

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**CASE NO. 06-50832 ERG**

**WILLIAM D. AULTMAN AND  
MARY C. AULTMAN**

**CHAPTER 7**

**OPINION**

The matter before the court is the Objection to Exemption filed by Forrest Loan in the Chapter 7 proceeding filed by William D. Aultman and Mary C. Aultman. Having considered the pleadings and briefs submitted by the parties, the court concludes that the Objection should be sustained.

**I. FACTUAL BACKGROUND**

A petition for relief under Chapter 7 of Title 11 of the United States Code was filed by William D. Aultman and Mary C. Aultman on August 21, 2006, the Debtors herein. Forrest Loans (“Forrest”) was listed as a secured creditor on personal property in the schedules filed by the Debtors.<sup>1</sup>

Forrest subsequently filed an Objection to Exemption, setting out that William Aultman executed a note and security agreement with Forrest Loans in October of 2005 pledging a George Steck upright piano valued at \$3,000 as collateral. Forrest claims the principal owed on the debt is \$2,501.90 exclusive of interest, fees and charges. As noted in the Objection, the Debtors’ Chapter 7 Statement of Intention indicates secured personal property held as collateral by Forrest

---

<sup>1</sup> The Debtors’ Schedule D listed two claims for Forrest Loan secured by personal property in amounts of \$2,436.46 and \$1,270.50 with values listed as \$500.00 and \$750.00.

is claimed as exempt.<sup>2</sup> Forrest objects to the Debtors' attempt to exempt the piano and claims that the debtor should be required to reaffirm the loan. Briefs were filed by the parties and the matter was submitted to the court for determination.

## II. CONCLUSIONS OF LAW

The matter before the court is a core proceeding pursuant to 28 U.S.C. § 157. The court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C. § 1334 and § 157.

The Debtors' entitlement to exemptions is controlled by Miss. Code Ann. § 85-3-1 which provides, in part, as follows:<sup>3</sup>

### **§ 85-3-1. Property exempt from execution or attachment**

There shall be exempt from seizure under execution or attachment:

(a) Tangible personal property of the following kinds selected by the debtor, not exceeding Ten Thousand Dollars (\$10,000.00) in cumulative value:

(i) Household goods, wearing apparel, books, animals or crops;

(ii) Motor vehicles;

(iii) Implements, professional books or tools of the trade;

(iv) Cash on hand;

(v) Professionally prescribed health aids;

(vi) Any items of tangible personal property worth less than Two Hundred Dollars (\$200.00) each;

---

<sup>2</sup> The Debtor's Schedule C listing exempt property does not specifically list a piano as collateral. It lists "furnishings supplies and appliances" in one category, with a listed value of claimed exemption in the amount of \$1,000.00.

<sup>3</sup> Pursuant to Miss. Code Ann. § 85-3-2, Mississippi elected to opt-out of the federal exemption scheme provided under 11 U.S.C. § 522(b), and to require that Mississippi residents not be allowed federal exemptions. *See, Barkley v. Tower Loan of Mississippi, Inc. (In re Kennedy)*, 139 B.R. 389, 393 (Bankr. N.D. Miss.1992); *Deposit Guaranty National Bank v. McLeod (In re McLeod)*, 102 B.R. 60, 62 (Bankr. S.D. Miss.1989).

Household goods, as used in this paragraph (a), means clothing, furniture, appliances, one (1) radio and one (1) television, one (1) firearm, one (1) lawnmower, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the debtor and his dependents; however, works of art, electronic entertainment equipment (except one (1) television and one (1) radio), jewelry (other than wedding rings), and items acquired as antiques are not included within the scope of the term "household goods." This paragraph (a) shall not apply to distress warrants issued for collection of taxes due the state or to wages described in Section 85-3-4.

Miss. Code Ann. § 85-3-1 .

The court concludes that the debtors' piano does not qualify for exempt status under the categories set out in the Mississippi exemption statute, including the section referring to household goods or furniture.<sup>4</sup>

The debtors' brief cites § 522(f)(1)(B)(I), under which musical instruments are specifically delineated, in its argument that the piano is exempt. However, the court notes that § 522(f) deals with lien avoidance and the matter before the court, specifically, is Forrest's Objection to Exemption.<sup>5</sup> However, if lien avoidance were the issue before the court, it is noted that before the lien may be avoided pursuant to § 522(f), it must first be decided that the item is exempt under Mississippi law<sup>6</sup>, and as discussed above, the court concludes that the piano is not exempt under Mississippi law. Accordingly, the court concludes that the Objection to

---

<sup>4</sup> Cf., *Lindell-Heasler v. Dinneen (In re Lindell-Heasler)*, 154 B.R. 748 (D. Wyo. 1992)(piano was exempt under Wyoming exemption statute where there was no specific definition of "household article"); *In re McKaskle*, 117 B.R. 671 (N.D. Okla. 1990)(discusses limitation on another court's ruling under Oklahoma exemption statute that piano was "household ... furniture.")

<sup>5</sup> The court's docket reflects no motion to avoid lien having been filed.

<sup>6</sup> *In re Goffney*, No. 02-53771 EEG (Bankr. S.D. Miss. 2004), *aff'd*, *Goffney v. Tower Loan*, No. 3:05CV21LN (S.D. Miss. 2005); *In re McCoy*, 2003 WL 22890102 (Bankr. N.D. Miss. 2003).

Exemption by Forrest Loans should be sustained.

An order will be entered consistent with these findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58. This opinion shall constitute findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.

**DATED** this the 3rd day of October, 2007.

*/s/ Edward R. Gaines*

EDWARD R. GAINES

UNITED STATES BANKRUPTCY JUDGE

**ATTORNEY FOR DEBTORS:**

David Lord

Lord and Associates, P.A.

2300 24th Avenue

Gulfport, Mississippi 39501

**ATTORNEY FOR FORREST LOANS:**

Maura McLaughlin

P.O. Box 18138

Hattiesburg, Mississippi 39404