

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

In the Matter of: : Chapter 7  
: :  
MARCUS D. CHAPMAN, dba :  
CHAPMAN CONSTRUCTION COMPANY, :  
and JODI U. CHAPMAN, :  
: :  
Debtors : Case No. 99-50746 RFH  
: :  
: :  
MARCUS D. CHAPMAN, dba :  
CHAPMAN CONSTRUCTION COMPANY, :  
and JODI U. CHAPMAN, :  
: :  
Movants :  
: :  
: :  
vs. :  
: :  
: :  
FIRST NATIONAL BANK OF :  
BALDWIN COUNTY, :  
: :  
Respondent :

BEFORE

ROBERT F. HERSHNER, JR.  
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Movants:

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For Respondent:

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MEMORANDUM OPINION

Marcus D. Chapman, dba Chapman Construction Company, and Jodi U. Chapman, Movants, filed on January 24, 2000 a Motion to Avoid Lien. First National Bank of Baldwin County, Respondent, filed a response on February 1, 2000. A hearing was held on March 9, 2000. The Court, having considered the evidence presented and the arguments of counsel, now publishes this memorandum opinion.

Movants obtained a loan from Respondent in the principal amount of \$3,460. Movants signed a promissory note and security agreement dated March 4, 1996. The security agreement contains a dragnet clause.<sup>1</sup> Movants used the proceeds to purchase a tractor. Respondent filed a UCC-1 financing statement on the tractor. Movants have paid off this loan. Respondent has not released its lien because the tractor is collateral for Movants' other obligations under the dragnet clause.

Movants obtained a second loan from Respondent in the principal amount of \$40,098. Movants signed a promissory note and security agreement dated February 12, 1997. The

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<sup>1</sup> The dragnet clause provides that any present or future agreement securing any other debt also will secure payment of this loan. The dragnet clause also provides that this security agreement secures this loan and any other present or future debt.

security agreement contains a dragnet clause. Movants used the proceeds to purchase a truck, a loader, and a twenty-foot flatbed trailer. Respondent filed a lien on the title to the truck. Movants gave Respondent a lien on a two-acre parcel of realty. Respondent filed a UCC-1 financing statement on the loader and the trailer. The State of Georgia issued a Certificate of Title dated March 14, 1997, listing Mr. Chapman as the owner of the trailer. Respondent is not listed as a lienholder on the title. Respondent was not aware that a title was issued on the trailer.<sup>2</sup> Movants owed \$32,971.65 on this obligation when they filed for bankruptcy relief. This obligation was never refinanced.

Movants obtained a third loan from Respondent in the principal amount of \$15,060. Movants signed a promissory note and security agreement dated February 25, 1997. The security agreement contains a dragnet clause. Movants used the

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<sup>2</sup> Movants do not contest the validity of Respondent's lien on the trailer.

proceeds to purchase a backhoe. Movants gave Respondent a lien on the backhoe. Movants have paid off this loan.

Mr. Chapman used the tractor and the trailer when he was self-employed in the construction business. Mr. Chapman was last self-employed about one year ago. Mr. Chapman wants to return to self-employment. Mr. Chapman now works for Brooks Equipment Company as an equipment operator. Mr. Chapman sometimes uses the tractor and the trailer at Brooks Equipment Company. Mr. Chapman last used, at Brooks Equipment Company, the trailer about one month ago and last used the tractor about two months ago. Mr. Chapman uses the tractor and the trailer almost every weekend "doing driveways on his side jobs." Mr. Chapman also uses the tractor for maintaining the yard at Movants' residence. Mrs. Chapman does not personally use the tractor or the trailer.

Movants suffered financial problems and filed a petition under Chapter 7 of the Bankruptcy Code on February 22, 1999. Movants, at the time of their bankruptcy filing, owed Respondent \$32,971.65 on the loan dated February 12, 1997, \$1,090.39 on personal lines of credit, and \$5,587.53 on credit card obligations. Movants and Respondent agree that the tractor and the trailer each are worth \$2,000.

In the motion before the Court, Movants seek to avoid Respondent's security interest to the extent that Respondent's liens impair their exemptions in their tractor

and trailer under section 522(f)(1)(B)(ii) of the Bankruptcy Code.<sup>3</sup> This section provides as follows:

**§ 522. Exemptions**

. . . .

**(f)(1)** Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may 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-

. . . .

**(B)** a nonpossessory, nonpurchase-money security interest in any-

. . . .

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

11 U.S.C.A. § 522(f)(1)(B)(ii) (West Supp. 1999).

Movants cannot avoid a purchase money security interest under section 522(f)(1)(B)(i). Respondent contends that its liens on the tractor and the trailer are purchase money security interests. Movants have the burden of demonstrating that they are entitled to avoid Respondent's

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<sup>3</sup> 11 U.S.C.A. § 522(f)(1)(B)(ii) (West Supp. 1999).

security interest. Carter v. W.S. Badcock Corp. (In re Carter), 180 B.R. 321, 323 (Bankr. M.D. Ga. 1995).

"To determine whether a security interest is a purchase-money security interest, the Court must look to the relevant state law." Franklin v. ITT Financial Services (In re Franklin), 75 B.R. 268, 270 (Bankr. M.D. Ga. 1986).

The Georgia Code defines purchase money security interest as follows:

**11-9-107. Definition: "purchase money security interest."**

A security interest is a "purchase money security interest" to the extent that it is:

(a) Taken or retained by the seller of the collateral to secure all or part of its price; or

(b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

O.C.G.A. § 11-9-107 (1994).

"A PMSI requires a one-to-one relationship between the debt and the collateral." SouthTrust Bank of Alabama, N.A. v. Borg-Warner Acceptance Corp., 760 F.2d 1240, 1243 (11<sup>th</sup> Cir. 1985).

In Snap-On Tools, Inc. v. Freeman (In re Freeman),<sup>4</sup>

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<sup>4</sup> 956 F.2d 252 (11<sup>th</sup> Cir. 1992).

the Eleventh Circuit Court of Appeals stated:

A security interest in collateral is "purchase money" to the extent that the item secures a debt for the money required to make the purchase. If an item of collateral secures some other type of debt, e.g., antecedent debt, it is not purchase money. In re Fickey, 23 B.R. 586, 588 (Bankr. E.D. Tenn. 1982). A purchase money security interest cannot exceed the price of what is purchased in the transaction wherein the security interest is created. In re Manuel, 507 F.2d 990, 993 (5<sup>th</sup> Cir. 1975).

956 F.2d at 254-55.

The Court is persuaded that Respondent's lien on Movants' trailer is a purchase money security interest. Movants used the loan proceeds to purchase the trailer. Movants continue to owe a balance on the loan. The loan was never refinanced and there was no loan consolidation. Movants' loan was not a revolving credit account and no future advances were made. The Court is persuaded that Movants cannot avoid Respondent's lien on the trailer. Compare SouthTrust Bank of Alabama, N.A. v. Borg-Warner Acceptance Corp., 760 F.2d 1240 (11<sup>th</sup> Cir. 1985); Goodyear Tire & Rubber Co. v. Staley (In re Staley), 426 F. Supp. 437 (M.D. Ga. 1977); W.S. Badcock Corp. v. Banks (In re Norrell), 426 F. Supp. 435 (M.D. Ga. 1977).

The Court is not persuaded that Respondent's lien on Movants' tractor is a purchase money security interest. Movants paid in full the loan that was used to purchase the



tractor. Respondent has not released its lien because the tractor is collateral for Movants' other obligations under the dragnet clause. Respondent's dragnet clause does not create a purchase money security interest.

Respondent next argues that Movants' tractor is not a tool of the trade under the state's exemption laws.

In South Atlantic Production Credit Ass'n v. Jones (In re Jones),<sup>5</sup> this Court stated:

The equipment must be exempt as a tool of the trade under the state's exemption laws for the lien on it to be avoided under 11 U.S.C. section 522(f)[(1)(B)(i)]

. . . .

. . . [The debtor] is permitted to combine his \$500.00 exemption for tools of the trade in O.C.G.A. section 44-13-100(a)(7) with his "wild card" exemption in section 44-13-100(a)(6) of \$5,400.

87 B.R. at 741-42.

In order to claim as exempt the tractor, Movants must show that they are legitimately engaged in a trade which currently and regularly uses the specific implements or tools being exempted. The tool of the trade exemption is not limited by the size or value of the tool. In re Jones, 87 B.R. at 741-42.

Mr. Chapman is an equipment operator. He uses the tractor almost every weekend on his "side jobs." These jobs

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<sup>5</sup> 87 B.R. 738 (Bankr. M.D. Ga. 1988) (Laney, J.).

provide income for Mr. Chapman's family. The Court is persuaded that the tractor is a tool of the trade.

Finally, Respondent argues that Movants' exemption amount is limited to \$500.<sup>6</sup> See O.C.G.A. § 44-13-100(a)(7) (Supp. 1999). Movants argue that they can claim \$2000 as exempt, which is the agreed upon value of the tractor. In their bankruptcy petition, Schedule C-Property Claimed as Exempt, Movants claimed, in part, the following property as exempt:

DESCRIPTION OF PROPERTY	SPECIFIC LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
1964 Ford 600 tractor	OCGA 44-13-100(a)(6)	\$2,000.00	\$2,000.00

Respondent's argument is time barred because it failed to object to Movants' claimed exemption within thirty days after the meeting of creditors or within thirty days after Movants' amended their claimed exemptions.<sup>7</sup> Taylor v. Freeland & Kronz, 503 U.S. 638, 112 S. Ct. 1644, 118 L. Ed. 2d 280 (1992) (deadline applies even though debtor has no

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<sup>6</sup> Respondent argues that Movants have exhausted their "wild card" exemption on other property.

<sup>7</sup> Fed. R. Bankr. P. 4003(b) (trustee or creditor may file objection to claimed exemptions within 30 days after the conclusion of meeting of creditors or the filing of any amendment to the exemption list).

colorable basis for claimed exemption and even though exemption is not claimed in good faith).

The Court is persuaded that Movants may avoid Respondent's lien on the tractor.

An order in accordance with this memorandum opinion will be entered this date.

DATED the 28<sup>th</sup> day of April 2000.

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ROBERT F. HERSHNER, JR.  
Chief Judge  
United States Bankruptcy Court