

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
ROY & SHARON TAYLOR, ) CASE NO. BK91-82454  
 )  
DEBTOR ) CH. 7  
 ) Filing No. 10, 11,  
 ) 14, 15, 18, 21, 22, 23

MEMORANDUM

Hearing on the debtors' motion for turnover of garnished funds was held on May 15, 1992. Debtor appeared pro se. Appearing on behalf of the Credit Union was Larry Corbridge of Corbridge, Baird & Christensen, Salt Lake City, Utah.

The debtors in this Chapter 7 case requested the Court to order Pacific Rails Federal Credit Union to turn over \$1,142.00 which had been garnished by the Credit Union from Amway Corporation, an entity which is not the employer of the debtors.

The Credit Union obtained a judgment against the debtors in 1988. It executed upon certain personal property and sold it to apply the proceeds against the judgment. It then transferred the judgment from the state courts in Utah to the state courts in Michigan and served garnishment papers upon Amway Corporation. Amway Corporation responded many times, making it clear that the debtors were not employees of the Amway Corporation, but that Amway did owe the debtors funds. All of the funds were turned over to the Clerk of the appropriate court who distributed the funds, except for the amount in dispute today, to the Credit Union.

The debtors filed a Chapter 7 bankruptcy petition, pro se, in December of 1991. On the Chapter 7 form "Individual Debtor's Statement of Intention," the debtors listed an amount Pacific Rails Federal Credit Union allegedly received, \$1,142.00, and claimed that it was money intended to be used to meet child support obligations. In addition, they indicated that the amount would be claimed as exempt. On Schedule C, "Property Claimed as Exempt," the debtors listed slightly more than \$5,000.00 in exempt personal property, without listing the amount garnished from Amway.

After the trustee abandoned any interest in assets of the debtors and the case was closed, the debtors filed Filing No. 10 which this judge interpreted as a request for turnover of

property. The Court entered certain orders and gave the Credit Union the opportunity to object and request a hearing. The Credit Union did so object and a hearing was held.

At the hearing, it became clear that the debtors believe that the Credit Union has interfered with their ability to make required child support payments. It is their position that the \$1,142.00 garnished from Amway was to be applied to child support obligations due to the Clerk of the District Court in Lincoln County, Nebraska.

After the hearing, supplemental material was provided to the Court by both parties. The Court has considered all of the materials in the court file and the arguments at the telephonic hearing.

The request of the debtors is granted in part and denied in part.

The Credit Union has a legitimate judgment upon which it executed through the use of garnishments applicable under state law. The garnishment apparently is superior to any child support garnishment of the same funds. At least there is no evidence before this Court that the child support obligation is represented by a judgment transcribed to Michigan with outstanding garnishments or executions which would, under Michigan law, give precedence to such garnishments over the judgment and execution by the Credit Union. Therefore, based upon the material provided to this judge, I must find that the Credit Union garnishment was timely and took priority over others.

The funds which were garnished from Amway Corporation are not wages. They apparently are contract rights or accounts or deposits. This type of property could be exempt under Nebraska law. Nebraska Revised Statutes § 25-1552 provides "all persons who have neither lands, town lots, or houses subject to exemptions as a homestead, under the laws of this state, shall have exempt from forced sale on execution the sum of twenty-five hundred dollars in personal property, except wages. . . ."

In addition to the above general exemption statute, the Nebraska Revised Statutes at Section 25-1556 provides:

No property hereinafter mentioned shall be liable to attachment, execution or sale on any final process issued from any court in this state, against any person being a resident of this state:  
(1) The immediate personal possessions of the debtor and his family; and (2) all necessary wearing apparel of the debtor and his family; all kitchen utensils and household furniture to be

selected by the debtor, not exceeding in value fifteen hundred dollars; all equipment or tools used by the debtor or his family for their own support not exceeding fifteen hundred dollars in value; the provisions for the debtor and his family necessary for six months' support, either provided or growing, or both; and fuel necessary for six months.

This statutory section has been interpreted by the United States District Court for the District of Nebraska to eliminate cash or cash equivalents from exemptions under "the provisions for debtor and his family necessary for six months' support." First Nat'l. Bank of Wahoo v. Plihal, Neb. Bkr. 89:393.

On Schedule C, the debtors exempted two automobiles with a total value of \$4,000.00 which they claimed were exempted under Section 524 and 522, apparently of the Bankruptcy Code. The true statutory authority for such exemption is Nebraska Revised Statute 25-1552. The debtors also attempted to exempt \$300.00 worth of Amway products, \$100.00 of office equipment and other miscellaneous personal property, including furniture, rings and wardrobe. The Amway products and office equipment equal \$400.00 in exempt property. Therefore, the debtors could claim under Nebraska Revised Statute § 25-1552 both cars, the Amway products and the office equipment for a total of \$4,400.00 in exempt property. This would leave them a total of \$600.00 in other property to exempt under Section 25-1552. The household goods and clothing and immediate personal possessions are exempt under Section 25-1556.

The funds held by Amway and garnished by the Credit Union, but held by the Michigan Court on the petition date, are exemptible under Nebraska Revised Statute § 25-1552. However, only \$600.00 would be so exempt. Therefore, the motion would have to be denied with regard to the excess over \$600.00.

The \$600.00 is appropriately exempt under the Nebraska Statute and the debtors have the right under 11 U.S.C. § 522(f) to avoid a judicial lien on such exempt amount. A proceeding by a debtor to avoid a lien on property exempt under Section 522(f) may be brought by motion in accordance with Fed. Bankr. R. 9014. (See Fed. Bankr. P. 4003(d)). Filing No. 10, although not entitled "motion," has been treated as a motion for turnover of property for purposes of this case. Both parties have had appropriate notice and an opportunity to present evidence in this contested matter. The issue which has been presented and argued is whether or not the property is exempt and the Credit Union must release its claim to the property. This is the same issue as would be framed by a motion to avoid the judgment lien under 11 U.S.C. § 522(f).

The Court finds that on the petition date there was an outstanding garnishment of funds held by Amway Corporation and transferred by such corporation to a Clerk of Court in Michigan. Those funds were being held by the Michigan Court on the petition date. Six hundred dollars of those funds are exempt under the Nebraska Statutes if appropriately listed as exempt. The debtors, although not specifically listing the property as exempt on Schedule C, did list the property on the "Individual Debtor's Statement of Intention" in detail and claimed it as exempt with the indication that the lien would be avoided pursuant to § 522(f). Although, technically, this Court could require the debtors to amend Schedule C to include the funds as exempt, this judge believes that requiring such a technical following of the Code would exalt form over substance.

Both parties and this judge know what the debtors intend. They intend to exempt assets in which they had a property interest and could claim as exempt on the date of the petition. Since the property had not been transferred from the Clerk of Court to the Credit Union on the date of the petition, the debtors still held a property interest on that date. They had the right to bring an avoidance action, by motion, under 11 U.S.C. § 522(f). There is no statute of limitations on the right to bring such an action.

Based upon this analysis, I find that the debtors have the right to exempt \$600.00 of the funds in question and to avoid the lien on such funds. Therefore, I find that the lien is avoided and that the Credit Union, or its counsel, who recently have received payment from the Clerk of Court in Michigan, should and are hereby ordered to turn over the amount of \$600.00 to the debtors.

The Clerk of the Bankruptcy Court shall provide one copy of this order and the contemporaneously filed Journal Entry to the debtors and to counsel for the Credit Union.

DATED: August 12, 1992.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

|                      |   |                        |
|----------------------|---|------------------------|
| IN THE MATTER OF     | ) |                        |
|                      | ) |                        |
| ROY & SHARON TAYLOR, | ) | CASE NO. BK91-82454    |
|                      | ) | A                      |
| <u>DEBTOR(S)</u>     | ) |                        |
|                      | ) | CH. 7                  |
|                      | ) | Filing No. 10, 11, 14, |
|                      | ) | 15, 18, 21, 22, 23     |
| Plaintiff(s)         | ) |                        |
| vs.                  | ) | <u>JOURNAL ENTRY</u>   |
|                      | ) |                        |
|                      | ) |                        |
| <u>Defendant(s)</u>  | ) | DATE: August 12, 1992  |
|                      | ) | HEARING DATE: May 15,  |
|                      | ) | 1992                   |

Before a United States Bankruptcy Judge for the District of Nebraska regarding debtor's motion for turnover of garnished funds.

APPEARANCES

Roy & Sharon Taylor, pro se

Larry Corbridge, Attorney for Credit Union

IT IS ORDERED:

The lien of Pacific Rails Federal Credit Union on garnished property of the debtor is avoided under 11 U.S.C. § 522(f) to the extent of \$600.00. The Credit Union is directed to turn over \$600.00 to debtor.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge