

In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:

JEWEL CLARK

Debtor

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Chapter 13 Case

Number 91-20394

MEMORANDUM AND ORDER

Debtor filed her Chapter 13 petition on May 15, 1991. A Confirmation Hearing was held on October 10, 1991. Debtor objected to the secured status of the claim of American General Finance, Inc., on the ground that refinancing divested the creditor of his purchase money secured status. The matter was taken under advisement to consider Debtor's claims. Based on the documentation submitted and the evidence adduced at the hearing, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

A hearing was held on October 10, 1991, to consider Debtor's Chapter 13 confirmation. At that time Debtor objected to the secured status of American General Finance, Inc., and voiced intent to avoid this lien. Debtor's Chapter 13 case was confirmed

with Debtor's objections taken under advisement.

Debtor entered into a purchase money installment contract on April 21, 1989, by which she purchased furniture from Shadron Furniture in Brunswick, Georgia. The contract was assigned to Credit Quick on this same date. The amount financed was \$2,840.00. *See* Exhibit "A" filed with Debtor's brief on October 21, 1991.

On April 13, 1990, American General Finance, Inc. ("American General") successor to Credit Quick refinanced the loan. In the refinancing \$2,165.93 was paid on the purchase money contract and \$1,652.07 was paid to the Debtor. *See* Exhibit "B" filed with Debtor's brief. Additional collateral was added to this contract consisting of two Magnavox televisions; one RCA VCR and one cassette recorder.

Debtor objects to American General's secured status on the grounds that the refinancing divested the creditor of its status as a purchase money secured creditor.

CONCLUSIONS OF LAW

Georgia Law applies to define purchase money security interests. The definition of purchase money security interest is found in Georgia's version of the U.C.C. at O.C.G.A. Section 11-9-107, which provides:

A security interest is a 'purchase money security interest' to the extent that it is:

- (a) Taken or retained by the seller of the collateral to secure all or part of its price; or
- (b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or use of the collateral if such value is in fact so used.

O.C.G.A. §11-9-107. In this instance, the creditor apparently had a security interest in certain items under the original contract of April, 1989, but when this contract was refinanced, there was no way to determine which items of security had been paid off by the debtors. The items listed on the original contract were also listed on the refinanced contract, and other items were added to that contract which were obviously not purchased when the contract was refinanced.

Applying the law as outlined in In re Manuel, 507 F.2d 990 (5th Cir. 1975), the refinancing of the original contract cannot be considered a purchase money contract because there is no indication of the order in which the purchases were to be paid off, and the amounts still due on such purchases.

Under Manuel, a creditor's purchase money security interest may be perfected without filing if the security interest is in the items purchased. However, if a refinancing agreement fails to indicate the order in which purchases were paid off, the amounts still due, and amounts secured by paid items, and if the agreement includes

collateral added to secure debt other than the price of the collateral, then that creditor fails to have a "purchase money security interest," and the statutory exception from filing requirements do no apply. Manuel, 507 F.2d at 993. Also, amounts and charges in an agreement for refinancing or extensions should not acquire purchase money secured status. See In re Fickey, 223 B.R. 586, 588-90 (Bankr. E.D.Tenn. 1982).

Clearly, the items added to the refinancing contract, which were not purchased at that time, would not be secured, and that portion of the contract would be unsecured. It is not possible, however, to differentiate in the refinanced contract which items would have been paid off, and it is not possible to break out the secured items from the unsecured items. See In re Fickey, supra.

As indicated in Fickey, supra, the Georgia courts have generally refused to determine the extent to which a secured debt is purchase money or is not purchase money. Fickey, 23 B.R. 590. Additionally, the creditor here has failed to show which, if any, part of his security interest should remain as "purchase money." Therefore, I conclude that the security interest of American General Finance, Inc., is non-purchase money and is fully avoidable. The debt owed to American General Finance, Inc., should be treated as an unsecured debt in Debtor's plan.

O R D E R

Debtor's objection to the claim of American General Finance, Inc., is granted. The security interest of this creditor is avoided with the claim to be reclassified as

unsecured.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ___ day of February, 1992.