

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

CASE NO.

JOSEPH M. & KATHRYN MICHELLE MCCOY	02-14926
ROGER DALE & SHANNON NICHOLE HARBIN	02-14972
TOMMY L. & TAMMY B. WOODHAM, JR.	02-16404
TAMATHA PETTIES	02-16110
ERICK DUANCE & TARTHY ANN DANCY	02-15730

OPINION

On consideration before the court in the above five captioned bankruptcy cases are motions, filed by the respective debtors, to avoid nonpurchase-money security interests held by Tower Loan of Mississippi, Inc., hereinafter "Tower"; responses to said motions having been filed by Tower; and memoranda of law having been submitted by the following:

1. On behalf of the debtors by Julie R. Galloway, Bond, Botes, and Galloway, P.C., and Selene D. Maddox, Maddox Law Office.
2. On behalf of Tower by John S. Simpson, III and W. Jeffrey Collier, McKay, Simpson, Lawler, Franklin & Foreman, PLLC.
3. On behalf of the Mississippi Consumer Finance Association by Pat H. Scanlon, and Jane B. Morgan, Watkins and Eager.

The Chapter 13 trustee, Terre M. Vardaman, also filed an objection to the debtors' claims of exemption, but elected not to submit a separate memorandum.

The court, having now considered the motions, responses, objection, and the various memoranda of law, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the subject matter of and the parties to this consolidated contested proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This matter is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A), (B), (K), and (O).

II.

The issues in this proceeding are two-fold:

1. What is the scope of recently amended Miss. Code Ann. §85-3-1(a), particularly subsection (vi)?
2. What is now the appropriate interplay between Miss. Code Ann. §85-3-1(a)(vi) and §522(f)(1)(B) of the United States Bankruptcy Code?

III.

Miss. Code Ann. §85-3-1(a), which shall be set forth hereinafter for simplicity as §85-3-1(a), provides as follows:

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 item of tangible personal property worth less than Two Hundred Dollars (\$200.00).

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 to the state or to wages described in Section 85-3-4.

The court is of the opinion that the language, “[A]ny item of tangible personal property worth less than two hundred dollars (\$200.00),” encompasses any and all items of personal property owned by the debtors having a value of less than \$200.00. Other than being limited by the cumulative value of \$10,000.00, the precise number of items which can be claimed as exempt is unlimited. This interpretation of the statute’s effect is consistent with this court’s perception of the legislative intent underpinning the statute’s enactment. Had the Mississippi Legislature not intended such a broad reading, it would have obviously used the words “any one item” or simply “one item.”

IV.

Fortunately for creditors, the analysis does not end at this point.

Section 522(f)(1)(B) of the Bankruptcy Code, which shall be set forth hereinafter as §522(f)(1), provides as follows:

(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--

- (i) 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;
- (ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or
- (iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

In order to effectively utilize the lien avoidance authority found in §522(f)(1)(B), two essential requirements must be met: First, the debtor must be able to claim an exemption in the asset. (In Mississippi, this can be done only pursuant to state law.) Second, the exempt asset must be listed in either category (i), (ii), or (iii), of §522(f)(1)(B). (For this analysis, the court presumes that the lien is a nonpurchase-money security interest that actually impairs the debtors' exemption claims.)

Because of this two prong test, every item which might be claimed as exempt under state law is not necessarily eligible for lien avoidance pursuant to §522(f)(1)(B). For example, the items that could qualify as exempt "household goods," for purposes of §522(f)(1)(B)(i), are limited by the state law definition found in §85-3-1(a). These items are specifically delineated as "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." Items excluded from this definition are "works of art, electronic entertainment equipment (except one (1) television and one (1) radio), jewelry (other than wedding rings), and items acquired as antiques." Only those items qualifying as exempt, within the state law definitional scope of "household goods," can be successfully "filtered" through the lien avoidance mechanism of §522(f)(1)(B)(i).

As such, if a debtor has ten television sets, all valued at less than \$200.00, he or she may claim all of them as exempt under §85-3-1(a)(vi). However, when lien avoidance relief is sought under §522(f)(1)(B)(i), the specific limiting definition of "household goods" found in §85-3-1(a), must be applied. (The state statute clearly contemplates that television sets are within the

definitional ambit of “household goods.”) Thus, the debtor is allowed to avoid the lien on only one television.

In this same context, several items of electronic entertainment equipment, each worth less than \$200.00, might be claimed as exempt under §85-3-1(a)(vi) for non-bankruptcy purposes. However, a security interest encumbering these assets ordinarily cannot be avoided (excepting, of course, one television and one radio) since items of electronic entertainment equipment cannot, under most circumstances, be “shoe horned” into any of the categories set forth in the §522(f)(1)(B) lien avoidance scheme.

Succinctly stated, for nonpurchase-money security interest avoidance purposes, Miss. Code Ann. §85-3-1(a) and §522(f)(1)(B) of the Bankruptcy Code must be applied together. The asset in question must be identifiable and eligible under both sections.

V.

The court would hasten to add that §85-3-1(a)(iv) does expand the number of items that might be eligible for judicial lien avoidance pursuant to §522(f)(1)(A), which provides as follows:

(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--

(A) a judicial lien, other than a judicial lien that secures a debt--

(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

(ii) to the extent that such debt--

(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support;

Consequently, to the extent that a judicial lien, such as a judgment, impairs an exemption that might be claimed under §85-3-1(a)(iv), it can be avoided. Judicial lien avoidance is not constricted by the limiting categories set forth in §522(f)(1)(B)(i), (ii), or (iii).

VI.

If the debtors herein are attempting to avoid nonpurchase-money security interests in “household goods,” their relief is limited to the specific definition of “household goods,” set forth in §85-3-1(a). The attorneys representing the debtors and the attorney representing Tower shall confer within ten (10) days following the entry of this opinion in order to resolve any disputes concerning specific items to which lien avoidance is being sought. If the disputes cannot be resolved in keeping with the guidelines set forth herein, the attorneys shall request an evidentiary hearing so that the court can adjudicate which items are legitimately subject to lien avoidance.

An order will be entered consistent with this opinion.

This the 23rd day of April, 2003.

_____/s/_____
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE