

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

FILED
JUL 15 1986
CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

JAMES E. KRESS,

WF7-86-00726

Debtor.

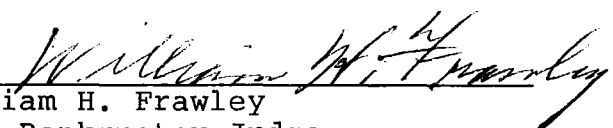
ORDER

The court having this day entered its memorandum opinion, findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS ORDERED that the motion of the debtor seeking lien avoidance with respect to the 424 International Tractor, the New Holland Chopper No. 8900 with three heads, a 12-Point Tandem Wheel Disc, and miscellaneous small tools, and the proceeds from the sale of each item is hereby granted.

Dated: July 15, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge

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MEMORANDUM OPINION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The debtor, by Jerry Slater, has brought this motion pursuant to 11 U.S.C. § 522(f) seeking to avoid liens that impair his exemptions. Rib Falls Sales, Inc. (RFS), appears by Raymond Thums and objects to the motion. Auburndale State Bank (ASB) appears by Ann E. Stevening-Roe and also objects to the motion. A hearing was held on this matter on May 14, 1986, and the issues have been submitted for determination by briefs.

The debtor filed for relief under Chapter 7 of the Bankruptcy Code on March 27, 1986. On March 29, 1986, an auction was held at which the property that is involved in this motion was sold. This property includes: a 424 International Tractor, a New Holland Chopper No. 8900 with three heads, a 12-Point Tandem Wheel Disc, and miscellaneous small tools. Each of these items was listed on the debtor's Schedule B-4 as exempt property.

The creditors argue that the debtor has failed to demonstrate any reasonable prospects for re-engaging in farm operations and, therefore, the debtor should not be allowed to exempt

farm equipment as tools of his trade. Matter of Richardson, 47 B.R. 113 (Bankr. W.D. Wis. 1985). The debtor has been a farmer all of his adult life. The debtor has filed a written affidavit stating that he intends to continue farming and will remain in farming as long as he is able. Apparently the debtor can receive some assistance in this regard from his father who is also a farmer. It is the opinion of the court that the trade of the debtor is farming.

ASB contends that the proceeds of the auction do not constitute exempt property. ASB bases this contention primarily on the assertion that the auction was not voluntary. Initially the court notes that the auction was held after the debtor filed his petition for relief under Chapter 7 of the Bankruptcy Code. The debtor consented to having the auction even though he could have stayed the auction by asserting his rights. 11 U.S.C. § 362. Regardless, "[A] debtor's available exemptions are determined at the time of filing the bankruptcy petition." In re Patterson, (W.D. Wis. 86-C-287-S, June 19, 1986). The debtor does not lose his exemptions if the property is subsequently liquidated. It is the equity of the property that is exempt. Id. The fact that the exempt property was sold does not affect the claim for exemptions.

Finally, ASB argues that the debt and the liens securing the debt to ASB all existed prior to the enactment of the 1978 Bankruptcy Code. Hence, ASB argues that the debtor cannot avoid these liens. U.S. v. Security Industrial Bank, 459 U.S. 70 (1982).

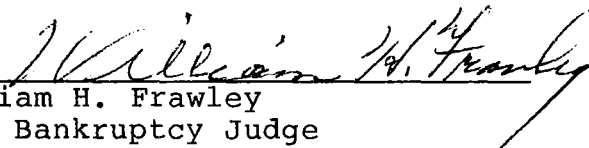
This argument is without merit. The loan obligations of the debtor to ASB were renewed yearly. These renewals constitute novations with respect to the debts. Accordingly, the debtor may avoid the liens of ASB.

It is the conclusion of the court that the items that are the subject of this dispute constitute tools of the trade of the debtor. 11 U.S.C. § 522(f). The debtor's motion for lien avoidance with respect to these items should be granted.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

Dated: July 15, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge