

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

No. 98-12252

Chapter 13

MARVIN WAYNE DILLARD
PEGGY JOAN DILLARD

Debtors

MEMORANDUM

Appearances: Sandra Y. Benton, Chattanooga, Tennessee, Attorney for Marvin and Peggy
Dillard

Brent James, Hanzelik & James, Chattanooga, Tennessee, Attorney for
Pioneer Credit Company

HONORABLE R. THOMAS STINNETT,
UNITED STATES BANKRUPTCY JUDGE

Pioneer Credit Company (“Pioneer”) has filed an objection to confirmation of the Chapter 13 plan proposed by the Debtors, Mr. and Mrs. Dillard. Pioneer objects on the ground that the plan treats its claim as unsecured when it is actually secured. The dispute has focused on Pioneer’s assertion of a security interest in a grave monument or headstone.

One of the Debtors, Mrs. Dillard, obtained a loan from Pioneer to purchase the monument and gave Pioneer a security interest in the monument to secure payment of the debt. This occurred in February 1997.

The Debtors later obtained other loans from Pioneer and gave it a security interest in other personal property. The parties have not raised an issue as to the whether Pioneer has a secured claim for the value of the other collateral or whether the security interest can be avoided. 11 U.S.C. §§ 506(a) & 522(f). The court is concerned only with Pioneer’s security interest in the monument.

The Debtors obtained one of the later loans in September 1997. They received additional money, and the earlier debt was refinanced or consolidated into the new note. Pioneer apparently obtained a non-purchase money security interest in other collateral when it made this loan. The “Description of Collateral” appears to be a form used for a non-purchase money security interest. It contains an “Exclusions” clause intended to make the loan comply with federal regulations limiting non-purchase money security interests in household goods. 12 C.F.R. §§ 227.12, 227.13, 535.1, 535.2, 706.1 & 706.2; 16 C.F.R. §§ 444.1 & 444.2.

The Debtors allege that when Pioneer made the second loan it agreed to release its security interest in the monument because Mr. Dillard co-signed the new note. The form titled “Description of Collateral” lists the monument under “Added/Deleted Security.” A statement at the bottom of the form gives the total value of the collateral as \$2,050. This amount includes the value of the monument as

listed on the form. Mrs. Dillard's initials appear on the form, but the Debtors allege the monument was not on the list when they obtained the loan.

The Debtors obtained another loan in March 1998. It refinanced or consolidated the earlier note into the new note. The Debtors allege the monument was not listed as collateral for this loan. In the note and security agreement, someone attempted to check the box for Personal property listed on the form titled "Schedule of Property." No such schedule of property was filed with the proof of claim.

Pioneer filed a financing statement when it made this loan, which was slightly more than a month before the Debtors filed their Chapter 13 case. The financing statement lists as collateral "certain household goods, appliances, tools and other personal property." Typed underneath this is a list of the collateral; it includes the monument.

The proof of claim includes a statement on account. It contains a list of collateral that also includes the monument.

The financing statement was filed with the register of deeds in Rhea County, Tennessee. In their bankruptcy petition, the Debtors gave their address as Dayton, Tennessee. The only evidence as to the location of the monument comes from the note and security agreement, which states "Set in Concord Cemetery Evensville Tn." The court can take judicial notice that Dayton and Evensville are in Rhea County. *Fed. R. Evid.* 201; *Fed. R. Bankr. P.* 9017; *Slone v. Integra Bank/Pittsburgh (In re International Building Components)*, 159 B.R. 173 (Bankr. W. D. Pa. 1993) *reconsideration denied* 161 B.R. 764 (Bankr. W. D. Pa. 1993). This does not necessarily lead to the conclusion that Concord Cemetery is in Rhea County.

The Debtors' property schedules do not reveal any interest in a burial lot or the monument and do not list either as exempt. The Debtors claimed the statutory exemption in household goods. The

court has no way of knowing whether the monument can be included within the dollar amount of the exemption. Tenn. Code Ann. § 26-2-102.

Pioneer's attorneys filed a proof of claim for Pioneer. The proof of claim includes a stamp with the firm name and address but no signature by the attorneys or any other representative of Pioneer.

At the hearing on the objection to confirmation, the court pointed out that all purchase money security interests are not automatically perfected and questioned Pioneer's attorney as to whether automatic perfection applied only to household goods. Pioneer's attorney responded by stating that the monument was not a household good, but the filed financing statement perfected Pioneer's security interest.

DISCUSSION

1. Execution of the Proof of Claim

The Debtors contend Pioneer's claim should be disallowed because the failure of anyone to sign the proof of claim means it was not properly executed. *Fed. R. Bankr. P.* 3001(a), (b) & (f). The failure of anyone to sign a proof of claim may prevent it from being properly executed, but the defect can be cured by amendment. *Vines v. Internal Revenue Service (In re Vines)*, 200 B.R. 940 (M. D. Fla. 1996); *In re DeRoche*, 17 B.R. 536 (Bankr. D. Me. 1982); *Erickson v. Brix Estate Co. (In re Magnet Oil Co.)*, 119 F.2d 260 (9th Cir. 1941). The court will allow Pioneer time to amend the proof of claim to provide a signature.

2. Release of the Security Interest in the Monument

The Debtors allege Pioneer agreed to release the security interest in the monument when they obtained the second loan in September 1997. The Description of Collateral executed at that time lists the monument as added or deleted collateral. Since the monument's value is included in the total value of the collateral listed at the bottom of the same form, it apparently means the monument was added. The monument was also listed in the financing statement that Pioneer filed in March 1998.

The Debtors allegations are not supported by any testimony or other evidence. The only evidence in the record is the written evidence from Pioneer which does not show any intent by Pioneer to release the security interest. The court concludes that Pioneer did not agree to release the security interest in the monument.

The refinancing of the original loan when the Debtors obtained the later loans did not necessarily destroy Pioneer's security interest in the monument or make it non-purchase money. *Commerce Union Bank v. Burger-In-A-Pouch, Inc.*, 657 S.W.2d 88 (Tenn. 1983); *In re Nolen*, 53 B.R. 235 (Bankr. M. D. Tenn. 1985).

3. Avoidance of Pioneer's Security Interest

The Debtors assert that Pioneer's security interest in the monument can be avoided because Pioneer failed to file a financing statement in the correct place before the Debtors filed their Chapter 13 case. Specifically, the Debtors contend the monument became a "fixture" when it was attached to real estate, the burial lot, and Pioneer failed to file a financing statement for the monument as a fixture.

A. The Debtors' Authority to Avoid a Security Interest

The Bankruptcy Code allows a debtor to avoid some liens for the debtor's personal benefit. The avoiding powers that debtors can use for their own benefit apply to exempt property. The Debtors have not specifically exempted the monument, but they may still have time to do so. *Fed. R. Bankr. P.* 1009(a); *Lucius v. McLemore*, 741 F.2d 125 (6th Cir. 1981); *Osborn v. Durant Bank & Trust Co. (In re Osborn)*, 24 F.3d 1199 (10th Cir. 1994).

The Debtors' avoiding powers as to exempt property do not give them the power to avoid Pioneer's security interest. Section 522(f) is limited to judicial liens and non-purchase money security interests. 11 U.S.C. § 522(f)(1). Pioneer's security interest is not a judicial lien. 11 U.S.C. § 101(36) & (51). The Debtors have not denied that Pioneer has a purchase money security interest in the monument. Thus, § 522(f) would not apply.

Section 522(h) allows the Debtors to use the bankruptcy trustee's avoiding powers but not as to a voluntary transfer by the Debtors. Mrs. Dillard's transfer to Pioneer of a security interest in the monument was voluntary. Therefore, the Debtors can not use the trustee's avoiding powers to avoid Pioneer's security interest in the monument as exempt property. 11 U.S.C. § 522(g) & (h); *see e.g., In re Albright*, 214 B.R. 408 (Bankr. N. D. Ala. 1997); *In re Hamrick*, 126 B.R. 270 (Bankr. E. D. Tex. 1991); *In re Rollins*, 63 B.R. 780 (Bankr. E. D. Tenn. 1986).

Of course, the Chapter 13 trustee's use of his avoiding powers is not limited to exempt property. But the Chapter 13 trustee can generally use his avoiding powers only for the benefit of the bankruptcy estate, which means the benefit of all general unsecured creditors. The court may allow a debtor or a creditor to use the trustee's avoiding powers for the benefit of the bankruptcy estate. *Canadian Pacific Forest Products Limited v. J. D. Irving, Limited (In re Gibson Group, Inc.)*, 66 F.3d

1436 (6th Cir. 1995); *NBD Bank v. Fletcher (In re Fletcher)*, 176 B.R. 445 (Bankr. W. D. Mich. 1995); *Emerson v. Maples (In re Mark Benskin & Co.)*, 161 B.R. 644 (Bankr. W. D. Tenn. 1993). The Debtors have not obtained the court's or the trustee's express permission to use his avoiding powers, but they are asserting the trustee's avoiding powers for the benefit of unsecured creditors, as explained below.

The Chapter 13 trustee regularly objects to confirmation of a Chapter 13 plan that proposes to pay a claim as secured when the trustee or the Chapter 13 debtor can avoid the security interest or other lien. The trustee takes the position that the plan can not be confirmed because paying the claim as secured unfairly discriminates against other unsecured claims. 11 U.S.C. § 1322(b)(1). (Since the Debtors' plan in this case provides for 100% payment on unsecured claims, this dispute boils down to a fight over paying interest on Pioneer's claim.)

Pioneer objects to confirmation on the ground that its claim must be treated as secured. The Debtors are making the trustee's argument in response to Pioneer's objection. They assert the plan must treat the claim as unsecured in order to avoid unfair discrimination against other unsecured claims. In this situation, the Debtors have standing to raise the question of whether the trustee could avoid Pioneer's security interest. Furthermore, Pioneer has not challenged the Debtors' standing.

B. The Bankruptcy Trustee's Power to Avoid the Security Interest

This brings the court to the question of whether the Chapter 13 trustee could avoid Pioneer's security interest. When the Debtors filed their Chapter 13 case, the trustee acquired the rights of a creditor with a judgment or execution lien on the Debtors' real and personal property. 11 U.S.C. §§ 544(a)(1), (2).

Priority between the trustee's lien rights and a creditor's security interest is determined by Tennessee's version of the Uniform Commercial Code, the UCC. Tenn. Code Ann. §§ 47-1-101 to 47-9-607.

Generally the trustee's lien rights will have priority over a security interest and the trustee can avoid the security interest if it was *not* "perfected" at the time of bankruptcy. Tenn. Code Ann. § 47-9-301(1)(b) & (3); 11 U.S.C. §§ 544(a) & 550; *Hill v. Earthman (In re Hill)*, 83 B.R. 522 (Bankr E. D. Tenn. 1988); *In re Hammond*, 38 B.R. 548 (Bankr. E. D. Tenn. 1984). On the other hand, the creditor's security interest will have priority and can not be avoided if it was perfected at the time of bankruptcy.

Perfection usually, but not always, requires the filing of a financing statement to give notice of the security interest. Tenn. Code Ann. § 47-9-302. Pioneer contends its security interest in the monument was perfected without the filing of a financing statement. Pioneer relies on the rule that no filing is required to perfect a purchase money security interest in consumer goods. Tenn. Code Ann. §§ 47-9-302(1)(d) & 47-9-109(1).

The Debtors do not dispute the purchase money nature of Pioneer's security interest in the monument. The Debtors contend the monument can not be classified as a consumer good. The Debtors rely first on a statement by Pioneer's lawyer at the hearing on the objection to confirmation. The Debtors contend that Pioneer's lawyer conceded the monument was not a consumer good.

Pioneer's lawyer stated that the monument was not in the household goods category. The relevant category under the UCC is consumer goods, not household goods. Tenn. Code Ann. §§ 47-9-109(1) & 47-9-302(1)(d). Household goods is a category under Bankruptcy Code § 522(f). 11 U.S.C. § 522(f)(1)(B).

Nevertheless, Pioneer's lawyer made the statement during a discussion of what was required to perfect the security interest under the UCC. Furthermore, household goods under Bankruptcy Code § 522(f) and consumer goods under the UCC generally include the same things. Section 522(f) applies to household goods held primarily for the personal, family or household use of the debtor or a dependent. 11 U.S.C. § 522(f)(1)(B) (i). The UCC defines consumer goods as goods used or bought for use primarily for personal, family or household purposes. Tenn. Code Ann. § 47-9-109(1).

Of course, there was little need for testimony or other evidence to show how the monument is used. It is used to mark a grave. This is a fact. A lawyer can make a binding admission of a fact such as this. Pioneer's lawyer stated a legal conclusion based on this fact, the conclusion that the monument is not used primarily for personal, family or household purposes. The lawyer's legal opinion is not binding on Pioneer or the court. *Mitchell v. Lone Star Ammunition, Inc.*, 913 F.2d 242 (5th Cir. 1990); *United States v. Owens Contracting Services, Inc.*, 884 F.Supp. 1095 (E. D. Mich. 1994).

The Debtors can not claim surprise to their prejudice with regard to the question of whether the monument is a consumer good. Neither the Debtors nor Pioneer filed briefs before the hearing on the objection to confirmation. The Debtors' lawyer had no reason to think Pioneer would admit the monument was not a consumer good. Indeed, the main argument by the Debtors' lawyer was aimed at rendering this point irrelevant. She argued that a later event, installation of the monument in the cemetery, made Pioneer's security interest unperfected even if it was previously perfected without the filing of a financing statement.

There was little or no need for the Debtors to present evidence at the hearing on how the monument is used. At worst, the statement by Pioneer's lawyer could have led the Debtors' lawyer to omit from her post-trial brief a discussion of the law with regard to how the monument should be

classified. The court required Pioneer to file its brief first, and it did so. The Debtors' lawyer should have had the brief, with its argument that the monument is a consumer good, before she filed her post-trial brief. As a result, the court sees no prejudice to the Debtors that might prevent the court from deciding that the monument is a consumer good, despite the statement by Pioneer's lawyer.

This brings the court to the question of how the monument should be classified under the UCC. The UCC establishes four categories of goods – consumer goods, equipment, farm products, and inventory. Tenn. Code Ann. § 47-9-109.

The monument definitely is not a farm product. Tenn. Code Ann. § 47-9-109(3). The monument does not come close to any of the goods described in the definition of inventory. Tenn. Code Ann. § 47-9-109(4). Thus, the monument could possibly be equipment or consumer goods.

The definition of equipment includes a general description – goods used or bought for use primarily in business. The definition also includes a more specific category – goods bought by a nonprofit organization, a governmental subdivision, or a government agency. Tenn. Code Ann. § 47-9-109(2). The monument does not come within the more specific category.

Equipment is also the catch-all classification. It includes all goods that do not fit within any of the other categories. The court will be concerned with this provision only if the monument is not a consumer good and does not fit within the general description of equipment.

The general description of equipment does not require the buyer or the debtor to be the one who uses the property in business. This leads to the argument that, from the viewpoint of the Debtors' creditors, the monument is equipment because Mrs. Dillard bought it for the cemetery owner to use in its business or it is being used in the business.

The UCC defines consumer goods to include goods used or bought for use primarily for personal, family or household purposes. Tenn. Code Ann. § 9-109(1). The definition of consumer goods does not require them to be used or bought for use in or around the household. The location of the goods may be considered in determining their intended use, but it is still the use of the goods, not their location, that determines their classification. *See, e.g., Commercial Credit Equipment Corp. v. Carter*, 516 P.2d 767, 13 UCC Rep. Serv. 1212 (Wash. 1973) (airplane as consumer goods).

The court must decide the odd question of how a grave monument is primarily used. A monument marks the grave primarily for the benefit of the family and friends of the deceased. A person buying a grave monument surely does not think she is buying it primarily for the cemetery's use. Of course, the monument may also serve to organize and beautify the cemetery for its benefit, but the buyer and seller doubtlessly view these as secondary or incidental uses.

Furthermore, a cemetery owner has limited rights in a monument in the cemetery. 14 Am.Jur.2d *Cemeteries* § 33 (1964); *see, e.g., Dearing v. Peery*, 387 N.W.2d 367 (Iowa Ct. App. 1986); *Conn v. Boylan*, 224 N.Y.S.2d 823 (Sup. Ct. 1962). This also indicates that a monument is used primarily for the benefit of the deceased person's family and friends.

Based on the primary use of the monument, the court concludes the monument is a consumer good. It follows that Pioneer's purchase money security interest was perfected without filing when the security interest attached, which was when Mrs. Dillard acquired the monument. Tenn. Code Ann. §§ 47-9-203(1) & 47-9-302(1)(d).

The Debtors assert this perfection was not enough to protect the security interest against the bankruptcy trustee's rights as a lien creditor because the monument became a "fixture" when it was placed in the cemetery, and different rules apply to fixtures.

An item of personal property becomes a fixture by being attached to real estate, but all attached personal property is not a fixture. *See generally* 35 Am.Jur.2d *Fixtures* § 5 (1967); Jack E. Gervin, Jr., *The Law of Fixtures in Tennessee: A Consideration of the Common Law and Fixture-Related Provisions of the Uniform Commercial Code*, 42 Tenn. L.Rev. 354, 357-59 (1975).

When personal property is a fixture, a person who acquires an interest in the real estate acquires an interest in the fixture as well, since it is regarded as part of the real estate. Perfection of the security interest against anyone who acquires an interest in the real estate generally requires the filing of a financing statement in the real estate records. This is what the UCC calls a “fixture filing.” Tenn. Code Ann. §§ 47-9-313, 47-9-402 & 47-9-409.

For the purpose of explaining the law as it applies to this case, the court makes some assumptions. First, the court assumes Mrs. Dillard has an interest in the monument and the burial lot. It is likely she has an interest in the monument, but there was no evidence as to the burial lot. Second, the court assumes Pioneer did not make a fixture filing in the correct place. The filing of the financing statement with the register of deeds in Rhea County might qualify as a correct fixture filing, if the evidence showed that the monument is located in Rhea County, but the evidence does not show that. Tenn. Code Ann. §§ 47-9-401(1)(b) & 67-24-103. Third, the court makes the doubtful assumption that Tennessee law would allow a judgment or execution lien on Mrs. Dillard’s interest in both the monument and the burial lot.¹

¹ The evidence does not show that the cemetery where the monument is located comes under the protection of Tenn. Code Ann. § 46-2-105(a), which does not apply to all cemeteries. Tenn. Code Ann. §46-1-106(a). But the Tennessee courts are likely to forbid judgment or execution liens on the basis of public policy or the nature of the owner’s rights. *Memphis State Line R. Co. v. Forest Hills Cemetery Co.*, 116 Tenn. 400, 94 S.W. 69 (1906); *Hines v. State*, 126 Tenn. 1, 149 S.W. 1058 (1911); 14 Am.Jur.2d *Cemeteries* §§ 25 & 30 (1964). A burial lot may also be exempted, but the Debtors have not claimed an exemption in this lot. Tenn. Code Ann. § 26-2-305. Another

The result is that the bankruptcy trustee, as a hypothetical lien creditor, could have two kinds of liens on the monument. He could have a lien on the monument as personal property. He could also have a lien on the monument as real property, as a result of having a lien on the burial lot.

With regard to the lien on the monument as personal property, Pioneer's failure to make a fixture filing is irrelevant. A fixture filing is not required to perfect a security interest in a fixture against a claim that is *not* based on an interest in the real estate. Tenn. Code Ann. § 47-9-302(1)(d); *see generally* James J. White & Robert S. Summers, *Uniform Commercial Code* § 33-9 at 341 (4th ed. 1995). Priority depends on the rules that do not deal with fixtures. Under those rules, Pioneer's purchase money security interest in the monument has priority and can not be avoided because it was perfected without filing before the trustee's lien rights attached.

With regard to the lien on the monument as real estate, Pioneer was not required to make a fixture filing to perfect its security interest against the trustee's judgment lien on the burial lot. Section 9-313 of the UCC establishes the general rule that the secured creditor must make a fixture filing in order to perfect its security interest against an "encumbrancer" of the real estate. Tenn. Code Ann. § 47-9-313(3), (4)(a) & (4)(b); § 47-9-105(g); § 47-9-301(3). However, paragraph (4)(d) of § 9-313 creates an exception to this general rule. A fixture filing is not required to perfect a security interest against a judgment lien. The statute provides:

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

.....

statute prohibits levy or execution on lots sold by a cemetery company, but the evidence does not show the lot in question was sold by a cemetery company. Tenn. Code Ann. § 46-2-102.

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter.

Paragraph (4)(d) gives a security interest in a fixture priority over a judgment lien on the real estate if the security interest was perfected by any method permitted by the UCC before the judgment lien attached. Pioneer's security interest was perfected by one of those methods; it was perfected without the filing of a financing statement since that method is allowed for a purchase money security interest in consumer goods. Tenn. Code Ann. § 47-9-302(1)(d); James J. White & Robert S. Summers, *Uniform Commercial Code* § 33-10 at 345-47 (4th ed. 1995). It was perfected before trustee's lien rights attached. Therefore, the trustee could not avoid Pioneer's security interest even if Pioneer did not make a proper fixture filing.

The cross reference in UCC § 9-302(1)(d) suggests that the continued perfection of a purchase money security interest in consumer goods after they become a fixture always requires a fixture filing. But this is not what § 9-302(1)(d) actually says. It provides that a creditor with a purchase money security interest in consumer goods must make a fixture filing in order to have priority "to the extent provided in" § 9-313. Tenn. Code Ann. § 47-9-301(1)(d). In other words, § 9-302(1)(d) merely refers the secured creditor to § 9-313 to determine the extent to which continued perfection of its security interest will require a fixture filing. Priority is determined by the rules set out in § 9-313. Under those rules, Pioneer's security interest was perfected against and has priority over the rights of the bankruptcy trustee as the holder of a hypothetical judgment lien on the burial lot.

The bankruptcy trustee also has the rights of a bona fide purchaser of real estate. These rights would not allow the trustee to avoid Pioneer's security interest because they do not apply to

fixtures. 11 U.S.C. § 544(a)(3); James J. White & Robert S. Summers, *Uniform Commercial Code* § 33-10 at 345-47 (4th ed. 1995).

Pioneer's filing of a financing statement shortly before the Debtors' bankruptcy does not raise the question of whether the transfer of the security interest might be avoided as a preferential transfer. 11 U.S.C. § 547(b). The security interest was already perfected against a judgment or execution lien; the filing of the financing statement was not necessary to perfect the purchase money security interest in the monument against a judgment or execution lien. It did not make the transfer occur at the time the financing statement was filed. 11 U.S.C. § 547(e)(1).

In summary, the court concludes that Pioneer's security interest in the monument can not be avoided by the Debtors using their avoiding powers or the avoiding powers of the Chapter 13 trustee.

The Debtors finally contend that removal of the monument would be a crime under Tennessee law. Tenn. Code Ann. §§ 39-17-311 & 46-2-105.² The court doubts that repossession of the monument would necessarily be a desecration of the gravesite. Even if the law does not allow Pioneer to remove the monument, that is not the same as extinguishing its security interest.

Since Pioneer's security interest is not avoidable, the claim is secured and the plan fails to meet the confirmation requirements of § 1325(a)(5). 11 U.S.C. § 1325(a)(5). The court will enter an order denying confirmation allowing Pioneer time to amend its proof of claim, and allowing the Debtors time to file an amended plan.

² The court notes again the lack of evidence that the cemetery is subject to Chapter 2 of Title 46. Tenn. Code Ann. § 46-1-106(a).

This Memorandum constitutes findings of fact and conclusions of law as required by *Fed.*

R. Bankr. P. 7052.

BY THE COURT

entered August 27, 1998

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

No. 98-12252
Chapter 13

MARVIN WAYNE DILLARD
PEGGY JOAN DILLARD

Debtors

ORDER

In accordance with the Memorandum Opinion entered this date,

It is ORDERED that the objection to confirmation filed by Pioneer Credit Company is SUSTAINED and confirmation is denied;

It is further ORDERED that the debtors are allowed ten (10) days from the date of this order within which to file an amended plan. If the plan is not amended within the time allowed, the case shall be dismissed without further hearing, there being no confirmable plan before the court. 11 U.S.C. §1307(c)(5); and

It is further ORDERED that Pioneer Credit Company shall file an amended proof of claim within ten (10) days from the date of this order.

ENTER:

BY THE COURT

entered August 27, 1998

R. THOMAS STINNETT
U.S. BANKRUPTCY JUDGE