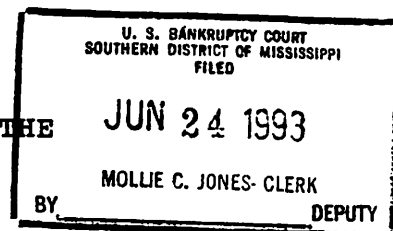


IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI



IN RE:

ALBERT LEE McNEIL

CASE NO. 9202893 MC

Hon. J. C. Bell
P. O. Box 566
Hattiesburg, MS 39401

Chapter 13 Trustee

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Meridian, MS 39302

Attorney for Debtor

Hon. John G. Compton
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Attorney for United Credit

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

The issue before the Court in this case is whether certain items of personal property owned by the Debtor fall within the scope of § 522(f)(2)(A) of the Bankruptcy Code¹, thereby subjecting United Credit Corporation's consensual lien on those items to avoidance. In deciding the issue, the Court must find specifically as to whether each individual item of personal property falls within the scope of § 522(f)(2)(A).

PROCEDURAL BACKGROUND

The Debtor, Albert McNeil, filed a petition for relief pursuant to Chapter 13 of the Bankruptcy Code. Prior to filing

¹ Hereinafter, all code sections refer to the U. S. Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

bankruptcy he borrowed money from United, and in order to secure repayment of the indebtedness, the Debtor executed a written security agreement in favor of United. The security agreement lists certain items of personal property that are to serve as security for the debt. United perfected its security interest pursuant to state law. There is no dispute between the parties as to the foregoing facts.

The Debtor's plan of reorganization does not propose to pay United the full value of the personal property securing the debt. Instead, the plan proposes to avoid United's lien on certain items of the personal property. United objects to the confirmation of the Debtor's plan and objects to the Debtor's motion to avoid its security interest in certain of the items of personal property.

The parties have stipulated that the Court may take judicial notice of its file and decide the matter on the pleadings.

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

The statutes relevant to the present issue are Miss. Code Ann. § 85-3-1 (1972) and Bankruptcy Code § 522(f) which provide as follows:

Miss. Code Ann. §85-3-1

There shall be exempt from seizure under execution or attachment:

(a) Tangible personal property of any kind, not exceeding Ten Thousand Dollars (\$10,000.00) in value, which shall be selected by the debtor;

provided, however, this paragraph shall not apply to distress warrants issued for collection of taxes due the state or to wages described in Section 85-3-4.

11 USC § 522(f)

Notwithstanding any waiver of exemptions, 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--

- (1) a judicial lien; or
- (2) a nonpossessory, nonpurchase-money security interest in any--

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

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

(C) professionally prescribed health aids for the debtor or a dependent of the debtor.

United has a perfected nonpossessory, nonpurchase money security interest in the following items of personal property:

1. assorted auto repair equipment;
2. one man's 10-speed bicycle;
3. one instamatic camera;
4. assorted fishing equipment;
5. assorted gardening equipment;
6. one push mower;
7. one Nintendo game;
8. one .22 automatic rifle;
9. one .12 pump shotgun.

This Court has previously ruled in the case of In re Pigg, No. 903398JC (Bankr. S.D. Miss. June 26, 1992), aff'd sub nom. In re Maddox, No. J92-0543(L)(N) (S.D. Miss. April 8, 1993), appeal docketed, No. 93-7266 (5th Cir. April 26, 1993) that in light of the United States Supreme Court's decision in Owen v. Owen, 111 S.Ct. 1833, 114 L.Ed.2d 350, 59 U.S.L.W. 4486 (1991) a debtor may now utilize the provisions of Section 522(f) to avoid a nonpossessory, nonpurchase money security interest in household furnishings, goods and certain other items of personal property that impairs an exemption to which the debtor would be entitled. This issue is not raised by the parties.

In the Pigg opinion, this Court adopted the definition of "household goods" articulated by the Fourth Circuit Court of Appeals in the case of McGreevy v. ITT Financial Services (In Re McGreevy), 955 F.2d 957 (4th Cir. 1992), wherein the Fourth Circuit stated:

. . . "household goods" under section 522(f)(2)(A) are those items of personal property that are typically found in or around the home and used by the debtor or his dependents to support and facilitate day-to-day living within the home, including maintenance and upkeep of the home itself.

In the district court's affirmance of the Pigg decision, U. S. District Judge Tom S. Lee specifically stated the district court's approval of this Court's adoption of the above household goods definition. In re Maddox, No. J92-0543(L)(N) (S.D. Miss. April 8, 1993), aff'g In re Pigg, No. 903398JC (Bankr. S.D. Miss. June 26, 1992), appeal docketed, No. 93-7266 (5th Cir. April 26,

1993). This Court's understanding of the rationale of the Fourth Circuit in McGreevy is set forth in detail in its opinion in the previously cited Pigg case. Based upon the Pigg ruling, it is the Court's opinion that the lien of United can be avoided on the following items:

assorted gardening equipment;
one push mower;
one Nintendo game;
one .12 pump shotgun.

The lien of United cannot be avoided on the following items:

assorted auto repair equipment;
one men's 10-speed bicycle;
one instamatic camera;
assorted fishing equipment;
one .22 automatic rifle.

A few additional comments in the way of explanation are appropriate. This decision is made strictly within the purview of § 522(f)(2)(A). In the appropriate case, pursuant to § 522(f)(2)(B), the lien might be avoided on auto repair equipment as tools of the trade. The Court's holding that the lien cannot be avoided on the bicycle, camera and fishing equipment is based on the assumption that these items are used for recreational purposes away from the home. If the bicycle is shown to be in the nature of a child's toy, the result might be different. As stated in the Pigg opinion, a debtor will be able to avoid the lien on one firearm if it is kept in the home and is reasonably necessary for the protection of the home and its occupants.

CONCLUSION

It is the conclusion of this Court that the Debtor is entitled to avoid the lien of United Credit Corporation on those items set forth above and to have his plan confirmed consistent with this opinion. In regard to those items on which the lien cannot be avoided, United is entitled either to be paid through the Debtor's chapter 13 plan of reorganization as provided by the Bankruptcy Code or to have the stay lifted on its collateral.

The attorneys for the parties are directed to confer with each other and the Trustee and to submit to the Court orders consistent with this opinion. As to those items on which the lien may not be avoided, if the value as to any item remains in dispute, the Court will make additional findings.

THIS this 24 day of June, 1993.


UNITED STATES BANKRUPTCY JUDGE