

Filed at 11 O'clock & 44 min. A.M.  
Date 1-26-93

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>92-10074</u>
STEWART AVRETT	)	
	)	
Debtor	)	
_____)	)	
TRUST COMPANY BANK OF AUGUSTA	)	
	)	
Movant	)	
vs.	)	
	)	
STEWART AVRETT	)	
	)	
Respondent	)	

**ORDER**

Trust Company Bank of Augusta, N.A. ("Trust Company") objects to confirmation of debtor's proposed Chapter 13 plan. Based on evidence presented at hearing and relevant legal authority, I make the following findings.

**FINDINGS OF FACT**

Trust Company loaned the debtor, Stewart Avrett, Five Thousand Five Hundred Thirteen and 39/100 (\$5,513.39) Dollars. In connection with the loan debtor executed a promissory note in favor of Trust Company, as well as a security agreement pursuant to which

Trust Company retains a security interest in the following property: (1) John Deere Tractor 650, serial No. CH06505020341; (1) Gilman Box Blade, Mode G-Line 50, serial No. 1099; (1) Sidewinder Mower, Model No. Lc50, serial No. 847560; and (1) Sidewinder Bush Hog, serial No. 0000403X007339. The note indicates that Trust

Company's security interest is a nonpurchase-money security interest. Debtor has possession of the property.

Debtor filed a Chapter 13 petition on January 10, 1992. His modified plan provides in part:

7. Pursuant to 11 U.S.C. §522(f), the liens, including judicial liens, if any, of the following creditors on the John Deere mower & equip. of the debtor(s) are voided upon confirmation of the plan to the extent that such liens impair an exemption claimed by the debtor as tools of the debtor's trade or to which the debtor(s) would have been entitled under 11 U.S.C. §522(b): Trust Company Bank (debt secured by a John Deere mower & equip.).

In his petition the debtor claims the following property is exemptible: "John Deere tractor, box blade, mower and bush hog . . . \$4,000.00." Trust Company objects to debtor's plan to the extent it attempts to avoid its lien against the John Deere tractor. Trust Company argues that the tractor is not a "tool of the trade" under 11 U.S.C. 522(f). Debtor is self-employed in the landscaping business. He testified without contradiction that he uses the tractor in his business to pull other items of equipment used to level dirt.

#### CONCLUSIONS OF LAW

The Bankruptcy Code permits a debtor to

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 -

(2) a nonpossessory, nonpurchase-money security interest in any --  
(B) implements . . . or tools, of the trade of the debtor  
. . . .

11 U.S.C. §522(f)(2)(B). The threshold inquiry under §522(f) is whether the

subject property is exempt under applicable law. Under Georgia law,<sup>1</sup>

any debtor who is a natural person may exempt, pursuant to this article, for purposes of bankruptcy, the following property:

(1) The debtor's aggregate interest, not to exceed \$5,000.00 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or a burial plot for the debtor or a dependent of the debtor;

(6) the debtor's aggregate interest, not to exceed \$400.00 in value plus any unused amount of the exemption provided under (1) of this subsection, in any property .  
. . . .

Based on debtor's schedule of exemptions, he has an available

exemption under O.C.G.A. §44-13-100(a)(1) and (6) to the extent of the value of the tractor.<sup>2</sup>

As Trust Company holds a nonpossessory, nonpurchase-money security interest in the tractor, debtor may avoid the lien if the tractor qualifies as an "implement[] . . . or tool[], of the trade." 11 U.S.C. 522(f)(2)(B). The test is whether the property is "essential to the debtor's livelihood." Powell v. Bank of Dodge County (In re: Powell), Ch. 7 case No. 92-30066 slip op. at 10 (Bankr. S.D. Ga. Davis, C.J. Nov. 23, 1992). Cf. In re: Lafond, 791 F.2d 623, 627 (8th Cir.

---

<sup>1</sup>Georgia opted out of the federal scheme of exemptions pursuant to 11 U.S.C. §522(b). See Official Code of Georgia Annotated (O.C.G.A.) §44-13-100(b).

<sup>2</sup>Although debtor's exemption schedule does not assign a value to the tractor, nor was any evidence of value presented at hearing, the debtor assigned an aggregate value of \$4,000.00 to all equipment, including the tractor, upon which Trust Company has a lien. Therefore, the value of the tractor, for purposes of O.C.G.A. §44-13-100, cannot be greater than \$4,000.00. Under O.C.G.A. §44-13-100(a)(1) and (a)(6), debtor has an available exemption of \$5,400.00, which is sufficient to cover the tractor.

1986) (reasonable necessity of the item to the debtor's trade or business).

Debtor's unrebutted testimony establishes that the tractor is an integral part of his landscaping business. Therefore, the tractor is an "implement" or "tool of the trade" under §522(f). Having established Trust Company's lien impairs an exemption available to the debtor and that the lien is a nonpossessory, nonpurchase-money lien against an implement or tool of the trade under 522(f), I find debtor has satisfied his burden of proof that the lien may be avoided pursuant to 522(f).

It is therefore ORDERED that the objection to confirmation by Trust Company Bank of Augusta, N.A. is overruled.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 25th day of January, 1993.