

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
 ) In Proceedings  
 ) Under Chapter 7  
GERALD WAYNE PITTS and )  
LINDA PITTS, ) No. BK 87-40332  
 )  
Debtors. )  
  
GERALD WAYNE PITTS and )  
LINDA KAY PITTS, )  
 )  
Plaintiffs, )  
 )  
v. ) ADVERSARY NO.  
 ) 87-0149  
UNITED STATES OF AMERICA )  
acting through its )  
Department of Agriculture )  
Farmers Home Administra- )  
tion, )  
 )  
Defendants. )

MEMORANDUM AND ORDER

This matter is before the Court on a motion for summary judgment filed by debtors Gerald Wayne Pitts and Linda Kay Pitts ("plaintiffs") against the United States of America ("defendant"). On July 17, 1987, plaintiffs filed a complaint to invalidate lien upon exempt personal property. At the pretrial hearing the parties indicated that there was no dispute as to the facts and that the matter could be submitted on the briefs. On November 18, 1987, plaintiffs filed their motion for summary judgment pursuant to Bankruptcy Rule 7056, and a memorandum of law in support of the motion in which they allege that they are entitled to judgment as a matter of law. Defendant's brief in response to the motion was filed on November 30, 1987. After reviewing the documents filed

by the parties, the Court finds as follows:

Plaintiffs filed their voluntary petition under Chapter 7 of the Bankruptcy Code on May 21, 1987. Prior to 1987, plaintiffs were engaged in farming on a part-time basis. Plaintiffs own a 1967 Case Model 830 tractor which allegedly has a fair market value of \$2,000.00. They have claimed the tractor as exempt property under Ill.Rev-Stat., ch. 110, 1112-1001(b).<sup>1</sup>

Defendant's lien on the tractor secures agricultural operating loans, no part of which were used to purchase the tractor. The agricultural loans were made to C&P Farms, a partnership of which Gerald Wayne Pitts was a principal. Both plaintiffs were among the parties who signed promissory notes evidencing the loans. The obligation of plaintiffs to defendant is also secured by junior real estate mortgages on plaintiffs' 150-acre farm and a senior, nonpossessory, nonpurchase-money lien on all of plaintiffs' farm machinery and equipment except a combine.

The sole issue to be decided by the Court is whether plaintiffs have the right to claim the tractor as exempt under the Illinois "wild-card" exemption statute which allows debtors to exempt personal property having a value of no more than \$2,000.00.

Plaintiffs filed their complaint pursuant to §522(f) which

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<sup>1</sup>In their schedule of property claimed as exempt, plaintiffs listed the tractor as exempt under Ill.Rev.Stat., ch. 110, ¶12-1001(c). That subparagraph refers to motor vehicles and is clearly not relevant to the present exemption claim. In their memorandum and proposed findings of fact, plaintiffs state that they are claiming the exemption under subparagraph (b). The Court will assume this is the only subparagraph plaintiffs are basing their exemption claim on.

provides that, "(n)otwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on the 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...." Under §522(b), plaintiffs are not permitted to claim the exemptions enumerated in the Bankruptcy Code because, in 1980, the Illinois legislature chose to "opt out" of the federal exemption scheme pursuant to §522(b)(1). See, Ill.Rev-Stat., ch. 110, ¶12-1201; Matter of Barker, 768 F.2d 191, 194 n. 4, (7th Cir. 1985); In re Cullen, 21 B.R. 118, 119 (Bankr. S.D. Ill. 1982). Consequently, the only exemptions available to plaintiffs are those under Illinois law.

Plaintiffs have chosen to base their claim of exemption on the Illinois "wild-card" exemption statute, Ill.Rev.Stat., ch. 110, ¶12-1001(b), which provides:

Personal property exempt. The following personal property owned by the debtor is exempt from judgment attachment or distress for rent:

(b) The debtor's equity interest, not to exceed \$2000 in value, in any other property.

In addition, the last paragraph of ¶12-1001 states:

The personal property exemptions set forth in this section shall apply only to individuals and only to personal property which is used for personal rather than business purposes.

On page 3 of their memorandum, plaintiffs admit they used the tractor in question in their farming operation.<sup>2</sup> As such, the tractor

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<sup>2</sup>The parties stipulated that there were no factual disputes in this case. Therefore from plaintiffs' argument the Court assumes that the tractor is used "in their farming operation" (plaintiffs'

was used for business purposes and not for personal purposes. Therefore, pursuant to the plain language contained in Ill.Rev.Stat., ch. 110, ¶12-1001, the tractor cannot be claimed as exempt personal property.

Plaintiffs have cited In re Allman, 58 B.R. 790 (C.D. Ill. 1986), in support of their position. In that case the debtor moved to exempt certain property as both "tools of the trade" under Ill. Rev.Stat., ch. 110, ¶12-1001(d)<sup>3</sup> and the "wild-card" exemption of 112-1001(b). Such stacking of exemptions is permitted under Illinois law. See, Matter of Barker, 768 F.2d 191 (7th cir. 1985). The Allman court concluded that since the stacking of exemptions is allowed, it is therefore permissible to utilize the "wild-card" exemption for tools of the trade whose value exceed the \$750.00 tools of the trade exemption. Allman, supra, at 793.

In the present case, plaintiffs do not claim that the tractor is an implement or tool of the trade which would be exempted under ¶12-1001(d). Rather, their exemption claim is based solely on the "wild-card" exemption found at ¶12-1001(b). There is no inconsistency

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brief P. 3). On page 2 of plaintiffs' proposed findings of fact plaintiffs' represent that "prior to 1987, the plaintiffs' directly engaged in farming operations," which would seem to indicate the debtors no longer farm. A tractor might, under certain circumstances, be considered personal property as opposed to property used for "business purposes." The Court has not however addressed the implications of such a finding in this case because the debtors have conceded that the tractor is used "in their farming operation."

<sup>3</sup>¶12-1001(d) provides the following exception:

The debtor's equity interest, not to exceed \$750.00 in value, in any implements, professional books or tools of the trade of the debtor.

between the "wild-card" provision of the statute and the requirement in the same statute that the exemptions only apply to personal property used for personal purposes.<sup>4</sup> Therefore, as the tractor was used for business purposes, it does not qualify as exempt property under ¶12-1001(b).

Even if plaintiffs had attempted to claim the tractor as exempt under ¶12-1001(d) as an implement or tool of the trade, it still would not have qualified as exempt property. The Seventh Circuit has recently held that a tractor is not an implement or tool of the trade for purposes of the federal bankruptcy exemption contained at §522(d)(6) of the Code.<sup>5</sup> Matter of Patterson, supra, 825 F.2d at 1147. There is no reported Illinois case concerning the applicability of the Illinois "tools of the trade" exemption to tractors, but the language of §522(d)(6) is nearly identical to that of ¶12-1001(d). Therefore, since the tractor was not an implement or tool of the trade, it would

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<sup>4</sup>In Allman, the court was faced with the difficult task of attempting to reconcile two seemingly inconsistent provisions of ¶12-1001; the tools of the trade exemption and the requirement that exemptions only apply to personal property which is used for personal rather than business purposes. Since plaintiffs in the present case have not claimed the tools of the trade exemption, this Court need not address the issue of that apparent inconsistency in the statute.

<sup>5</sup>§522(d)(6) reads as follows:

(d) The following property may be exempted under subsection (b)(1) of this section:

(6) The debtor's aggregate interest, not to exceed \$750 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

not qualify as exempt property under 1112-1001(d).<sup>6</sup>

The Court finds that plaintiffs are not entitled to judgment as a matter of law and their motion for summary judgment must be denied. Although defendant has not filed a cross motion for summary judgment, a court may, if the situation reasonably allows for such to be done, render summary judgment in favor of a non-moving party when ruling on a motion for summary judgment. Anderson v. City of Northlake, 500 F.Supp. 863, 864 n. 1 (N.D. Ill. 1980), aff'd 657 F.2d 272 (7th Cir.), cert. denied 454 U.S. 1081 (1981). See also, Engsberg v. Town of Milford, 601 F.Supp. 1438, 1446 (W.D. Wis. 1985) aff'd without opinion 785 F.2d 312 (7th Cir. 1986).

The parties and the Court have determined that there is no issue of material fact to be decided and the Court has found that, as a matter of law, plaintiffs are not entitled to claim their tractor as exempt property under Ill.Rev.Stat., ch. 110 ¶12-1001(b). Therefore, the Court will grant summary judgment in favor of defendant.

IT IS ORDERED that plaintiffs' motion for summary judgment is DENIED.

IT IS FURTHER ORDERED that summary judgment is GRANTED in favor of defendant and that plaintiffs' complaint to invalidate lien upon exempt property is DISMISSED.

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<sup>6</sup>The Court in Patterson did find that a tractor could be exempted under the federal "wild-card" exemption. However, the federal exemption statute does not contain the requirement found in the Illinois statute that the exemptions only apply to property used for personal rather than business purposes.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: January 4, 1988