IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In Re:

GLEN BROWN and
LONA BROWN,

Case No. 16-04023

Debtors.

ORDER

This case is before the Court on the debtors' motion to avoid Republic Finance's lien pursuant to Bankruptcy Code § 522(f) and the creditor's response. [Docs. 20 and 23.] At the hearing the parties agreed to disposition of the motion except as to one item: a half carat diamond ring with silver band, which is not a wedding ring. The parties agreed that the ring has a value of $2,500, that it belongs to debtor Lona Brown for her personal use, and debtors have claimed it as exempt on Schedule C.

Bankruptcy Code § 522(f)(1)(B)(i) allows a debtor to avoid, to the extent it impairs his or her exemptions, a nonpossessory, nonpurchase money security interest ("NPMSI") in several categories of items, including "household goods" and "jewelry" held primarily for the personal, family or household use of the debtor or debtor's dependents. The issue here is whether the jewelry category has a dollar cap after the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). BAPCPA added a provision at § 522(f)(4)(B)(iv) that the term "household goods" does not include "jewelry with a fair market value of $675 in the aggregate (except wedding rings) …."[1] But under § 522(f)(1)(B)(i), "jewelry" is already an exemptible category of its own without any dollar limitation -- regardless of whether the jewelry falls within the definition of "household goods."

[1] The dollar amount was originally $500 but is currently $675.

Judge Keith Lundin calls the BAPCPA addition “daffy” and “nonsense” in his Chapter 13 treatise:

> This analysis becomes only a little more daffy when the new statutory exclusions from household goods are considered. Under new § 522(f)(4)(B)(iv), for example, jewelry “with a fair market value of more than $500 in the aggregate” is excluded from household goods, with an exception to the exclusion for wedding rings. Just a few lines earlier, new § 522(f)(4)(A)(xiv) states that wedding are included in personal effects, which are a new sub-category of household goods. But then “jewelry” is a category altogether separate from household goods for purposes of the lien avoidance power in § 522(f)(1)(B)(i). Reading the three sections together: wedding rings are personal effects included in household goods; wedding rings are not subject to the exclusion from household goods of jewelry with a fair market value in the aggregate greater than $500; jewelry (other than wedding rings) with a fair market value in the aggregate greater than $500 can’t be household goods; but jewelry worth more than $500 could be just plain jewelry with respect to which lien avoidance under § 522(f)(1)(B)(i) remains an option.
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> If the folks who drafted BAPCPA wanted to limit the items of personal property that were subject to lien avoidance under § 522(f)(1), why didn’t they just list the items of personal property with respect to which lien avoidance was not available? Is this new definition of household goods a vestige of some larger legislative plan that failed to flower? Whatever was intended, what actually happened is considerable corruption of a relatively uncontroversial process before BAPCPA -- the avoidance of nonpossessory, nonpurchase money security interests in small items of personal property that could be exempted by individual debtors in consumer bankruptcy cases. New § 522(f)(4) is substantial evidence of bad policy and worse draftsmanship that would be laughable if it didn’t threaten the few sticks and personal items that consumer debtors can exempt in spite of liens by lenders who contributed nothing to acquisition of those items. Chapter 13 debtors will contribute good money to their lawyers to sort out the nonsense in § 522(f)(4).

Keith M. Lundin & William H. Brown, Chapter 13 Bankruptcy, 4th Ed., § 409.1 at ¶ 5-6 (2007).

Similarly, Professor Margaret Howard has pointed out that BAPCPA’s exclusion of non-wedding ring jewelry worth more than $500 (now $675) from the definition of household goods “accomplishes nothing”:

> Other items are excluded from the definition of "household goods" despite the fact that they fall into separate categories under the avoiding provision. As a result, nonpossessory, nonpurchase money security interest in those items remain available despite the exclusion from that category of household goods. For example, jewelry worth more than $500 (other than wedding rings) is excluded, but the avoiding provision lists jewelry without any mention of value. Similarly, works of art, as well as antiques worth more than $500, are excluded from the definition of "household goods," but security interest in them may very well be avoidable as "household furnishings." In these instances, the exclusion accomplished nothing.

Margaret Howard, Exemptions Under the 2005 Bankruptcy Amendments: A Tale of Opportunity Lost, 79 Am. Bankr. L.J. 397, 409 (2005) (emphasis in original).

The parties have not pointed the Court to any cases on the interplay between §§ 522(f)(1)(B)(i) and 522(f)(4)(B)(iv) with regard to jewelry, and the Court has not found any.

Where a statute's language is plain, the sole function of a court is to enforce it according to its terms. U.S. v. Ron Pair Enters., Inc., 489 U.S. 235, 241 (1989). The "plain meaning" of legislation should be conclusive, except in the rare cases where the literal application of a statute will produce a result demonstrably at odds with the drafters' intentions. Id. at 242. "[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there .... When the words of a statute are unambiguous, then, this first canon is always the last: judicial inquiry is complete." Connecticut Nat. v. Germaine, 503 U.S. 249, 253-54 (1992) (citations omitted).

The plain meaning of 11 U.S.C. § 522(f)(1)(B)(i) is to allow avoidance of a nonpossessory NPMSI in a debtor's personal "jewelry" without any monetary limitation. To graft onto that subsection the $675 monetary limitation contained in § 522(f)(4)'s

definition of "household goods" would in effect delete the category of jewelry from § 522(f)(1)(B)(i) and allow liens on jewelry to be avoided only under the household goods category. On the other hand, applying the plain meaning of § 522(f)(1)(B)(i) without a monetary cap on jewelry does not produce an "absurd" result, since it simply continues the law as it existed before BAPCPA. See Merritt v. Dillard Paper Co., 120 F.3d 1181, 1188 (11th Cir. 1997) (statutory language should not be applied literally if doing so would produce an absurd result). And allowing nonpossessory NPMSI's to be avoided on jewelry without a monetary cap does not contravene § 522(f)(4)(B)(iv)'s limit on the amount of jewelry which also qualifies as "household goods"; the subsection simply does not have a field of operation.

If Congress intended to restrict the avoidance of NPMSI's in non-wedding ring jewelry to relatively low-dollar items, the language of the 2005 amendment did not accomplish that goal.

For the reasons stated above, the Court thus finds that the debtor is entitled to avoid the nonpossessory, nonpurchase money security interest of Republic Finance in the ring described above. The Court will enter a separate order which also includes the other items.

Dated: April 11, 2017

HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE