the partnership affairs without a liquidation of the assets (by agreeing to a cash settlement or in-kind distribution)." In re Trust Estate of Schaefer, 91 Wis. 2d 360, 375, 283 N.W.2d 410, 418 (1979). Wisconsin statutory law supports this option of terminating a partnership without liquidation as well. The aforementioned Wisconsin statute pertaining to settlement and distribution on dissolution expressly states that "[t]he following rules shall be observed, subject to any agreement to the contrary . . ." See WIS. STAT. ANN. § 178.35 (West 1989) (emphasis added).

Here, there is just such an agreement -- the "Partnership Dissolution Agreement" signed by the debtors on June 30, 1991, nearly two months before the bankruptcy filing. The agreement delineated the respective proportional interests of the five

former partners in the partnership assets and provided for joint ownership of those assets. The former partners each remain liable for the debts of the terminated partnership. The Court finds, therefore, that the debtors' agreement of June 30, 1991, constituted a "winding up" of the partnership so as to effect a termination of it for purposes of WIS. STAT. § 178.25(2). Each of the five former partners, therefore, qualifies as a "debtor" for purposes of the Wisconsin exemption statute.

As to FmHA's second ground for its objection, the debtors point out in their reply brief that they have all continued farming since the date of Arnold's death and hope to continue to do so. This Court has previously held that exemption rights are determined based on the circumstances present at the time of filing. See In re Brzezinski, 65 B.R. 336, 339 (Bankr. W.D. Wis. 1985). Each of the debtors was engaged in farming as of the filing date of August 26, 1991. They each hope to be able to continue farming. These factors were found sufficient to entitle the Brzezinski debtors to an exemption in farm machinery. See In re Brzezinski, 65 B.R. at 339. The Court finds them to be sufficient to entitle the current debtors to an exemption in farm machinery as well.

Having found both of the FmHA's grounds for objection to the debtors' lien-avoidance motions to be without merit, the debtors are each entitled to the Wisconsin exemption for farm machinery contained in § 815.18(3)(b).

Accordingly, the debtors' motions for lien avoidance pursuant to 11 U.S.C. S 522(f) are granted.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.