

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

IN RE:)
)
THEODORE E. DOMNICK and) Case No. 18-0349
YOHLANDA MARIE DOMNICK,)
)
Debtors.)

ORDER ON COMBINED MOTION TO AVOID NONPOSSESSORY,
NONPURCHASE-MONEY SECURITY INTEREST, MOTION FOR VALUATION,
AND OBJECTION TO CLAIM

This case is before the court on the combined motion (doc. 21) by debtors to avoid the nonpossessory, nonpurchase-money security interest of First Heritage Credit of Alabama, LLC (“the Lienholder”), motion for valuation, and objection to Lienholder’s claim no. 7.

Lien Avoidance

Creditor First Heritage Credit of Alabama has filed a proof of claim no. 7 claiming a perfected security interest in a Craftsman “riding tractor,” a Briggs & Stratton garden tiller, a Honda generator, and a Craftsman push mower. At the hearing on the debtors’ motion, creditor’s counsel contended that the Craftsman “riding tractor” is a “motor vehicle (including a tractor or lawn tractor)” in which a nonpossessory, nonpurchase-money security interest cannot be avoided pursuant to 11 U.S.C. § 522(f)(4)(B)(v).

The only evidence presented to the court were four photographs of the item which were admitted as debtors’ Exhibit 1. The pictures show a well-used riding lawn mower with rotary mower blades. None of the photos show that the mower has a receiver, trailer hitch, or the capability to pull anything. The court adopts the holdings of *In re Evans*, 548 B.R. 449 (Bankr. N.D. Miss. 2016) and *In re Goodman*, 566 B.R. 80 (Bankr. N.D. Ala. 2017) and finds that because the mower cannot tow any significant weight or handle a power takeoff or other

attachments that would enable it to do anything other than cut grass, the mower should not be characterized as a “lawn tractor” and thus the creditor’s security interest can be avoided.

As to the garden tiller, generator, and push mower, the court finds that these items are each “a device or piece of equipment used for a specific task, especially a machine for domestic use” and thus qualify as “appliances” as to which a nonpossessory, nonpurchase-money security interest can be avoided pursuant to 11 U.S.C. § 522(f)(1)(B). *See In re Zieg*, 409 B.R. 917 (Bankr. W.D. Mo. 2009).

The court has reviewed the schedules filed by debtors and finds that the Lienholder’s security interest impairs an exemption to which the debtors would otherwise be entitled. The motion is thus granted to the extent set out below.

1. The security interest of the Lienholder is avoided pursuant to Bankruptcy Code § 522(f) as to the following items:

X Household furnishings, wearing apparel, appliances, books, animals, crops, musical instruments, and jewelry held primarily for the personal, family, or household use of debtors or a dependent of debtors. Description: Craftsman riding mower, Briggs & Stratton garden tiller, Honda generator, and Craftsman push mower

2. Upon the discharge of debtors in this bankruptcy case, the security interest of the Lienholder shall be extinguished against the above-described personal property of debtors and shall not survive the bankruptcy or affix to or remain enforceable against said items.

3. The motion to avoid lien is denied as to any item not listed above.

Valuation of Collateral

This issue is moot since the lien has been avoided as to all the collateral listed on the proof of claim.

Claim Objection

The court sustains the objection by Debtors to the Lienholder's claim no. 7 to the following extent:

The claim is allowed in full but as unsecured.

Dated: July 2, 2018


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE

United States Bankruptcy Court

Southern District of Alabama

Case No. 18-00349
Chapter 13

In re:

Theodore E Domnick
aka Theodore Eugene Domnick
8567 Grand Farms Rd E
Grand Bay, AL 36541

Yohlanda Marie Domnick
8567 Grand Farms Rd E
Grand Bay, AL 36541

Social Security No.:
xxx-xx-1523

Social Security No.:
xxx-xx-0529

ORDER SUSTAINING OBJECTION TO CLAIM IN CHAPTER 13 CASE

This matter is before the Court upon the objection by debtor(s) or Chapter 13 trustee to ECF claim number 7 filed by creditor First Heritage Credit.

Upon consideration, it appears to the Court that the objection should be sustained.

It is thus ORDERED that the objection is sustained and the claim is allowed in full but reclassified as unsecured.

Dated: 7/2/18


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE