



as exempt to the extent of the dollar amounts shown pursuant to Official Code of Georgia Annotated (O.C.G.A.) §44-13-100(a)(1), (a)(6), and (a)(7):

John Deere 4020 Tractor	\$3,000
International Tractor	4,000
4 Row Cultivator	200
John Deere Bottom Plow	350
Rotary Mower	600
Massey Ferguson Planter	300
Massey Ferguson Grain Drill	400
IH Loadstar 1600 Tuck	3,000
2 Nursing Tanks	200
Front End Loader	450
International Tractor F1466	1,500
International Harrow 470	500
Grain Chief Dryer 300 Bushel	500
Spray Rig 300 Gallon	200
Valley 6 Tower Pivot/John Deere Pumping Unit Engine	6,000
Valley 3 Tower Pivot/John Deere Pumping Unit Engine	3,000
Valley 5 Tower Pivot/John Deere Pumping Unit Engine	5,000
Valley 5 Tower Pivot/John Deere Pumping Unit Engine	5,000

Debtor's interest: \$34,200 Value exempt: \$5,500.

Debtor does not indicate in his amended schedule of exempt property what dollar value of each item of equipment he claims is exempt. However, at hearing on his motion debtor indicated that it is the following property which he seeks to retain and hence avoid FmHA's lien against:

John Deere 4020 Tractor	\$3,000
4 Row Cultivator	200
John Deere Bottom Plow	350
Rotary Mower	600
Massey Ferguson Planter	300
Massey Ferguson Grain Drill	400
2 Nursing Tanks	200 <sup>1</sup>

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<sup>1</sup>It is assumed that debtor is claiming the dollar values he assigned in his amended schedules to these items of equipment as exempt.

(hereinafter collectively "the exempt equipment").

It is undisputed that FmHA holds a nonpossessory, nonpurchase-money security interest in the equipment. FmHA did not object to debtor's claim of exemptions.

Debtor's petition, Schedule I, reflects that his only source of income as of the date of the petition is social security benefits, payments of Four Hundred Forty-Three and No/100 (\$443.00) Dollars each month. Debtor testified that he has operated a farm business virtually all of his life. He is now 69 years old. Debtor underwent knee surgery in early 1992. Because of the problem with his knee, debtor testified, he was not able to operate his farming business in 1992. However, he further testified that he fully intends to continue farming upon full recuperation of his knee. Although debtor no longer owns the land he previously used for his farming operation, he testified that Joyce Williams will allow him to plant 425 acres she owns pursuant to a share crop arrangement. Debtor also testified that the equipment is necessary to conduct his future farming operations.

FmHA argues that the subject equipment is not "implements" or "tools of the trade" because debtor is not currently in the farming business and will not likely farm again due to his age and the fact that he no longer owns any farmland.

#### **CONCLUSIONS OF LAW**

The Bankruptcy Code permits a debtor to

avoid the fixing of a lien on an 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, if such lien is --

. . . .  
(2) a nonpossessory, nonpurchase-money security interest in any --

. . . .  
(B) implements . . . or tools, of the trade of the debtor . . . .

11 U.S.C. §522(f)(2)(B).

In order to utilize the lien avoidance provisions of §522(f), the subject property must be exempt under applicable law. 11 U.S.C. §522(f). Because no creditor or the Chapter 7 trustee timely objected to the debtor's claimed exemption, the property is exemptible as claimed. 11 U.S.C. §522(l), Bankruptcy Rule 4003(b); see generally, Taylor v. Freeland & Kronz, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1644, 118 L.E.2d 280 (1992).<sup>2</sup> The question raised is whether the property qualifies as "implements" or "tools of the trade" for the purpose of lien avoidance pursuant to §522(f)(2)(B). The debtor bears the burden of proof that a lien is avoidable pursuant to §522(f). In re: Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992); In re: Sherwood, 79 B.R. 399 (Bankr. W.D. Wis. 1986).

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<sup>2</sup>However, the debtor claimed an aggregate exemptible interest of only \$5,500 in his amended schedule of exempt property. The amended petition reflects that the aggregate value of all the farm equipment listed as exempt property is \$34,200. No values claimed as exempt are assigned with respect to the individual items of property. The debtor indicated at hearing which items of equipment he seeks to retain. These items, listed above, have an aggregate value of \$5,050. Debtor is entitled to only a \$450 exemption with respect to the remainder of the farm equipment itemized in his amended exemption schedules as that is the balance of the value claimed exempt.

The temporary abandonment of a trade does not bar lien avoidance pursuant to §522(f)(2)(B) if the property is "essential to the debtor's livelihood." Powell v. Bank of Dodge County, Ch. 7 case No. 92-30066 slip op. at 10 (Bankr. S.D. Ga. Davis, C.J. Nov. 23, 1992). In determining whether a debtor that previously engaged in the business of farming may utilize §522(f) to avoid a lien on property alleged to be an implement or tool of the trade, the court "'should take into account the intensity of the debtor's past farming activities and the sincerity of his intentions to continue farming. . . .'" In re: Lafond, 791 F.2d 623, 626 (8th Cir. 1986) (quoting the lower court without citation). Further, "[t]he fact that [the] [d]ebtor's primary income is derived from retirement benefits and not from the use of the equipment should not affect the court's decision." Powell, supra, at 12 (citing In re: Jones, 87 B.R. 738, 741 (Bankr. M.D. Ga. 1988); In re: Walkington, 42 B.R. 67, 72 (Bankr. W.D. Mich. 1984); and Matter of Lipe, 36 B.R. 597, 598-99 (Bankr. W.D. Mo. 1983)). The debtor testified he has been a farmer most of his life, stating farming is "all I know." Based on his uncontradicted testimony, debtor fully intends to continue farming, albeit with land he does not own. In light of debtor's history in the farming business and sincere intent to resume farming, his temporary break from farming, lack of land ownership, and current dependence on social security benefits do not preclude a finding that he is engaged in the business of farming for the purpose of utilizing §522(f)(2)(B) to avoid FmHA's lien on the

equipment, which debtor must have to resume his farming business. Debtor has met his burden to prove FmHA's lien on the equipment impairs an exemption to which he is entitled and thus is avoidable pursuant to 11 U.S.C. §522(f).

It is therefore ORDERED that debtor's motion to avoid the lien of the Farmers Home Administration is granted with respect to the following property: (1) John Deere 4020 Rowing Tractor; (1) 4 Row Cultivator; (1) John Deere Bottom Plow; (1) Rotary Mower; (1) Massey Ferguson Planter; (1) Massey Ferguson Grain Drill; (2) Nursing Tanks.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 25th day of January, 1993.