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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Kenneth Scott Mosley and Barbara Kaye
Mosley,

Debtors.

C/A No. 96-71639-W

JUDGMENT

Chapter 7

ENTERED

MAY 11 6 1996

RECEIVED

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Tico Credit Company's lien in the following items of collateral is avoided pursuant to 11 U.S.C. § 522 (f) (2):

1. 13" Quasar Television
2. Emerson VCR
3. Emerson Stereo System
4. Murray Self-Propelled Lawnmower
5. Nintendo and Six Games
6. Gas Grill
7. Dryer
8. John Deere Trimmer
9. Four (4) Chrome Rims
10. Panasonic Vacuum Cleaner

The Debtors' Motion to Avoid Tico Credit Company's Lien on the following items of collateral is denied:

1. Bear Cat Scanner
2. Rossi .38 Pistol
3. Browning Rifle w/Scope

John E. Waites
UNITED STATES BANKRUPTCY JUDGE.

Columbia, South Carolina,
May 15, 1996.

96-106

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (10)

IN RE:

C/A No. 96-71639-W

Kenneth Scott Mosley and Barbara Kaye
Mosley,

ORDER

Chapter 7

Debtors.

ENTERED
MAY 11 6 1996
R. J. U.

THIS MATTER comes before the Court upon the objection of Tico Credit Company
("Tico"), to the Debtors' Motion to Avoid Tico's lien on certain collateral 11 U.S.C. § 522.¹

Based upon the parties' stipulations, the Court makes the following Findings of Fact and
Conclusions of Law:

FINDINGS OF FACT

The Debtor, Kenneth Scott Mosley, entered into numerous loans dated May 28, 1995,
July 15, 1995 and August 12, 1995 with the creditor, Tico, by which Tico financed the purchase
of several items from department stores while retaining valid purchase money security interests
in those items. On September 27, 1995, a subsequent loan in the amount of \$6,175.56 was made
by Tico to the Debtor secured by the same collateral as the previous loans, to consolidate the
Debtor's accounts with Tico and to pay all the previous loans in total. This new loan was treated
as a separate transaction by the parties, as evidenced by a new loan number and financial
statement. A list of the items which served as collateral for the new loan are as follows:

1. 13" Quasar Television

¹Further references to the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* shall be by section
number only.

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[Handwritten mark]

2. Emerson VCR
3. Emerson Stereo System
4. Bear Cat Scanner
5. Murray Self-propelled Lawnmower
(Incorrectly listed as "Riding Lawnmower")
6. Nintendo and Six Games
7. Gas Grill
8. Dryer
9. Rossi .38 Pistol
10. John Deere Trimmer
11. Browning Rifle w/Scope & Scope Mount
12. Four (4) Chrome Rims
13. Panasonic Vacuum Cleaner

The parties stipulated that, in making the subsequent consolidation loan, Tico did not intend to extinguish its then existing purchase money security interests in these items. The parties also stipulated that Tico has a lien on the Murray self-propelled lawnmower despite the fact that it had been previously incorrectly described as a "riding lawnmower".

On March 8, 1996, the Debtors filed a chapter 7 bankruptcy. During the course of the bankruptcy proceedings, the Debtors pursuant to § 522 (f)(1) sought to avoid the lien held by Tico in each of the above items with the exception of the Browning rifle, scope mount and scope, the Rossi .38 pistol, and the Bear Cat scanner. The parties further stipulated that the remaining items of collateral, with the exception of the lawnmower, fall within the definition of household goods contained in § 522 (d)(1). The only evidence presented regarding the lawnmower indicates that it is used by the Debtor to maintain his residence.

CONCLUSIONS OF LAW

The initial inquiry for the Court is whether the lawnmower is a household good pursuant to § 522(f)(2)(A). The Fourth Circuit has held that "'household goods' under § 522(f)(2)(A) are those items of personal property that are typically found in or around the home and used by the

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debtor or his dependents to support and facilitate day-to-day living within the home, including maintenance and upkeep of the home itself." In re McGreevy, 955 F.2d 957 (4th Cir. 1992).

The Fourth Circuit added the functional nexus requirement to its definition of household goods after a thorough analysis of prior cases. McGreevy separated the case law on household goods into two categories. The first category of cases defined household goods as "only those goods that are found and used in or around the debtor's home and that are necessary to a debtor's fresh start after bankruptcy," and based the definition primarily on the general purpose of the Bankruptcy Reform Act of 1978, which is to provide a debtor with a fresh start. Id. at 959; see H.R.Rep. No. 595, 95th Cong., 1st Sess. 126 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6087. The second category of cases defined household goods as "all goods typically found and used in or around the home, whether or not they would be considered strictly necessary to a debtor's fresh start." McGreevy, 955 F.2d at 960.

In re French, 177 B.R. 568 (Bkrty.E.D.Tenn. 1995). One Court has used the In re McGreevy definition to exempt substantial lawn and garden equipment and tools based upon the size and requirements of the Debtor's yard.

The evidence on this issue establishes that the Debtors do have a substantial yard. It requires more than an ordinary lawn mower to maintain this property and the surrounding grounds...Based on the evidentiary record, it is the conclusion of this Court that the following items are properly claimed as household goods and furnishings: push mower; string trimmer; riding mower; snow blower; garden trailer; wheelbarrow; lawn sweeper; garden rakes and shovels; wood storage shed; circular saw, bench grinder; sabre saw; wet and dry shop vac; miscellaneous hand tools; hammers, wrenches, sockets, chisels; 18" chain saw.

In re Kunkle, 1993 WL 767974 (Bankr.N.D.Iowa). In the facts presented within, it appears that the Murray self-propelled lawnmower meets the definition of a household good as it is an item of personal property that is typically found in or around a home and used to support and facilitate day-to-day living within the home, including maintenance and upkeep of the home itself.

The Court must now determine whether the security interest in the property held by Tico instant to the refinancing arrangement constitutes a purchase money security interest or a non-purchase security interest. Section 36-9-107 of the South Carolina Code of Laws defines a purchase money security interest as one "taken by a person who by making advances or incurring an obligation gives value to enable the debtor(s) to acquire rights in or the use of collateral if such value is in fact so used." S.C. Code Ann. § 36-9-107(b) (1976). This Court has previously addressed this issue in Rosen v. Associates Financial Services Co., 18 B.R. 723 (Bkrtcy.D.S.C. 1982), affirmed in Rosen v. Associates Financial Services Co., 17 B.R. 436 (D.S.C. 1982). The District Court in citing In re Jones, 5 B.R. 655, 656 (M.D.N.C. 1980) held that "[t]he purchase money character of the original lien was destroyed by the advancement of the additional sums and the refinancing of the note". Rosen v. Associates Financial Services Co., 17 B.R. at 437. The District Court also relied upon the Official Comment to the 1972 version of the Uniform Commercial Code, adopted in South Carolina at S.C. Code Ann. § 36-9-107(b) (1976), which states that "the quoted language excludes from the purchase money category any security interest taken as security for or in satisfaction of a pre-existing claim or antecedent debt."

The Rosen v. Associates Financial Services Co. decision has been cited with approval by the Fourth Circuit Court of Appeals.

It is not a purchase-money security lien, because it secures a loan made to refinance a pre-existing debt--not to acquire the collateral. The "refinancing or consolidating loans by paying off the old loan and extending a new one extinguishes the purchase money character of the original loan because the proceeds of the new loan are not used to acquire rights in the collateral". Matthews v. Transamerica Financial Services (In re Matthews), 724 F.2d 798,

800 (9th Cir. 1984) (per curiam); Rosen v. Associates Financial Services, 17 B.R. 436, 437 (D.S.C. 1982); In re Jones, 5 B.R. 655 (Bankr.M.D.N.C. 1980) U.C.C. § 9-107(b), Official Comment 2.

Dominion Bank of Cumberland, NA v. Nuckolls, 780 F.2d 408, 413 (4th Cir. 1985).

In opposition to this precedent, Tico cites In re Leftwich, 174 B.R. 54 (Bkrtcy. W.D.Va. 1994), which distinguishes Dominion Bank of Cumberland, NA v. Nuckolls and ruled that under Virginia law, absent evidence that a novation was intended by the parties, a creditor may retain to purchase money security interest despite a consolidation with later purchases. The In re Leftwich Court noted a split in the Circuits regarding this issue with the 4th, 5th, 9th, and 11th Circuits finding that such a security interest is no longer a purchase money lien after consolidation, while the 3rd and 10th Circuits found that the purchase money security interest remained after consolidation to the extent “it is possible to distinguish the part of the debt which is purchase money from the part that is not, and to allocate payments accordingly.” In re Leftwich, 174 B.R. at 58,59.

After considering the reasoning of these decisions and the precedence of the Rosen v. Associates Financial Services Co.² and Dominion Bank of Cumberland, NA v. Nuckolls opinions, this Court believes the Rosen v. Associates Financial Services Co. rule is still applicable and controlling of the issues in the instant case.

In this case it is beyond dispute that the consolidation loan was intended to satisfy the antecedent debts created by the previous purchase money loans. While Tico held a valid

² As the Court in In re Leftwich noted, the District Court in Rosen v. Associates Financial Services Co. expressly considered the relevance of the intentions of the parties in connection with the consolidation and denied its importance to the determination.

purchase money security interest in the collateral by virtue of the original financing agreements, the refinancing arrangement, which was designed to discharge the antecedent debts, transformed those security interests into a single non-purchase money security interest. The purchase money character of the original liens was destroyed when the renewal note was accepted by Tico in the refinancing of the original notes and satisfaction of the antecedent debts. Therefore, the security interest held under the renewal note in this case is non-purchase money in nature. Therefore, it is

ORDERED, that Tico Credit Company's lien in the following items of collateral is avoided pursuant to § 522 (f)(2):

1. 13" Quasar Television
2. Emerson VCR
3. Emerson Stereo System
4. Murray Self-Propelled Lawnmower
5. Nintendo and Six Games
6. Gas Grill
7. Dryer
8. John Deere Trimmer
9. Four (4) Chrome Rims
10. Panasonic Vacuum Cleaner

It is further

ORDERED, that the Debtors' Motion to Avoid Tico Credit Company's Lien on the following items of collateral is denied:

1. Bear Cat Scanner
2. Rossi .38 Pistol
3. Browning Rifle w/Scope

AND IT IS SO ORDERED.

Columbia, South Carolina,
May 15, 1996.


UNITED STATES BANKRUPTCY JUDGE

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