

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE**

IN RE:

JOSEPH LANE COTTINGHAM,

Debtor.

Case No. 95-32441-WHB
Chapter 7

**MEMORANDUM OPINION ON THE OBJECTIONS TO DEBTOR'S
MOTION TO AVOID LIENS OF NORWEST FINANCIAL SERVICES
AND AMERICAN GENERAL FINANCE**

This contested matter is before the Court on the objections of American General Finance Company and Norwest Financial Services ("creditors") to the debtor's motion to avoid the creditors' nonpossessory, nonpurchase-money security interests in personalty that the debtor may be entitled to claim as exempt.

The Court has determined that this matter presents the following issues:

- (1) Whether the debtor may amend his Schedule C to increase claimed exemptions in personal property from \$500 to \$4,000 and to reflect a \$750 exemption for tools of the trade;
- (2) Whether certain items specified by the creditors are ineligible for lien avoidance under 11 U.S.C. § 522(f)(1)(B);
- (3) Whether an IBM computer used in the debtor's business qualifies as a tool of the trade for exemption purposes;
- (4) Whether entireties ownership of the items at issue protects them from recovery by these creditor; and
- (5) Whether the value of the debtor's property claimed as exempt exceeds the monetary limits for exemption.

Resolution of these issues is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). The following constitutes findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

The record reflects that the debtor filed his voluntary chapter 7 petition for relief on November 13, 1995. On November 29, the debtor filed his schedules and statement of financial affairs. On "Schedule C - Property Claimed As Exempt," the debtor lists \$500 worth of household goods and furnishings; \$225 worth of firearms; \$150 worth of office equipment and \$300 worth of food handling equipment. Since these schedules were filed, the debtor has filed the current motions seeking to avoid the creditors' nonpossessory, nonpurchase-money security interests in the personalty listed on Schedule C and in personalty not specifically itemized but allegedly eligible for exemption. The creditors concede that their security interests are nonpossessory and nonpurchase-money but they filed a written objection contending that the collateral pledged "is not entirely subject to lien avoidance." Objection to Motion to Avoid Lien . . . " filed February 20, 1996.

At the hearing on this matter, the debtor testified that the collateral to which the creditors' security interests attach has a value of approximately \$2,900. Tennessee's exemption law allows personalty with a value of up to \$4,000 and tools of the trade with a value up to \$750 to be claimed as exempt and the debtor wishes to claim the full value of the exemptions to which he is entitled. TENN. CODE ANN. §§ 26-2-102 & 26-2-111. The debtor orally amended his exemptions, but he should now do so in writing. FED. R. BANKR. P. 1009(a) provides that a debtor may amend his schedules "as a matter of course at any time before the case is closed." The debtor is required to give notice of the amendment to the case trustee and to any entity affected thereby. FED. R. BANKR. P.1009(a). The trustee or any creditor may file objections to the exemptions or any amendment within thirty (30) days unless within the thirty (30) day time period further time is granted by the

court. FED. R. BANKR. P. 4003(b). The cases generally construe these rules liberally to allow the debtor to amend the exemption schedule, Schedule C, and, absent objections by and prejudice to creditors, to allow the added exemptions. *See, e.g., In re Osborn*, 24 F. 3d 1199 (10th Cir. 1994); *In re Fournier*, 169 B.R. 282 (Bankr. D. Conn. 1994). Accordingly, amendment of the debtor's schedules with notice to the trustee and creditors is available in this case as is an opportunity for the trustee and creditors to object thereto. At the hearing on this matter, counsel for the creditors contended that the debtor must first claim as exempt household goods and furnishings that do not serve as collateral for their security interests before claiming the collateral items as exempt and that, otherwise, such a claimed exemption would exceed the \$500 amount of the debtor's scheduled exemptions. Neither the debtor nor the creditors provided values for these noncollateral items at the hearing. Presumably, allowance of an amendment to the scheduled exemptions will resolve this contention. However, this leads to the issue asserted by the creditors of whether the value of the debtor's property claimed as exempt is less than \$4,000. As noted above, the debtor testified that the maximum total value of the creditors' items of collateral, including the computers, is approximately \$2,900. This is the only evidence of value before the Court and is clearly an amount less than \$4,000. Thus, it may be found that the items at issue do not exceed the \$4,000 exemption limit. However, should the creditors desire to challenge the exemptions claimed, following the debtor's formal amendment, on valuation grounds they have thirty (30) days following the written amendment within which to do so and to present evidence of the value of the items at issue.

The creditors next contend that certain items that serve as collateral for their loans do not qualify for the lien avoidance available under 11 U.S.C. § 522(f)(1)(B) because they are not household goods within the meaning of the statute. Specifically, these items are:

one tent; one stereo; two televisions; one computer; one chain saw; a .38 caliber Smith & Wesson firearm; and a bicycle.

Section 522(f)(1)(B) directs that if a lien impairs an exemption to which the debtor would otherwise be entitled and 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,

it may be avoided.

The pertinent Tennessee exemption statute provides:

Personal property to the aggregate value of four thousand dollars (\$4,000.00) debtor's equity interest shall be exempt from execution, seizure or attachment in the hands of any person who is a bona fide citizen permanently residing in Tennessee, and such person shall be entitled to this exemption without regard to his vocation or pursuit or to the ownership of his abode. Such person may select for exemption the items of the owned and possessed personal property, including money and funds on deposit with a bank or other financial institution up to the aggregate value of four thousand dollars (\$4,000.00) debtor's equity interest.

TENN. CODE ANN. §26-2-102.

There is no dispute that the items at issue constitute personalty, which, assuming a cumulative value of less than \$4,000, are eligible for exemption under Tennessee law. Therefore, the question

becomes whether the items qualify as household goods or eligible items "held primarily for the personal, family, or household use of the debtor or dependent of the debtor" within the meaning of 11 U.S.C. § 522(f)(1)(B)(i).

The majority view seems to be that "household goods" in the exemption context are to be defined liberally. *In re French*, 177 B.R. 568, 572 (Bankr. E.D. Tenn. 1995). A recent opinion from the Court of Appeals for the Fourth Circuit provides a thorough discussion of the definitions traditionally applied in cases such as this and concludes that "household goods under Section 522(f) are those 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, including maintenance and upkeep of the house itself." *McGreevy v. ITT Fin. Serv. (In re McGreevy)*, 955 F. 2d 957, 961-962 (4th Cir. 1992).

As discussed by the *McGreevy* Court, the bankruptcy courts have traditionally adhered to one of two different definitions of "household goods." 955 F. 2d at 959. The first definition includes "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 . . ." *Id.* (emphasis in original, citing *In re Barnes*, 117 B.R. 842 (Bankr. D. Md. 1990)). The second prominent definition includes "*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." 955 F. 2d at 960 (emphasis in original, citing, *e.g.*, *In re Caruthers*, 87 B.R. 723 (Bankr. N.D. Ga. 1988)). Further, according to the *McGreevy* Court, the "necessity" definition is underinclusive "because some goods are used to support and facilitate daily life within the home that are not strictly necessary to day-to-day living," and the "proximity" definition is overinclusive "because some goods are found and used within the home that are not used to support and facilitate

home life." 955 F. 2d at 961. The *McGreevy* Court rejected both traditional definitions in favor of the better view that defining household goods for purposes of 11 U.S.C. § 522(f) requires a determination that the goods are actually used to support and facilitate daily life within the house. There must be a "functional nexus between the good and the household." *Id.* This standard has been adopted by several courts and is a particularly workable standard in Tennessee given that the Tennessee personalty exemption statute does not impose a "reasonably necessary" requirement on items claimed as exempt. TENN. CODE ANN. §26-2-102. Compare, e.g., *In re Biancavilla*, 173 B.R. 931, 932 (Bankr. D. Idaho 1994) (which applied the Idaho statute requiring that only "reasonable necessary" furnishings and appliances up to a value of \$4,000 may be claimed as exempt. Citing Idaho Code § 11-605(1)(a)).

Application of the *McGreevy* test requires a determination of whether the items at issue are actually used to support and facilitate daily life within the house. The debtor testified that the tent had not been used in approximately ten years; thus, it clearly does not support daily life within the household. Similarly, there was no evidence that the chain saw would support and facilitate day to day living within the home or the home's maintenance and upkeep. Firearms are generally not considered items that support and facilitate day to day living, particularly where, as here, there is no evidence that the gun is or has been used for home protection. See, e.g., *In re Raines*, 161 B.R. 548 (Bankr. N.D. Ga. 1993), *aff'd*, 170 B.R. 187 (N.D. Ga. 1994); *In re French*, 177 B.R. 568, 54-575. Likewise, there is no evidence that the debtor's bicycle facilitates and supports the day to day living within the household. The evidence establishes that the debtor possesses two computers, one MacIntosh that is used by his wife and by his children for school work and one IBM that is used by the debtor in his business. The creditors object to avoidance of the lien on one computer alleging

that it is not available for exemption. However, given the debtor's testimony, it may be found that the MacIntosh computer used by the debtor's children and wife supports the day to day life of this family and household and qualifies as a household good that may be exempt. Conversely, the IBM computer used in the debtor's business does not qualify as such, there being no evidence of family, personal or household use thereof by the debtor or a dependent of the debtor.

The stereo and the two televisions are items typically found in the average household. The debtor testified that his family possesses three televisions, one of which is an "old black and white TV;" thus, the creditors contend that the two televisions pledged as security for their respective loans are luxury items rather than household goods. Having rejected the requirement that an item must be strictly necessary for daily living in order to qualify as a household good under § 522(f) in favor of a requirement that an item actually supports and facilitates day to day living in the household, the Court finds that the stereo and two televisions are items that facilitate and support day to day living by providing entertainment for the debtor and his dependents. *Farley v. Commercial Credit*, 189 B.R. 398, 401 (W.D. Ky. 1995). This is particularly true given that the debtor has school age children. *In re French*, 177 B.R. at 574.

In summary, based on the above discussion, the tent, IBM business computer, chain saw, firearm and bicycle do not qualify as household goods within the scope of § 522(f)(1)(B)(i). Conversely, the two televisions and stereo qualify as § 522(f)(1)(B)(i) household goods and the creditors' objection to avoidance of the security interests thereon will be denied.

The next issue for consideration is whether the IBM computer used by the debtor in his business qualifies as a tool of the trade for exemption purposes when the debtor's business is not computer related. The pertinent Tennessee exemption statute provides as follows:

In addition to the property exempt under § 26-2-102, the following shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in Tennessee: . . .

(4) The debtor's aggregate interest, not to exceed seven hundred fifty dollars (\$750) in value in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor; . . .

TENN. CODE ANN. § 26-2-111.

"Necessity to present [rather than future] employment . . . is the appropriate standard" for determining the applicability of this provision. *McLemore v. Huffines (In re Huffines)* 57 B.R. 740, 741 (M.D. Tenn. 1985). The debtor is in the catering business and he testified that he uses the computer for bookkeeping and record keeping. He further testified that he is self employed and that he purchased the computer specifically for use in his business. There is no evidence that the debtor employs any clerical staff. The evidence supports a finding from the debtor's testimony that the computer contributes to efficient operation of the debtor's present business and thus, his livelihood. *See, e.g., In re Carson*, 184 B.R. 587, 589 (Bankr. N.D. Okla. 1995). Consequently, under these circumstances, the debtor may be allowed to exempt his computer as a tool of the trade to the extent of the allowed exemption of \$750 under TENN. CODE ANN. § 26-2-111(4), plus any residual exemption amount that may be available under TENN. CODE ANN. § 26-2-102. The specific \$750 "tools of trade exemption under TENN. CODE ANN. § 26-2-102 does not preclude the debtor from claiming tools of the trade exempt under the general \$4,000 personalty exemption provisions of TENN. CODE ANN. § 26-2-102. *Am. Bank & Trust v. Miller (In re Miller)* 30 B.R. 819 (M.D. Tenn. 1983). However, should the value of the computer exceed the cumulative exemption¹ allowance, the

¹ Although the debtor testified at the hearing that the cumulative value of the collateral items at issue is

debtor may redeem the computer by paying the creditors the difference in the cumulative exemption limit and value of the computer within thirty (30) days from issuance of this memorandum. To the extent that the IBM computer is exempt, these creditors' liens may be avoided under §522(f)(1)(B)(ii).

approximately \$2,900, he did not specify a separate value for this computer.

The Court next *sua sponte* considers whether ownership of the collateral items by the debtor and his wife as tenants by the entirety exempts them from recovery by these creditors. Whether and to what extent the property may be available for exemption is a question of fact and law. In the bankruptcy context, entirety property is available for exemption to the extent that it is exempt under applicable state or nonbankruptcy law. 11 U.S.C. § 522(b)(2)(B); *In re Hunter*, 970 F. 2d 299 (7th Cir. 1992). In Tennessee, a tenancy by the entirety may be created in personal property. *First Am. National Bank v. Evans*, 220 Tenn. 393, 417 S.W. 2d 778 (1967). Moreover, entirety property is exempt from process by a creditor of either spouse, individually,² but is not exempt from process by creditors to whom the debtors are jointly obligated. *Waldschmidt v. Shaw (In re Shaw)*, 5 B.R. 107 (Bankr. M.D. Tenn. 1980); *Robinson v. Trousdale*, 516 S.W. 2d 626 (Tenn. 1974); *Irwin v. Dawson*, 197 Tenn. 314, 273 S.W. 2d 6 (1954). In this matter, all indications are that the obligations to these two creditors were incurred by the debtor individually; however, the Court is without actual proof in that regard. It is also unclear whether all of the property pledged to these creditors was owned individually or as tenants by the entirety. Consequently, the Court will allow the parties fifteen (15) days following issuance of this memorandum to file additional pleadings if the parties wish to present additional proof on who is liable for repayment of these specific debts or on the ownership of this specific collateral. In the absence of additional pleadings, the Court will consider this issue to have been resolved or abandoned by these parties.

From the above discussion and findings, the Court finds that the value of the debtor's exemptions do not exceed \$4,000; that the debtor's scheduled exemptions may be amended; that the liens on the debtor's tent, chain saw, firearm and bicycle may not be avoided and these items should be surrendered to the creditor(s) or redeemed within thirty (30) days from this memorandum; that the

² The individual spouse's interest is subject to alienation. *Weaks v. Gress*, 225 Tenn. 593, 474 S.W. 2d 424 (1971).

liens on the stereo, two televisions and the MacIntosh computer may be avoided under § 522(f)(1)(B)(i) and these items claimed as exempt; that the debtor's IBM business computer may be claimed as exempt as a tool of the trade and the liens thereon avoided under § 522(f)(1)(B)(ii) and that to the extent the value of the IBM computer exceeds the cumulative exemption of \$750 plus any residual remaining of the \$4,000 for general personal property the debtor may redeem that computer by paying any excess value to the affected creditor(s) within thirty (30) days from this memorandum.

Whether the obligations at issue are obligations of the debtor individually, and whether the pledged property is owned as tenants by the entirety must remain under advisement for fifteen (15) days following issuance of this memorandum to allow the parties to file further pleadings and to submit evidence relevant to that issue's resolution. An appropriate Order shall be entered simultaneously herewith.

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE

April 25, 1996

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