

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE
 SOUTHERN DISTRICT OF GEORGIA
 Augusta Division

IN RE:)	
)	Chapter 7 Case
)	Number <u>95-10933</u>
LONNIE HATTON)	
JESSE HATTON)	
)	
Debtors)	
<hr style="border: 0.5px solid black;"/>		
)	
LONNIE HATTON)	FILED
JESSE HATTON)	at 11 O'clock & 30 min. A.M.
)	Date: 12-18-96
Plaintiffs)	
)	
vs.)	Adversary Proceeding
)	Number <u>96-01044A</u>
SEARS, ROEBUCK & CO., INC.)	
)	
Defendant)	

ORDER

Lonnie and Jesse Hatton, debtors in the above-captioned Chapter 7 Bankruptcy case, (hereinafter "Debtors") filed this complaint to determine the extent and priority of any security interest asserted by Sears, Roebuck & Co., Inc. (hereinafter "Sears") against certain consumer goods purchased by the Debtors through two Sears charge accounts. For the reasons that follow,

judgment is entered for the Debtors determining that Sears is a general unsecured creditor.

The Debtors maintained two separate accounts with Sears; account number 05-56788-85297-9 (hereinafter "Account A") and account number 06-63755-47419-1 (hereinafter "Account B"). After trial and within the thirty days allotted to Sears to supplement the record, Sears provided a copy of a SearsCharge Application (hereinafter "Application") signed by Lonnie Hatton dated September 2, 1990. Sears did not indicate whether this Application opened Account A or Account B. The Application recited that the Debtor:

...agree[d] to pay Sears in accordance with the credit terms disclosed to me and to comply with all terms of the SearsCharge Agreement. A copy of the SearsCharge Agreement will be given to me to keep when my application is approved. Sears will retain a security interest where permitted by law under the Uniform Commercial Code on all merchandise charged to the account. Sears is authorized to investigate my credit, employment, and income references and to report to proper persons and credit bureaus my performance on the account. Finance charges not in excess of those permitted by law will be charged on the outstanding balance from month to month.

Sears also introduced into evidence a copy of the SearsCharge Agreement (hereinafter "Agreement") purportedly referenced in the Application. However, the Debtors did not sign the Agreement, and the Agreement form submitted was revised in 1994, four years after the date on the Application.

On July 4, 1992, the Debtors purchased from Sears a table, love seat, and sofa in North Carolina and charged the purchase to

their Sears account. Above the Debtors' signature, the receipt provided that:

This credit purchase is subject to the terms of my SearsCharge agreement which is incorporated herein by reference and identified by the account number shown on this salescheck. I grant Sears a security interest in this merchandise (except in New York) until paid in full.

The receipt lists the merchandise purchased by the Debtors as follows:

CPNE TBL

LA INC LVST MDSE

RA ON SLPR MDSE

SYR SPA MDSE.

The total amount financed, \$1529.79, included state sales tax and a \$30.00 delivery fee.

On July 25, 1992, the Debtors' purchased from Sears a mattress, box spring and bed frame in Augusta, Georgia. The receipt contained an identical security interest "granting clause," and described the merchandise purchased as follows:

OM MATTRESS MDSE

OM BOXSPRIN MDSE

BED FRAME MDSE.

The amount financed totaled \$459.92.

On March 14, 1995, the Debtors returned the mattress and box spring to Sears in Augusta in exchange for a replacement mattress and box spring. The new items purchased by the Debtors cost \$799.99

before tax, and Sears credited the Debtors \$200.00 against this amount and added tax and a delivery fee for a total of \$646.00. The Debtors charged this balance to Account B. Sears did not credit any amount for the return to Account A. The receipt recited that the items were:

PURCHASED UNDER MY SEARSCHARGE AGREEMENT, INCORPORATED BY REFERENCE. I GRANT SEARS A SECURITY INTEREST IN THIS MERCHANDISE UNTIL PAID, UNLESS PROHIBITED BY LAW.

The receipt described the items as:

I/S BEDDIN MDS

I/S BEDDIN MDS.

State law determines the existence and extent of a security interest in property of the estate. Roberts Furniture Co. v. Pierce (In re Manuel), 507 F.2d 990, 992 (5th Cir. 1975). Whether Georgia law or North Carolina law determines the existence and extent of Sears' lien is controlled by Georgia's choice of law provision. United Counties Trust Co. v. Mac Lum, Inc., 643 F.2d 1140 (5th Cir. 1981) (A federal court shall apply the choice of law provision of the state in which the court sits).

Georgia has enacted the Uniform Commercial Code ("U.C.C.") provision for determining the law applicable to the perfection of security interests in multi-state transactions. O.C.G.A. §11-9-103. This provision provides that

... perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last

event occurs on which is based the assertion that the security interest is perfected or unperfected.

O.C.G.A. §11-9-103(b). The laws of North Carolina apply to the items purchased in North Carolina, and the laws of Georgia apply to the items purchased in Georgia. As the two states' enactment and interpretations of the relevant U.C.C. sections are identical, I will together analyze the existence of the security interests in the goods purchased in both states.

A security interest in consumer goods does not attach unless:

(a) ...the debtor has signed a security agreement which contains a description of the collateral ... ;and

(b) value has been given; and

(c) the debtor has rights in the collateral.

O.C.G.A. §11-9-203; N.C.Gen.Stat. §25-9-203. A creditor may perfect a purchase money security interest ("PMSI") in consumer goods without filing a financing statement. O.C.G.A. §11-9-302(d); N.C.Gen.Stat. §25-9-302(d).

Sears asserts that the receipt signed by the Debtors creates a PMSI in the items purchased. Sears correctly points out that the receipt contains a clause granting Sears a security interest in the goods purchased, that the Debtor signed this receipt, and that the Debtors maintained rights in the collateral. However, the receipt does not contain an adequate description of the collateral securing the indebtedness. Therefore, the PMSI never attached to the collateral.

The U.C.C. provides that "[f]or the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described." O.C.G.A. §11-9-110; N.C. Gen. Stat. §25-9-110. The Amended Official Comment to this code section provides that:

The requirement of description of collateral ... is evidentiary. The test of sufficiency of a description laid down by this section is that the description do the job assigned to it -- that it make possible the identification of the thing described. Under this rule courts should refuse to follow the holdings, often found in the older chattel mortgage cases, that descriptions are insufficient unless they are of the most exact and detailed nature, the so-called "serial number" test.

Courts have generally found that a description satisfies §9-110 if is "specific enough to allow the creditor's agents or the sheriff to distinguish between the goods subject to the security interest and other consumer goods owned by the debtor which may be similar in type but not subject to the security interest." Aronson Furniture Co. v. Johnson, 47 Ill. App.3d 648, 653, 365 N.E.2d 61,65 (1977). In Aronson, the Illinois Court of Appeals reversed the trial court's finding that the creditor's contract form adequately described the collateral under §9-110¹ as a "3 PC Bed Rm Set, 4/6 Box Spring, 4/6 Matt." Id. This description was not "...specific enough to permit a third party to distinguish between the subject goods and other goods owned by the debtor which may be similar."

¹Ill. Rev. Stat. 1973, ch. 26, par. 9-110.

Id.; Accord, Freeman v. Decatur Loan & Fin. Corp., 140 Ga. App. 682, 231 S.E.2d 409 (1976) (a security agreement describing the collateral as "1 Refrigerator, White, Philco" is insufficient to identify the collateral subject to a security interest.)

The description of the four items purchased in North Carolina does not sufficiently identify the items to subject them to a PMSI. Of the four items on the receipt, Sears only asserts a security interest in three; a table, a love seat, and a queen sleeper sofa. It is impossible to decipher the abbreviations on the receipt without first knowing what items were purchased. Under the standard established, the description does not identify the items purchased to a third party.

I find the description of the items purchased in Georgia equally deficient. "I/S BEDDIN MDS" does not adequately identify the mattress and box spring purchased by the Debtors. Furthermore, even if I could interpret this abbreviation to identify a mattress and box spring instead of any other general bedding merchandise, the debtors may own more than one mattress and box spring set, making it impossible for a third party to identify the actual items subject to the security interest. Compare, Personal Thrift Plan v. Ga. Power, 242 Ga. 388, 249 S.E.2d 72 (1978) (description on receipt listing model and serial numbers of dishwasher and washing machine is sufficient description to create PMSI).

In its brief, Sears asserts that even if the language in the

receipt fails to sufficiently grant a security interest, the Application and Agreement sufficiently establish a security interest in the items purchased. This argument fails for several reasons. First, and most importantly, neither the Application nor the Agreement contains any description of collateral. Second, Sears failed to produce an Agreement either signed by the Debtors or which Sears could identify as having been sent to the Debtors at any time. Sears did introduce a blank copy of an Agreement, but the form was printed years after the Debtors opened their account. The document, therefore, has no probative value.

Finally, Sears produced only one Application signed by the Debtors, even though Sears claimed security interests in items purchased on two different accounts. Sears did not indicate which account this Application opened. The probative value of the Application was minimal given the fact that it pertained to only one of the two accounts, and given the fact that Sears did not identify to which of the two accounts it applied.

Because I have determined that Sears never held a security interest in the items purchased, I will not address whether Sears' method of allocating payments to the accounts destroyed any security interest.

It is therefore ORDERED that judgment is entered for the plaintiffs, Lonnie and Jesse Hatton determining that defendant Sears, Roebuck & Co. does not hold a purchase money security

interest in items of personal property purchased by them on credit from defendant. Sears, Roebuck & Co. is a general unsecured creditor of the plaintiffs.²

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 18th day of December, 1996.

²By separate order the Debtors' companion motion to avoid lien of Sears pursuant to 11 U.S.C. §522(f) filed in the Debtors' underlying bankruptcy case is dismissed as moot.