

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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May 29, 1997

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Chapter 7 Trustee
Post Office Box 66
Pierre, South Dakota 57501

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714 West 41st Street
Sioux Falls, South Dakota 57105

Subject: ***In re David C. and Janice L. Webb,***
Chapter 7; Bankr. No. 96-40476

Dear Trustee and Counsel:

The matter before the Court is the OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS filed by the case trustee¹ on August 7, 1996 and Debtors' response thereto. The matter was submitted to the Court on stipulated facts and briefs.² This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that the Trustee's objection must be sustained because Debtors may claim exempt only \$200.00 worth of "tools and implements of any mechanic" under S.D.C.L. § 43-45-5(4) and only \$200.00 in "household and kitchen furniture" under S.D.C.L. § 43-45-5(2).

SUMMARY. David C. Webb is in the business of repairing and painting water towers. He owns various personalty associated with that business. David Webb and his wife Janice L. Webb filed a Chapter 7 petition on June 20, 1996. In their schedules filed July 8, 1997, Debtors claimed exempt under S.D.C.L. § 43-45-5(2) \$650.00 in household goods. Under S.D.C.L. § 43-45-5(4), Debtors also declared exempt certain personal property valued at

¹ Trustee A. Thomas Pokela was replaced by Trustee John S. Lovald on December 13, 1997.

² The deadlines for filing the stipulated facts and briefs were informally extended to allow the new case trustee sufficient time to become familiar with the file. Debtors' brief also was substantially delayed.

\$54,725.00. The schedule of exempt property indicated there was an exhibit attached that delineated what this equipment included. It also indicated that all this property was subject to a security interest. No exhibit was attached that was related to the schedule of exempt property. However, an attachment to Debtors' schedule of personal property, which listed various pieces of office and business equipment, also totaled \$54,275.00. Consequently, the Court presumes, and the parties agree in their stipulated facts, that Debtors declared exempt that same office and business equipment.

On August 7, 1996, the case trustee objected to Debtors' claimed exemptions on the grounds that: (1) Debtors' claimed exemptions under S.D.C.L. § 43-45-5(4) exceeded the statutory allowance by \$54,525.00; (2) Debtors' claimed exemption in household goods exceeded the allowance under S.D.C.L. § 43-45-5(2) by \$450.00; and that Debtors were not mechanics who could claim a tool of the trade exemption under S.D.C.L. § 43-45-5(4). A preliminary hearing was held October 2, 1996. The parties were given until November 18, 1996 to complete discovery.

By letter dated January 7, 1997, the case trustee advised the Attorney General for the State of South Dakota that a constitutional issue might be raised by his objection. The Attorney General responded by letter to point out that S.D.C.L. § 2-14-8 dictates that punctuation, or the lack thereof, should not be allowed to affect the spirit or purpose of S.D.C.L. § 43-45-5(4). He did not further intervene in the matter.

The case trustee filed his brief on January 23, 1997. He argued that the exemption for tools and implements of a mechanic at S.D.C.L. § 43-45-5(4) is limited to mechanic's hand tools or inventory and does not cover such items as construction shacks, expensive automobiles, or heavy duty industrial machinery. The trustee also argued that the exemption is limited to a total of \$200.00 in value. He bases this argument on article XXI, § 4 of the South Dakota Constitution.

Debtors filed their brief April 4, 1997 with the parties' stipulated facts. In their brief, Debtors argued, among other things, that § 43-45-5(4) provides an unlimited exemption for tools of trade and that all the personalty claimed by Debtors are the tools of Debtor David Webb's trade of painting water towers and the attendant record keeping. Debtors also argue that the statute must be interpreted consistent with the South Dakota Constitution.

APPLICABLE LAW. The Constitution for the State of South Dakota specifically addresses exemptions. It states:

The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws exempting from forced sale a homestead, the value of which shall be limited and defined by law, to all heads of families, and a reasonable amount of personal property, the kind and value of which to be fixed by general laws.

S.D. CONST. art. XXI, § 4. Section 43-45-5 of the South Dakota Code sets forth one of the exemptions that the state legislature created in response to article XXI, § 4 of the Constitution. It states:

Instead of the exemptions of personal property granted in § 43-45-4, the debtor, if the head of a family, may select and choose the following property, which shall then be exempt, namely:

(4) The tools and implements of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and in addition thereto, stock in trade not exceeding two hundred dollars in value.

S.D.C.L. § 43-45-5(4) (in pertinent part). This statute was previously interpreted in *In re Lind*, 10 B.R. 611 (Bankr. D.S.D. 1981) (Ecker, J.). In *Lind*, the Court concluded that exempt "tools and implements of any mechanic" under § 43-45-5(4) were not limited to \$200.00 in total value. However, the Court did not consider article XXI, § 4 in its analysis. *Id.* at 615

Section 2-14-8 of the South Dakota Code provides guidance on how the comma in subsection (4) of § 43-45-5 should be considered:

Punctuation shall not control or affect the construction of any provision when any construction based on such punctuation would not conform to the spirit and purpose of such provision.

This section has previously been interpreted to mean that a misplaced punctuation mark in a statute should not be read so as to cause an interpretation that is inconsistent with the purpose of the statute in which the mark is found. *LaBore v. Muth*, 473 N.W.2d 485, 489 (S.D. 1991).

DISCUSSION. When S.D.C.L. § 43-45-5(4) is read in light of article XXI, § 4 of the South Dakota Constitution and S.D.C.L. § 2-14-8, it is clear that the legislature intended an exemption for "tools and implements of any mechanic" to be limited in value to \$200.00. To read the \$200.00 limitation to apply only to the final clause regarding "stock in trade" would not only be inconsistent with the Constitution but would also be inconsistent with the other exemptions provided in § 43-45-5. Virtually all the exemptions in § 43-45-5 are limited in value or number. Accordingly, a consistent reading of § 43-45-5(4) dictates that "tools and implements of any mechanic" also are limited in value. Moreover, § 2-14-8 of the South Dakota Code dictates that a confusing comma should not defeat the purpose and spirit of the statute. The conclusion in *Lind*, 10 B.R. at 615, on this issue is not adopted.

The exemption provision for a mechanic's tools and stock in trade has changed little since the Territory of Dakota's Compiled Laws § 5129. The only significant change is that a \$600.00 exemption for the library and instruments of a professional

originally was the last sentence of the subsection regarding the mechanic's exemption. [The value for the professional's exemption also changed a few times over the years and is now \$300.00.] Later, the professional's exemption was separated into subsection (5). S.D.C. § 51.1804 (1939). Since the professional's library and instruments exemption originally was limited in value and also was set forth with the mechanic's tools and stock in trade exemption, it lends further support that the Legislature intended that a mechanic's tools and stock in trade also be limited in value.

While neither party addressed the issue in detail, S.D.C.L. § 43-45-5(2) also limits Debtors' exemptions in "household and kitchen furniture" to \$200.00. Debtors' schedule of exempt property exceeded that allowance by \$450.00. Section 43-45-5(21) does not have any questionable comma to cloud the value-limit issue. It clearly provides for a \$200.00 limit.

Debtors will need to amend their schedule of exempt property to limit their "tools and implements of any mechanic" to items that total \$200.00 in value and to limit their "household and kitchen furniture" to items that total \$200.00 in value. Alternatively, Debtors may utilize the exemptions under S.D.C.L. § 43-45-4. After the amended exemptions are filed and noticed to all creditors and other parties in interest, see F.R.Bankr.P. 1009(a) and Local Bankr. R. 1009-3, the trustee or another party in interest may object pursuant to F.R.Bankr.P. 1009(a).

Until Debtors trim their exemptions to comply with the South Dakota Code, there is no need to decide what property qualifies as "tools and implements of any mechanic" to meet S.D.C.L. § 43-45-5(4) or to value the property claimed exempt. Those matters can be addressed, if necessary, through objections to the amended exemptions.

An Order will be entered sustaining the Trustee's objection to Debtors' original claimed exemptions as provided herein.

Sincerely,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: case file (docket original; copies to parties in interest)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Southern Division

In re:) Bankr. No. 96-40476
)
DAVID CONRAD WEBB) Chapter 7
Soc. Sec. No. 471-58-4106)
and)
JANICE LEE WEBB) ORDER SUSTAINING
Soc. Sec. No. 472-70-2270) TRUSTEE'S OBJECTION
) TO EXEMPTIONS
Debtors.)

In recognition of and compliance with the letter decision entered this day,

IT IS HEREBY ORDERED that the Trustee's August 7, 1996 objection to Debtors' claimed exemptions is SUSTAINED to the extent that Debtors may declare exempt under S.D.C.L. § 43-45-5(4) "tools and implements of any mechanic" that do not exceed \$200.00 in total value and may declare exempt under S.D.C.L. § 43-45-5(2) "household and kitchen furniture" that does not exceed \$200.00 in total value.

So ordered this _____ day of May, 1997.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk

By: _____
Deputy Clerk

(SEAL)