

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE

In re	)	
	)	
KENNARD B. WEBB	)	Case No. 95-20011
JEAN M. WEBB	)	Chapter 7
	)	
Debtors	)	

MEMORANDUM OPINION

This matter is before the court upon the debtors' motion to avoid the nonpossessory, nonpurchase-money lien of Blazer Financial Services, Inc. ("Blazer") in a wood lathe<sup>1</sup> pursuant to 11 U.S.C. § 522(f)(1)(B). As set forth below, the court finds that the motion should be denied.

I.

The debtors filed a bankruptcy petition initiating this chapter 7 case on January 4, 1995. Also on that day the debtors filed a Motion to Avoid Lien Pursuant to 11 U.S.C. § 522(f)(2)<sup>2</sup> wherein they allege that prior to the filing of their chapter 7,

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<sup>1</sup>The AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE defines a "lathe" as "[a] machine for shaping a piece of material, such as wood or metal, by rotating it rapidly along its axis while pressing against a fixed cutting or abrading tool." AM. HERITAGE DICTIONARY, p. 1017 (3rd ed. 1992).

<sup>2</sup>The correct provision is actually 11 U.S.C. § 522(f)(1)(B). The Bankruptcy Reform Act of 1994 added additional subparts to subsection 522(f) of the Code, resulting in the renumbering of the lien avoidance provision from § 522(f)(2) to § 522(f)(1)(B).

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they pledged certain specified items<sup>3</sup> of personal property to Blazer and request that the lien of Blazer on these items be avoided. Blazer filed an objection to the motion, asserting that the personalty listed did not fall within the categories of personal property on which liens may be avoided under section 522(f)(1)(B). A trial on this issue was held on April 18, 1995. At the beginning of the trial, counsel for Blazer announced to the court that Blazer was withdrawing its objection to all items except the wood lathe. This is a core proceeding. 28 U.S.C. section 157(b)(2)(K).

## II.

Section 522(f)(1)(B) of the Bankruptcy Code provides that

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 -

...

(B) a nonpossessory, nonpurchase-money security interest in any -

(i) household furnishings, household

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<sup>3</sup>The debtors' motion to avoid lien does not list the wood lathe as an item of personalty upon which Blazer holds a lien, and the debtors have not amended the motion to add the wood lathe. However, counsel for the debtors represented to the court that the intent of the motion was to avoid the lien of Blazer on all the personalty in which Blazer asserted an interest, including the wood lathe, and counsel for Blazer advised the court at trial that it desired to proceed with the trial on the issue of whether its lien on the wood lathe may be avoided and that it waived any procedural defect in debtors' motion.

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.

The debtors assert that Blazer's lien on the wood lathe may be avoided under § 522(f)(1)(B)(i) because it is a household good used by the debtor, Kennard Webb, to engage in woodworking as a hobby. Mr. Webb testified that he uses the wood lathe to make lamps and children's toys for use by his family and children. The debtors note that pursuant to the definition of household goods adopted by this court through Judge Richard Stair, Jr. in an unpublished memorandum opinion in *In re Holstine*, case no. 90-33197 (Nov. 14, 1991), hobby items may constitute "household goods" as that phrase is used in § 522(f). In *Holstine*, the court defined household goods as "property one might normally find in today's household and that includes certain recreational items such as golf clubs and cameras used for non-commercial purposes." *In re Holstine*, case no. 90-33197 (Richard Stair, Jr., November 14, 1991), citing *In re Reid*, 121 B.R. 875, 889-880 (Bankr. D.N.M. 1990).

Blazer similarly refers this court to Judge Stair's rulings but requests that instead of *Holstine*, this court adopt Judge Stair's recent ruling in *In re French*, 177 B.R. 568 (Bankr. E.D. Tenn. 1995), wherein the court added a second component to the

*Holstine* definition of household goods. Relying on the decision of the Fourth Circuit Court of Appeals in *McGreevy v. ITT Financial Services (In re McGreevy)*, 955 F.2d 957 (4th Cir. 1992), Judge Stair held that in order to constitute a household good, an item of personalty must not only normally be found in and around today's average household, but must also "be used by the debtor or the debtor's dependents to support and facilitate day-to-day living within the home, including maintenance and upkeep of the home itself." *In re French*, 177 B.R. at 573, quoting *McGreevy v. ITT Financial Services*, 955 F.2d at 961. Applying this definition, the court concluded that a camera used to memorialize family events and a VCR which provides the debtor with entertainment were household goods, while a shotgun and a revolver, under the facts of the case before the court, were not. *Id.* at 573-575.

Blazer asserts that a wood lathe fails to satisfy either prong of the definition of household goods formulated in *McGreevy* and adopted in *French*. According to Blazer, the wood lathe does not meet the first prong because a wood lathe is not typically or normally found in or around today's average household and it does not meet the second prong that the item support and facilitate day-to-day living because the wood lathe is not presently being used by the debtor. At the trial on this matter, Mr. Webb testified that he knew of only one other individual that owns a wood lathe. Mr. Webb further testified that it had been two years since he had made anything with the wood lathe because he did not have a place to set it up and because he did not have time for the hobby due to being

busy with his work, his duties around the home and his children. Mr. Webb noted that when he was using the wood lathe, he had made approximately a dozen toys and three lamps for his family during the thirteen or fourteen year period that he had owned the lathe.

The term "household goods" is not defined in the Bankruptcy Code. As a result, the conclusions reached by the various bankruptcy courts as to whether a particular item is a household good have been varied and often conflicting. For example, the courts have been unable to agree on whether an item as common as a bicycle is a household good.<sup>4</sup> The courts even disagree as to whether the term "household goods" should be strictly or liberally construed.<sup>5</sup> In *McGreevy*, the circuit decision relied upon by Judge Stair in *French*, the Fourth Circuit conducted an extensive analysis of existing case law on the subject of what constitutes "household goods" as that phrase is used in § 522(f). The court in *French* summarized the *McGreevy* decision:

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<sup>4</sup>See *Matter of Reid*, 97 B.R. 472 (Bankr. N.D. Ind. 1988); *In re Courtney*, 89 B.R. 15 (Bankr. W.D. Tex. 1988); *In re Eveland*, 87 B.R. 117 (Bankr. E.D. Cal. 1988); *In re Ray*, 83 B.R. 670 (Bankr. E.D. Mo. 1988), for cases holding that a bicycle is a household good; and *In re Miller*, 65 B.R. 263 (W.D. Mo. 1986); *In re McTearnen*, 54 B.R. 764 (Bankr. D. Colo. 1985), for cases concluding that a bicycle is not a household good.

<sup>5</sup>Compare *In re French*, 177 B.R. at 572; *In re Reid*, 121 B.R. 875, 878 (Bankr. D.N.M. 1990); *In re Courtney*, 89 B.R. at 16; *In re Coleman*, 5 B.R. 76 (Bankr. M.D. Tenn. 1980) (cases espousing a liberal construction); with *In re Weitzel*, 46 B.R. 254 (Bankr. W.D. Va. 1984); *McPherson v. Association Financial Services (In re McPherson)*, 18 B.R. 240, 241 (Bankr. D.N.M. 1982); *General Finance Corp. v. Ruppe (In re Ruppe)*, 3 B.R. 60, 61 (Bankr. D. Colo. 1980) (cases espousing a narrow construction). See also *Central National Bank & Trust Co. v. Liming (In re Liming)*, 797 F.2d 895, 901 (10th Cir. 1986) ("the legislative history [to § 522(f)] exhibits a partially pro-debtor stance . . .").

*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 the 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. [cites omitted]. 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 *McGreevy*, the Fourth Circuit rejected both definitions, the first because the "necessary to a fresh start" or "necessity" requirement was not provided for in the statute, and the second because it did not "capture fully the functional nexus between the good and the household that distinguishes a household good from a good that happens (even typically so) to be used in the house." *Id.* at 960-61. In order to remedy these two problems, the Fourth Circuit adopted a definition for household goods that required the good be "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." *Id.* at 961-62. The first part of the definition was adopted because "[a]ny definition that does not incorporate at least this requirement is wholly without mooring in the statute." *Id.* at 960 n. 8. The second part of the definition, the "functional nexus" requirement, was adopted based on the following rationale:

Such a requirement, we believe, is necessary for the term ["household goods"] to have the ordinary, common-sense meaning that was intended by Congress. Any definition that does not include a functional requirement will inevitably suffer from either the underinclusiveness of the necessity definition, because some goods are

used to support and facilitate daily life within the home that are not strictly necessary to day-to-day living, or the overinclusiveness of the proximity definition, because some goods are found and used within the home that are not used to support and facilitate home life. *Id.* at 961.

*In re French*, 177 B.R. at 573.

For the most part, courts considering the household goods issue since *McGreevy* have adopted the *McGreevy* definition as the applicable test. See *In re Keeton*, 161 B.R. 410 (Bankr. S.D. Ohio 1993); *Matter of Raines*, 161 B.R. 548 (Bankr. N.D. Ga. 1993), *aff'd*, 170 B.R. 187 (N.D. Ga. 1994); *cf. In re Lindell-Heasler*, 154 B.R. 748 (D. Wyo. 1992) (*McGreevy* not applicable in determining whether an item constitutes a "household article" for state exemption purposes).

The Supreme Court has made it clear that unless otherwise defined, words should be interpreted as taking their ordinary, contemporary, common meaning. *Perrin v. United States*, 444 U.S. 37, 42, 100 S. Ct. 311, 314, 62 L. Ed. 2d 199 (1979). The American Heritage dictionary defines "household" when used as an adjective as "of, relating to, or used in the household" as in "household appliances" and "commonly known; familiar" as in "has become a household name." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, p. 876 (3rd ed. 1992) (hereinafter "HERITAGE"). As a noun, HERITAGE defines household as a "domestic unit consisting of the members of a family who live together along with nonrelatives such as servants; the living spaces and possessions belonging to such a

unit and a person or group of persons occupying a single dwelling." *Id.* HERITAGE also defines "goods" as "commodities; wears; portable personal property." *Id.* at 780. BLACKS LAW DICTIONARY defines "household" as an adjective as "belonging to the house and family; domestic" and as a noun as "a family living together ... those who dwell under the same roof and compose a family." BLACKS LAW DICTIONARY, p. 740 (6th ed. 1990).

Thus, based on the common meaning of these words as recognized in the dictionary, the ordinary definition of household goods would appear to be that adopted in *Holstine* and categorized in *McGreevy* as the definition used by the second category of pre-*McGreevy* cases of "goods typically found and used in and around the home." See *McGreevy*, 955 F.2d at 960. As noted above, however, *McGreevy* rejected this definition because it did not provide a functional nexus between the good and the household. *Id.* at 961. In a post-*McGreevy* ruling, a bankruptcy court in Georgia reviewed the cases that had applied the second approach and questioned *McGreevy's* conclusion that this approach provided no functional nexus between the good and the household. *Matter of Raines*, 161 B.R. at 550. The *Raines* court observed that the definition "at least impliedly requires that such a 'functional nexus' exists" and that "therefore, the *McGreevy* definition does not appear to be a material departure from the other approach." *Id.* Despite the lack of an apparent distinction in its application, the *Raines* court adopted the *McGreevy* definition of "household goods," concluding that the Fourth Circuit's approach was a better one since it

"expressly establishes the importance of there being a relationship between the good and the household." *Id.*

Like the *Raines* court, this court similarly questions that a real distinction exists between the definition "goods typically found and used in or around the home" and the *McGreevy* definition of "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." In fact, the court can conceive of no item of personalty that fits the former but not the latter.<sup>6</sup> However, as held by *Raines*, to ensure that the requisite "functional nexus" exists, this court defines household goods as 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 **or about**<sup>7</sup> the home. See *McGreevy*, 955 F.2d at 962.

The court is further of the opinion that the phrase "household goods" should be liberally construed in favor of the debtor.

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<sup>6</sup>As an example of a good that is located and used within the home, but does not support and facilitate daily living within the home, *McGreevy* referenced a model car collection. *McGreevy*, 955 F.2d at 961. This court does not agree that a collection of this type is used within the home as this court construes the definition.

<sup>7</sup>The addition of "or about" to the definition was made to clarify that the definition is not limited to items of personalty that are used solely within the strict confines of the home. Although the addition of the words "or about" would appear to be a modification to the *McGreevy* definition, the court in *McGreevy* noted that "[a] *sine qua non* of a household good must be use in or around the house" and that "[a]ny definition that does not incorporate at least this requirement is wholly without mooring in the statute." *McGreevy*, 955 F.2d at 960, n. 8. (emphasis in original).

Although the Fourth Circuit Court of Appeals in *McGreevy* did not address whether the phrase should be given a liberal or narrow construction, Judge Stair in *French* noted that the term is to be defined "liberally" and that there should be a "liberal and flexible application" of § 522(f). See *In re French*, 177 B.R. at 572, 574.

The analysis of this issue by the bankruptcy court in *In re Coleman*, 5 B.R. 76 (Bankr. M.D. Tenn. 1980), is also instructive. The *Coleman* court noted that subsection (d) of section 522 of the Bankruptcy Code sets forth the federal bankruptcy exemptions and that the phrases used in subsection (d) to describe the items in which an exemption may be claimed appears verbatim in subsection (f) describing the items subject to lien avoidance.<sup>8</sup> *Id.* at 77-78. "There is no indication that these phrases [should] be given a more restricted scope in subsection (f) than in subsection (d)." *Id.* at 78. The court further noted that exemption statutes have always

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<sup>8</sup>Compare § 522(f)(1)(B) quoted above with § 522(d)(3) and (4) of the Code:

The following property may be exempted ...

(3) The debtor's interest ... in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's ... interest ... in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

been construed liberally in favor of the debtors, under both the old Bankruptcy Act of 1898 and in decisions construing similar phrases in state exemption statutes, and concluded that this construction was intended to continue in the Bankruptcy Reform Act of 1978. *Id.* As observed by the court:

A review of the legislative history of 11 U.S.C. § 522 ... reveals no intention on the part of Congress to depart from the well-accepted general approach to construing exemption statutes liberally in favor of debtors. Subsection (f) is an integral part of the comprehensive exemption provisions of the Bankruptcy Reform Act.

...

An additional consideration militating in favor of giving the phrases in subsection (f) a broad scope is the applicability of the lien avoidance provisions to property claimed as exempt under state exemption statutes. In order to protect these exemptions, these phrases must be sufficiently broad to cover the most liberal constructions of state statutes. If the scope of the lien avoidance provisions of 11 U.S.C. § 522 is to be restricted, it must be through the statutory provisions governing what property may be claimed as exempt.

*In re Coleman*, 5 B.R. at 78-79. It is clear that the purpose of subsection (f) is to protect, not restrict, the debtor's exemptions. *Id.* at 79.<sup>9</sup> Accordingly, the lien avoidance provision, like the exemption statutes, must be liberally construed.

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<sup>9</sup>The legislative history to subsection (f) of section 522 indicates that its purpose, *inter alia*, is to "protect the debtor's exemptions." *In re Coleman*, 5 B.R. at 78, citing H.R. REP. No. 95-595, 95th Cong., 1st Sess. 362 (1977), 1978 U.S.C.C.A.N. 5787, 6318; S. REP. No. 95-989, 95th Cong., 2d Sess. 76 (1978).

The court must now apply its definition of household goods to determine whether the wood lathe which the debtor characterizes as a piece of hobby equipment constitutes a household good. The courts which have applied the first part of the *McGreevy* test, i.e., whether the item of personalty is typically found in or about the debtor's home, have concluded that items of hobby equipment are household goods. See *Matter of Reid*, 97 B.R. at 479 (gym weight sets, one rod and reel); *In re Gray*, 87 B.R. 591 (Bankr. W.D. Mo. 1988) (hobby equipment). And this court agrees, as recognized by Judge Stair in *In re French*, that items which provide entertainment may support and facilitate a debtor's day-to-day living within the home. *In re French*, 177 B.R. at 574. However, this court concurs with Blazer that a wood lathe does not meet either of the requirements of a household good. It is not the type of good that is typically or normally found in or around a home. The debtor testified that he knew of only one other person that owned a wood lathe.<sup>10</sup> In addition, it does not appear that the wood lathe, under the facts of this case, constitutes an item of personalty that supports and facilitates the debtor's day-to-day living within or about his home. The debtor testified that he had not used the wood lathe in two years because he did not have a place to set it up and because of lack of time. The court recognizes that hobby items, even though not used daily, may still facilitate and support

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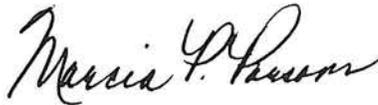
<sup>10</sup>Some goods may be so commonplace that the court can take judicial notice of the fact that the goods are typically found in or around the home. See Fed. R. Evid. 201. A wood lathe is not such an item.

day-to-day living, but cannot conclude that a hobby item that has not been used in two years is such an item. Therefore, this court finds that a wood lathe does not constitute a household good.

The foregoing constitutes findings of facts and conclusions of law pursuant to Fed. R. Bankr. P. 7052. An order will be entered in accordance with this memorandum denying debtors' motion to avoid lien in the wood lathe and sustaining Blazer Financial Services' objection thereto.

ENTER: May 15, 1995

BY THE COURT

A handwritten signature in cursive script, appearing to read "Marcia P. Parsons".

MARCIA PHILLIPS PARSONS  
UNITED STATES BANKRUPTCY JUDGE

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