

UNITED STATES BANKRUPTCY COURT
 DISTRICT OF SOUTH DAKOTA
 Southern Division

In re:)	Bankr. No. 99-40138
Daniel W. Barrett)	Chapter 7
Soc. Sec. No. 504-82-2260)	
and)	
Magen L. Barrett)	
a/k/a Magen's Floral Designs)	
Soc. Sec. No. 504-90-9270)	
Debtors.)	
)	
Daniel W. Barrett)	Adv. No. 01-4011
Magen L. Barrett)	
Plaintiffs,)	DECISION RE: LIEN VALIDITY
-vs-)	
Small Business Administration)	
and)	
First Dakota National Bank)	
Defendants.)	

The matter before the Court is Plaintiffs-Debtors' complaint seeking a declaratory judgment regarding the validity of a lien held by the Small Business Administration on an insurance policy declared exempt by Plaintiffs-Debtors and Defendant Small Business Administration's counterclaim. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Decision and accompanying Order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes that the Small Business Administration's lien remains post-discharge.

I.

Daniel W. and Magen L. Barrett ("Debtors") filed a Chapter 7 petition. According to their schedules and a later-filed amendment, Debtors jointly owned a life insurance policy that had a cash surrender value of \$20,000. They claimed the policy exempt

any debt to SBA has been discharged. Alternatively, they argued that any lien interest held by SBA was inferior to their exemption claim. Debtors also urged the Court to use its equitable powers under 11 U.S.C. § 105 to remove the lien.

SBA moved for a judgment on the pleadings. It argued that Debtors have failed to set forth any legal basis on which the SBA's lien would be void or voidable.

Debtors filed an amended answer to SBA's counterclaim to include a reference to S.D.C.L. § 43-45-6 for their proposition that the SBA's lien interest is inferior to Debtors' exemption claim. Debtors also filed a response to SBA's Motion for Judgment on the Pleadings. They acknowledged that 11 U.S.C. § 522(f), which governs the removal of certain liens on exempt property, did not afford them any relief. However, they argued that the assignment of the life insurance policy from them to SBA did not contain any waiver of the Debtors' statutory exemption in life insurance proceeds provided by S.D.C.L. § 58-12-4. Therefore, they argued that their exempt interest of \$20,000 comes first and that the Court should avoid SBA's lien on the \$20,000 using its equitable powers. Debtors stated that the issue presented is "analogous to a creditor who holds a mortgage which fails to contain a Waiver of a Homestead Exemption." Debtors did not cite any authority for this position.

In its reply, SBA argued that S.D.C.L. §§ 43-45-6 and 58-12-4 specifically exclude an exemption in life insurance proceeds that have been assigned. In support of its argument, SBA cited *Norwest Bank South Dakota v. Hogg (In re Hogg)*, 76 B.R. 735, 745 (Bankr. D.S.D. 1987).

III.

SBA has correctly characterized the post-discharge status of its lien on Debtors' exempt life insurance. Only Debtors' personal liability on the subject note has been discharged. 11 U.S.C. § 727(b). Absent other specific relief granted by this Court, any valid lien on this exempt life insurance policy that existed on the petition date was not affected by the discharge. 11 U.S.C. § 522(c)(2). As acknowledged by Debtors, 11 U.S.C. § 522(f), which is cited in § 522(c)(2), did not afford Debtors any relief. Relief under the several other Chapter 5 Code sections cited in § 522(c)(2) also was not timely obtained.

Further, the circumstances presented do not justify a use of the Court's § 105(a) powers to void SBA's lien. Debtors' particular circumstances notwithstanding, the Court's equitable powers under § 105(a) are not appropriately used when specific Bankruptcy Code sections and rules otherwise govern the relief sought. *Viking Associates, L.L.C. v. Draws (In re Olson)*, 120 F.3d 98, 102 (8th Cir. 1997) (quoting therein *Official Comm. of Equity*

Security Holders v. Mabey, 832 F.2d 299, 302 (4th Cir. 1987), cert denied, 485 U.S. 962 (1988)).

Finally, issues as to the priority of SBA's lien versus the Debtors' exemption under S.D.C.L. § 58-12-4 are better determined by the appropriate nonbankruptcy court if and when SBA's seeks foreclosure. The subject property is no longer bankruptcy estate property. 11 U.S.C. §§ 522(b) and 554(c). Bankruptcy law issues are not presented.

An order will be entered dismissing Plaintiffs-Debtors' complaint and Defendant SBA's counterclaim. Both will be dismissed without prejudice to any nonbankruptcy law issues that were raised. Each party shall bear their own costs, including attorneys' fees.

So ordered this 16 day of July, 2001.

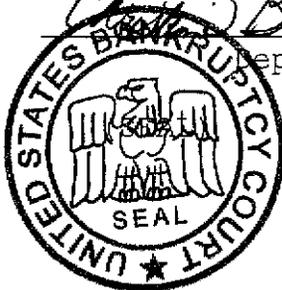
BY THE COURT:



Irvin N. Hoyt
Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk

By: Charles L. Nail, Jr.
Deputy Clerk



NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

JUL 17 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

JUL 17 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By: CK

Case: 01-04011 Form id: 122 Ntc Date: 07/17/2001 Off: 4 Page : 1
Total notices mailed: 5

Plaintiff Barrett, Daniel W. 606 James Place, Yankton, SD 57078

Plaintiff Barrett, Magen L. 606 James Place, Yankton, SD 57078

Aty Howey-Fox, Wanda L. PO Box 18, Yankton, SD 57078

Aty Haverly, Jon K. 110 S. Phillips Ave., #200, Sioux Falls, SD 57104

Intereste Lovald, John S. Box 66, Pierre, SD 57501

under S.D.C.L. § 43-45-6. Debtors stated that First Dakota National Bank ("Bank") held three partially secured business notes, but the collateral for these loans was not stated. The Small Business Administration ("SBA") was not scheduled as a creditor.

Debtors received their discharge of debts without any objection. The case trustee made a small distribution to unsecured creditors. The case was closed in early 2000.

On March 23, 2001, Debtors filed a complaint against Bank and SBA. They stated SBA was apparently a guarantor on a business note that Bank held. They stated SBA was still maintaining, as collateral for the note, a lien on the life insurance policy that Debtors had declared exempt. Debtors argued that by virtue of their discharge, Bank and SBA should be required to release this lien.

Bank did not answer, but the Court has not entered a default judgment against it. SBA timely answered that its lien is not voidable although Debtors' personal liability on the subject note was discharged. SBA counterclaimed that the subject note was secured by a valid lien on the life insurance policy, which remains enforceable post-discharge. SBA also wanted a declaration that it was entitled to realize upon the cash surrender value of the policy.

Debtors timely answered the counterclaim. They argued that