

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

98 OCT 20 AM 9:39

IN RE:

Jeanette Addy,

Debtor.

C/A No. 98-07437-W

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

JUDGMENT

Chapter 7

Based upon the findings as recited in the attached Order of the Court, the objection by Blazer Financial Services to the Debtor's motion to avoid its lien pursuant to §522(f)(1)(B) is overruled and the lien is avoided.

Columbia, South Carolina,
October 19, 1998.


UNITED STATES BANKRUPTCY JUDGE

ENTERED

OCT 21 1998

J.G.S.

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IN RE:

C/A No. 98-07437-W

Jeanette Addy,

ORDER

Debtor.

Chapter 7

THIS MATTER comes before the Court upon the objection of Blazer Financial Services ("Blazer") to the Debtor's motion to avoid its lien pursuant to 11 U.S.C. § 522(f)(1)(B)¹ on certain personal property of the Debtor. Blazer takes the position that while it does not have a purchase money security interest, it does have a possessory interest in the collateral and therefore its lien can not be avoided.

Section 522(f)(1)(B) provides as follows:

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.

11 U.S.C. § 522(f)(1)(B). Blazer asserts that while it does not have physical possession of the

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



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OCT 21 1998

J.G.S.

21

collateral, it does have a filed UCC financing statement in its possession and therefore it has a possessory interest in the collateral. The Court however does not agree.

Pursuant to the South Carolina Uniform Commercial Code, a creditor may have a possessory security interest in property only if the creditor has possession of the collateral.

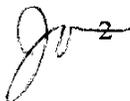
Subject to the provisions of § 36-4-208 on the security interest of a collecting bank and § 36-9-113 on a security interest arising under the Chapter on sales, a security interest is not enforceable against the debtor or third parties unless

- (a) the collateral is in the possession of the secured party; or
- (b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing the collateral, the word "proceeds" is sufficient without further description to cover the proceeds of any character.

South Carolina Code of Laws, Ann. § 36-9-203. Pursuant to this definition, possessory for purposes of § 522(f)(1)(B) means actual possession of the collateral, not possession of a UCC financing statement. See 68A Am Jur 2d, Secured Transaction § 277 and Matter of Wood, 13 B.R. 245 (Bkrcty.E.D.N.C. 1981)("a creditor may have a possessory security interest in property only if, pursuant to the agreement between the debtor and creditor, it is agreed that the creditor will have possession of the collateral" citing § 9-203 of the North Carolina Uniform Commercial Code).

[I]n order to create a possessory interest not avoidable by 11 U.S.C. § 522(f)(2)(B), there must be an agreement between the parties that the secured party will possess the collateral and pursuant to that agreement the secured party must possess the collateral. Possession must be a function of the agreement. Possession may be by the original security agreement or by a subsequent agreement.

Where the parties originally enter into a nonpossessory security agreement perfected by filing, a clause giving the secured party

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right to possess the collateral upon default does not render the security interest possessory within the meaning of 11 U.S.C. § 522(f)(2)(B) where the secured party repossesses the equipment by self-help or by judicial action.

In re White, 203 B.R. 613 (Bkrcty.N.D.Tx. 1996) citing In re Vann, 177 B.R. 704, 710 (D.Kan.1995). Pursuant to these definitions, it is evident that Blazer has a nonpossessory, nonpurchase-money security interest and therefore the objection by Blazer Financial Services to the Debtor's motion to avoid its lien pursuant to §522(f)(1)(B) is overruled and the lien is avoided.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
October 19, 1998.



CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below:

OCT 22 1998

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH
Deputy Clerk

Adddy
Burgess
Pincelli
REA
USTR
Index #
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