

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

LARRY KELLEY and)
VIOLA KELLEY,)

CASE NO. BK79-1588

DEBTORS)

A80-29

LARRY KELLEY and)
VIOLA KELLEY,)

Plaintiffs)

vs.)

FARMER'S COOP ELEVATOR COMPANY, INC.,)

Defendant)

MEMORANDUM AND ORDER

This is a proceeding to avoid a judicial lien. Plaintiffs alleged that defendant has a nonpurchase money judgment lien for \$1,054.00 plus costs and attorneys' fees on a certain tract of real estate and states that the lien impairs exemptions to which plaintiffs are entitled under 11 U.S.C. §522(b). Defendant answered, admitting the lien and stating that the lien does not impair any exemptions to which plaintiffs are entitled. Defendants further alleged that the value of the real estate is listed on plaintiffs' property schedule as \$14,000 and that this exceeds the amount of the exemption in real property to which plaintiffs are entitled. Plaintiffs then moved for summary judgment, stating that the exemption is claimed under 11 U.S.C. §522(d)(5), which allows an exemption of up to \$7,900 in any property and that this is a joint case wherein each debtor is entitled to the exemption.

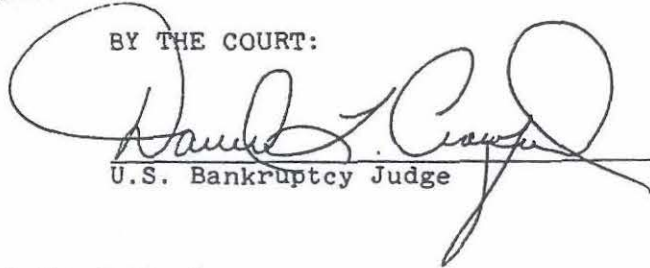
Plaintiffs' motion is unaccompanied by any affidavits or other evidence.

Plaintiffs apparently assume that the property schedules from the bankruptcy proceedings are before the court in this proceeding. However, as the bankruptcy proceedings are separate from these adversary proceedings, any documents from the bankruptcy proceedings which are necessary to a resolution of issues in these proceedings must be offered as exhibits. In the absence of any exhibits or affidavits, plaintiffs' motion must be treated as one for judgment on the pleadings. Local Rule 20 E. On the basis of the pleadings, an issue of material fact exists. Therefore, it is

ORDERED that plaintiffs' motion for summary judgment be,
and hereby is, denied.

DATED: April 7, 1980.

BY THE COURT:



A handwritten signature in cursive script, appearing to read "Hank C. [unclear]", is written over a horizontal line. Below the line, the text "U.S. Bankruptcy Judge" is printed.

Copies mailed to each of the following:

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