

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:)	CASE NO. 03-62155
)	
JAMES EDWIN CONERTON and)	CHAPTER 7
RITA SIMPSON CONERTON,)	
)	
Debtors)	
_____)	
)	
JAMES EDWIN CONERTON and)	CONTESTED MOTION
RITA SIMPSON CONERTON,)	
)	
Movants)	
)	
v.)	
)	
WACHOVIA BANK, N.A.,)	JUDGE BIHARY
)	
Respondent.)	

ORDER

This Chapter 7 case is before the Court on debtors' motion to avoid a non-possessory nonpurchase-money security interest held by Wachovia Bank, N.A. ("Wachovia") in a 1996 Isuzu Trooper (the "Vehicle"). The parties filed stipulated facts on November 17, 2003, and each party has now filed a brief. The issue is whether the Vehicle is a tool of the trade under 11 U.S.C. § 522(f)(1)(B)(ii). Debtors seek to avoid a \$17,932.04 consensual security interest held by Wachovia on the Vehicle valued at \$4,970.00. After carefully considering the briefs, stipulated facts, and the record in this case, the Court concludes that the Vehicle is not a tool of the

trade and the motion to avoid Wachovia's security interest cannot be granted.

The parties agree that the only legal issue before the Court is whether the Vehicle is a tool of the trade, and they have stipulated that debtor James Conerton is an independent contractor in the business of selling and installing plasma screen equipment and furniture. His sample display of plasma screen and related furniture measures five feet tall by three and one-half feet wide, and he uses the Vehicle in his business to call on customers and to carry a ladder and other tools used in the installation of plasma screens.

There are many cases dealing with whether a motor vehicle is a tool of the trade for purposes of claiming an exemption and for purposes of the bankruptcy lien avoidance statute, and the cases go both ways. The parties have cited a few of these cases. The Court is persuaded by the reasoning of Judge Posner in *In re: Patterson*, 825 F.2d 1140 (7th Cir. 1987) (where the Court held that a dairy farmer's tractor was not a tool of the trade), the reasoning by Judge Kahn in *In re: Curry*, 18 B.R. 358 (Bankr. N.D. Ga. 1982) (where the Court held that a debtor tile-setter's pick-up truck was not a tool of the trade), and other opinions holding that a motor vehicle was not a tool of the trade. See *In re: Nipper*, 243 B.R. 33 (E.D. Tenn. 1999); *In re: Bondank*, 130 B.R. 586 (Bankr. D. Kan. 1991); *In re: Harrell*, 72 B.R. 107 (Bankr. N.D. Ala. 1987); *In re: Lindsey*, 29 B.R. 25 (Bankr. D. Ore. 1983). The Court recognizes that there is contrary authority on this subject, but finds these cases less persuasive. See *South Atlantic Production Credit Assoc. V. Jones (In re: Jones)*, 87 B.R. 738 (Bankr.

M.D. Ga. 1988); *In re: Schneider*, 37 B.R. 747 (Bankr. N.D. Ga. 1984).

The lien avoidance statute in the Bankruptcy Code allows a debtor to avoid a lien on an interest of the debtor in property to the extent such lien impairs an exemption if and only if such lien is a certain type of judicial lien or if such lien is a certain type of nonpossessory, nonpurchase-money security interest. Here, we are concerned with a non-possessory, nonpurchase money-security interest, not a judicial lien. The statute lists only three categories of nonpossessory, nonpurchase-money security interests that can be avoided if they impair an exemption and the list is exclusive. The list reads as follows:

(f)(1) ... 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) (2004).

Congress could have listed vehicles used to earn a living as a type of property in which a debtor could avoid a nonpossessory, nonpurchase-money security interest, but it did not do so. Given the specific language of § 522(f)(1)(B) and the omission of

any reference to avoiding consensual liens on vehicles, the Court is reluctant to open a Pandora's box by allowing these debtors to avoid Wachovia's interest in the Vehicle. To hold otherwise would lead to the conclusion that any debtor who uses his vehicle in sales or installation could avoid a nonpurchase-money security interest in the vehicle if it impaired his exemption. This may be sound policy, but it should be decided by Congress, not the courts.

In accordance with the above reasoning, debtors' motion to avoid Wachovia's security interest in the Vehicle is DENIED.

IT IS SO ORDERED, this _____ day of January, 2004.

JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

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