

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

BOYD C. YOCHUM and)
PATRICIA A. YOCHUM,)

CASE NO. BK82-1106

DEBTORS)

A82-532

BOYD C. YOCHUM and PATRICIA A.)
YOCHUM,)

Plaintiffs)

vs.)

HAVELOCK BANK OF LINCOLN, a)
corporation,)

Defendant)

MEMORANDUM

This matter is before me upon the complaint filed by the plaintiffs, Boyd and Patricia Yochum, against Havelock Bank praying that the judicial lien which is claimed by the defendant, Havelock Bank, against property owned by the plaintiffs be avoided under 11 U.S. Code, Section 522(f), which permits a debtor to avoid judicial liens to the extent those liens impair exemption rights under applicable law.

Here the applicable law is the law of the State of Nebraska, and more specifically, Section 40-101, which exempts to a head of family equity in the real estate homestead up to a value of \$6,500 over and above any valid, consensual mortgages on the property.

The case is one of first impression for this Court to the extent that the issue is whether property claimed as exempt should be valued at fair market value or a forced sale value.

Case law of the State of Nebraska which construes the exemption statutes suggests that the applicable standard is the fair market value of the property and not an arbitrary, forced-sale value. I so hold.

In accordance with that holding, I conclude that the fair market value of this property is the sum of \$58,000. And I

conclude that that is the value of the property for the purpose of this trial.

Given that finding, I hold that there is equity over and above the first mortgage on the property, over and above the unpaid taxes which constitute a lien against the property, and over and above the homestead exemption of \$6,500. To the extent that there is equity over those three items, it constitutes non-exempt equity and the lien of the defendant, Havelock Bank, would attach to that equity over the homestead exemption.

I should add that the homestead exemption is available to the head of the family, and the evidence is not clear in this particular case as to which party-plaintiff may be entitled to that.

To the extent that evidence may be relevant, I find that the plaintiff has failed in its burden and failed to persuade me that the evidence is sufficient to avoid the lien.

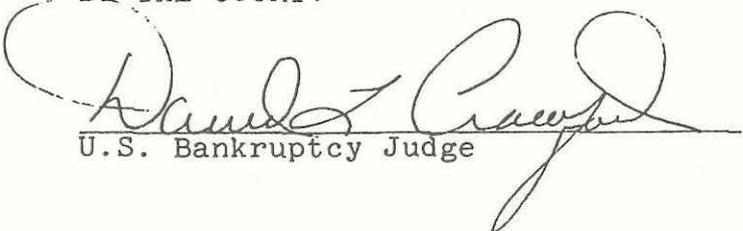
If the value of this property is, in fact, jointly owned and the unpaid real estate mortgage and the taxes are split as liabilities of each party's--as against each party's interest in the real estate and one party is entitled to the \$6,500 homestead exemption--that there still appears to be equity over and above that value against which the lien can attach.

All in all, I conclude that the evidence does not permit the avoidance of this judicial lien. My finding is in favor of the defendant and against the plaintiff.

Plaintiffs' complaint is dismissed with prejudice.

DATED: 6-29-83

BY THE COURT:


U.S. Bankruptcy Judge

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