

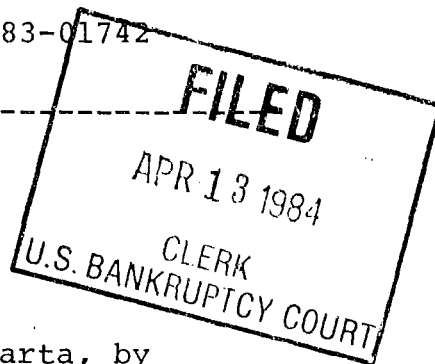
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In Re: ROGER W. HANSON, SR.
KAREN A. HANSON

In Bankruptcy
No. LF7-83-01742

Debtors.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER AVOIDING LIEN



Production Credit Association of Sparta, by
Attorney Michael J. McAlpine of Gleiss, Goodman, Osborne &
McAlpine, having filed an Objection to Debtors' Claim of
Exemptions; and Roger and Janet Mueller, by Attorney Thomas
R. Fortney of Gulbrandsen & Fortney, S.C., also having filed
an Objection to Debtors' Claim of Exemptions; and a hearing
having been held; and Debtors Roger W., Sr., and Karen A.
Hanson appearing in person and by Attorney Elisabeth E. Atwell
of Ferryville Law Office; and Creditor PCA appearing by its
attorney; and Creditors Roger and Janet Mueller appearing in
person and by their attorney; and the Trustee, Attorney Lawrence
J. Kaiser, appearing in person and on his own behalf; and the
parties stipulating to submit so much of the Objections as may
be affected by 11 U.S.C. sec. 522 lien avoidance on written
briefs; and the Debtors and Creditors having filed briefs; the
Court, having reviewed the submitted briefs and the complete

record and file herein, and being fully advised in the premises,
FINDS THAT:

1. Debtors Roger W., Sr., and Karen A. Hanson filed for relief under Chapter 11 of the Bankruptcy Code on October 26, 1983, and voluntarily converted the proceeding to one under Chapter 7 of the Bankruptcy Code on January 19, 1984.

2. The parties appear to agree that:

A. On December 15, 1981, the Debtors ("Tenant") and Creditors Roger and Janet Mueller ("Landlord") entered into a Farm Lease.

B. Said Farm Lease provided, in pertinent part:

Section I. Date, Contracting Parties, Description of Property, Term and Extent of the Lease.

2. The Landlord...hereby furnishes to the Tenant, to occupy and to use for agricultural purposes as a dairy farm, the Roger Mueller Farm...

Section IV. The Landlord and Tenant Agree Jointly to Furnish the Items Below, 70% by Landlord and 30% by Tenant:

2. All feed...

4. ... All milk cows and young stock.

Section V. Division of Farm Income.

1. All gross income from the sale of milk, calves, and feed shall be paid 70% to the Landlord and 30% to the Tenant. ...

Section VIII. Ownership of Livestock, Feed and Supplies.

1. At the commencement of this lease, the Landlord owned 70% and the Tenant owned 30% of all cattle, and all increases in raised or purchased cattle shall be owned in the same percentage.
 2. At the commencement of this lease, the Landlord owned 70% and the Tenant owned 30% of all feed, straw and farm supplies. At the termination of this lease, the Tenant shall leave with the Landlord 70% of all feed, straw and farm supplies then on the leased farm.
- C. At the time the Debtors filed for relief Creditor Production Credit Association of Sparta (PCA) was a secured creditor with a valid, nonpossessory, nonpurchase-money security interest in, inter alia, the Debtors' livestock, equipment and machinery--but not in the Debtors' feed inventory.
- D. The relevant exemptions claimed by the Debtors at the time of their original petition for relief and at the time of the conversion to a Chapter 7 proceeding were, with one exception, identical:

<u>Claimant</u>	<u>Type</u>	<u>Description</u>	<u>Statute</u>	<u>Value</u>
Roger	Automobile	Truck	11 U.S.C. sec. 522(d)(2)&(5)	\$1,600
Karen	Machinery	Tractor	Wis. Stat. 815.18(6)	1,000
Roger	Machinery	Farm Equipment	11 U.S.C. sec. 522(d)[5]	-- ¹
Karen	Cattle	8 cows	Wis. Stat. 815.18(6)	6,400
Karen	Inventory	Feed	Wis. Stat. 815.18(6)	18,885

¹ \$2,700 at the time of the original petition,
2,200 at the time of the conversion.

- E. The 8 cows were claimed by the Debtors from the livestock which is subject to the Farm Lease.
- F. At the time of their original petition for relief, the Debtors intended to reorganize and continue farming on the Roger Mueller Farm.
- G. The Debtors now profess an intention to resume farming at a location other than the Roger Mueller Farm.
- H. On February 8, 1984, the parties in this matter entered into a Stipulation which provided, in pertinent part:
 - ...that the cattle and feed in which the debtors have an interest (30% interest) located on the farm of Roger and Janet Mueller shall be sold at auction...any proceeds from said sale shall be held by PCA until further order of the Court.
- I. Subsequently, 30% of the livestock and feed subject to the Farm Lease were sold at auction.

3. Title 11 of the United States Code provides, in part:

§541 Property of the estate.

(a) The commencement of a case ... creates an estate. ...

§522 Exemptions.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate either --

- (1) property that is specified under subsection (d) of this section...or, in the alternative,
- (2) (A) any property that is exempt under...State or local law that is applicable on the date of

of the filing of the petition...

(f) ...the debtor may avoid the fixing of 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...

§348 Effect of conversion.

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title...does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

4. Thus, the validity of the Debtors' lien avoidance claims must be measured as of October 26, 1983 (the date of the original petition for relief). Cf. In re Sivley, 14 B.R. 905 (Bankr.E.D.Tenn. 1981) (exemptions).

5. To the extent that PCA's lien impairs an exemption claim to 8 cows to which the Debtors would be entitled, the Debtors may avoid said lien on cows "held primarily for...personal, family, or household use." 11 U.S.C. sec. 522(f)(2)(A).

6. While a dairy farm herd is held primarily for business use, the typical farm family will apply the milk from one cow for family use.

7. PCA's lien does not impair an exemption claim to feed to which the Debtors would be entitled.

8. To the extent that PCA's lien impairs an exemption claim to farm equipment, a tractor and a truck to which the Debtors would be entitled, the Debtors may avoid said lien to the extent that the farm equipment, tractor and truck are "implements, ... or tools, of the trade" of the Debtors. 11 U.S.C. sec. 522(f)(2)(B).

9. The creditors do not dispute that the Debtors were engaged in the trade of farming at the date of the original petition. Cf. In re Johnson, 19 B.R. 371, 374-375 (Bankr.D.Kan. 1982).

10. Farm equipment, tractors and trucks are generally recognized as implements and tools of the trade of farming.

11. However, PCA argues that a truck can not be an implement or tool of the trade within the meaning of sec. 522(f) because it is a motor vehicle. See In re Sweeney, 7 B.R. 814, 819 note 4 (Bankr.E.D.Wis. 1980), rev'd on other grounds sub nom. In re Gifford, 669 F.2d 468 (7th Cir. 1982) (dicta).

12. A motor vehicle may be a tool of the trade under sec. 522(f). In re Pockat, 6 B.R. 24 (Bankr.W.D.Wis. 1980).

CONCLUSIONS OF LAW

1. The Debtors may avoid PCA's lien to the extent that said lien impairs an exemption claim to 1 cow, farm equipment, a tractor and a truck to which the Debtors would be entitled.

2. The Debtors' entitlement to the exemptions they have claimed is left for determination by the Trustee.

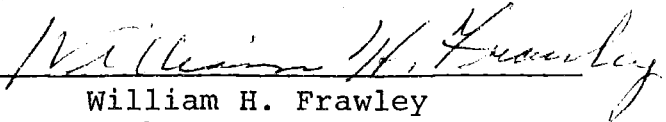
ORDERS

IT IS ORDERED THAT the lien of Production Credit Association of Sparta should be, and the same hereby is, AVOIDED to the extent to which it impairs the Debtors' valid exemption claim to 1 cow, farm equipment, a tractor and a truck.

IT IS FURTHER ORDERED THAT the Trustee determine the validity of the Debtors' claimed exemptions as provided in the Bankruptcy Code.

Dated: April 13, 1984.

BY THE COURT:



William H. Frawley
Bankruptcy Judge