

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

IN RE:) In Proceedings
) Under Chapter 7
GERALD WAYNE PITTS and)
LINDA KAY PITTS,) No. BK 87-40332
)
Debtor(s).)

GERALD WAYNE PITTS and)
LINDA KAY PITTS,)
)
Plaintiff(s),)
)
v.) ADVERSARY NO.
) 87-0150
FIRST NATIONAL BANK OF)
GRAND TOWER,)
)
Defendant(s).)

O R D E R

This matter is before the Court on a complaint to invalidate lien upon exempt property filed by debtors Gerald Wayne Pitts and Linda Kay Pitts ("plaintiffs") against the First National Bank of Grand Tower ("defendant"). The relevant facts are 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 1973 John Deere Model 3300 combine with grainhead and cornhead. The combine¹ was the only security for a nonpurchase-money agricultural production loan made by defendant to plaintiffs. No part of the loan was used to purchase the combine. Plaintiffs have claimed the combine as

¹All references to the "combine" also refer to the cornhead and grainhead attachments.

exempt property under Ill.Rev.Stat., ch. 110, ¶¶12-1001(b) and (d).²

At the hearing on the complaint, plaintiffs represented that the combine was not in working order and, therefore, was not being used for farming purposes. They further represented that if the Court granted their exemption claim on the combine they would sell it as is and keep the proceeds as exempt property.

To resolve a dispute as to the value of the combine the Court had previously ordered that it be independently appraised. At the close of the hearing the Court found the fair market value of the combine in its present, non-working condition to be \$4,000.00. The sole remaining issue to be decided by the Court is whether plaintiffs have the right to claim the combine as exempt property under Illinois personal property exemption law.

Plaintiffs filed their complaint pursuant to §522(f) which provides that, "(n)otwithstanding any waiver of exemptions, the debtor may void 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

²Contrary to their assertion in their trial memorandum, plaintiffs originally claimed the combine as exempt property under Ill.Rev.Stat., ch. 110, ¶12-1001(c). That subparagraph refers only to motor vehicles and is clearly not relevant to the present exemption claim.

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, in part, on the "wild card" provision of the Illinois 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.

Under the wild card provision, each debtor is entitled to exempt his equity interest of up to \$2,000.00 in personal property used for personal rather than business purposes.

The final provision of the exemption statute, which allows personal property exemptions only on property used for personal rather than business purposes, is ambiguous on its face and susceptible to various interpretations. The Seventh Circuit has held that exemption statutes should be liberally construed in order to carry out the legislature's purpose in enacting such statutes, i.e., the protection of debtors. Matter of Barker, 768 F.2d 191, 196 (7th Cir. 1985). In

a case where an exemption statute might be interpreted either favorably or unfavorably vis-a-vis a debtor, the court should interpret the statute in favor of the debtor. Id.

In the present case, the combine is not operational and plaintiffs have indicated that they plan to sell it in its present condition. Although debtors' non-working combine clearly is not being used for business purposes, it is not clear whether the combine satisfies the statute's requirement that the exempt property be used for personal purposes.

Given the ambiguity of the statute, and the fact that the combine is not used for business purposes, the statute should be interpreted in such a way as to allow the debtors to exempt the combine as personal property under the "wild card" provision of the Illinois exemption statute. Since each individual debtor is entitled to a \$2,000.00 "wild card" exemption, together plaintiffs are entitled to the entire \$4,000.00 value of the combine as exempt property.³

Since it has already been determined that plaintiffs are entitled to an exemption which equals the value of the combine, the Court need not address debtors' claim that they are also entitled to exemptions under Ill.Rev.Stat., ch. 110, ¶12-1001(d).

³In another adversary proceeding related to plaintiffs' bankruptcy (Adv. No. 87-0149), the Court held that a tractor owned by plaintiffs was not exempt under the "wild card" exemption because plaintiffs used the tractor in their farming operation and, therefore, it was being used for a business purpose. By contrast, the combine in the present case is not being used for a business purpose because it is not in working condition.

IT IS ORDERED that the lien of the First National Bank of Grand Tower on plaintiffs' 1973 John Deere Model 3300 combine with grainhead and cornhead is avoided to the extent of its \$4,000.00 fair market value.

_____/s/ Kenneth J. Meyers_____
U.S. BANKRUPTCY JUDGE

ENTERED: February 5, 1988