

1 **FOR PUBLICATION**

FILED & ENTERED

JUN 08 2010

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY ngo DEPUTY CLERK

2
3
4
5
6
7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 In re:

12 Angie M Garcia,

13
14
15
16
17 Debtor(s).

Case No: 8:10-bk-10096-TA

Chapter: 7

STATEMENT OF DECISION ON DEBTOR'S
MOTION TO AVOID LIEN

Date: April 27, 2010

Time: 10:00 a.m.

Location: 5B

18
19 This matter came on for hearing on Debtor's motion to avoid the non-possessory, non-
20 purchase money lien of Orange County Credit Union in a 2001 Mercedes Benz automobile.
21 Prior to the hearing the court published its tentative decision, which is incorporated herein by
22 reference and is repeated *verbatim* below:

23 This is the debtor's motion to avoid the non-purchase money
24 security interest of Orange County Credit Union in a 2001
25 Mercedes Benz automobile. Debtor seeks to employ 11 U.S.C.
26 §522(f), which provides, in pertinent part, that a debtor may avoid a
27 non-possessory, non-purchase money security interest in certain
28 defined kinds of property *to the extent that the lien impairs a valid*

1 *exemption* claimed in that property. The portion of §522(f) pertinent
2 here is “(B)(ii) implements, professional books, or tools, of the trade
3 of the debtor...” Debtor argues that the Mercedes is a “tool of the
4 trade” considering debtor is a realtor. This may or may not be true
5 depending on whether one looks to California to define “tools of the
6 trade” or to federal law. But there is a more basic problem. The
7 only exemption claimed by debtor is listed under Schedule “C” by
8 reference to CCP §703.140(b)(5), which therefore defines the outer
9 limit of §522(f)’s application. Section 703.140(b)(5) allows \$925
10 plus any unused portion of the grubstake exemption “in any
11 property.” The value of the claimed exemption is listed on
12 Schedule “C” as \$5350.

13
14 But the issue is not just whether California recognizes an
15 exemption here. The real issue is whether it is the kind of
16 exemption that can then be used to avoid a voluntary, non-
17 purchase money lien. The Court is not convinced that the
18 California grubstake can be imported into an application against
19 vehicles through §522(f) under the argument that vehicles can be
20 “tools of the trade” under California exemption law. Section
21 522(f)(1) does not permit just any state exemption in any property
22 in any amount. Instead, the federal statute is very narrow on
23 exactly what sorts of property and security interests are subject to
24 the avoidance power. At §522(f)(3)(B), it is clarified that to the
25 extent the exemption law in “opt-out” states would allow an
26 exemption unlimited in amount, there is still a \$5,475 cap insofar as
27 the attempt is made to avoid the lien in “tools of the trade.” The
28 dollar amount is not important; what is important is that “tools of the

trade” appears to be separately defined for purposes of the federal statute. Motor Vehicles are conspicuously absent from the description of items listed in §522(f)(1)(B) or (3)(B). Although vehicles are or can be included within the general definition of property “necessary to and used in exercise of trade, business or profession” in California exemption law under CCP §704.060(a), this was not the section utilized by debtor to claim her exemption under Schedule “C”; instead, debtor is trying to “back into” the use of the avoidance section by reference to California’s grubstake exemption. More importantly, the federal statute seems to have its own definition of tools of the trade. Some courts have interpreted the language of the federal statute regarding “tools of the trade” specifically **not** to apply to vehicles since elsewhere within the same statute at §522(d)(2) motor vehicles are separately and distinctly referenced. *In re Harrell*, 72 B.R. 107, 110-11 (Bankr. N.D. Ala. 1987). “ ‘Tool’ as used in this context implies “a manually operated device, such as a carpenter’s hammer or a mechanic’s wrench...the primary purpose of that section was to prevent overreaching by creditors who take a security interest in the kinds of items specified in §522(f)(2) in order to coerce the debtor, by threatening to repossess the collateral, into making the scheduled payments...Congress recognized that such items of collateral are, by their nature, necessary for the debtor’s fresh start, that they generally have very little resale value, and are thus practically worthless in the hands of the creditor...” *Id.* at 111 *citing* H.Rep. No. 95-595, p. 127-27, 95th Cong.2d Sess. (1987).

1 There are lines of cases on both sides of this issue¹. Of
2 particular interest is *In re McNutt*, 87 B.R. 84 (9th Cir BAP 1988),
3 where the Ninth Circuit BAP decided that a truck used in the
4 debtor's drywall business was a "tool of the trade" and thus eligible
5 for the lien avoidance provisions of §522(f). The Ninth Circuit BAP
6 went to some lengths to distinguish and criticize the 7th Circuit in *In*
7 *re Patterson*, 825 F. 2d 11140 (7th Cir. 1987) and noted that the
8 issue is both a factual and a legal one. *McNutt*, 87 B.R. at 87. The
9 Court, however, is not prepared to go as far as this debtor wants
10 here for two reasons:

14 ¹ Among those cases holding or acknowledging that a motor vehicle (or motorized farm machinery) may in some
15 instances be a tool of the trade under 11 U.S.C. § 522(d)(6), 11 U.S.C. § 522(f)(2)(B), or applicable state law, are:
16 *In re LaFond*, 791 F.2d 623 (8th Cir.1986); *In re Smith*, 68 B.R. 581 (Bankr.D.Minn.1986); *In re Weinstein*, 44 B.R.
17 987 (Bankr.E.D.Pa.1984); *In re Dempsey*, 39 B.R. 561 (Bankr.E.D.Pa.1984); *In re Schneider*, 37 B.R. 747
18 (Bankr.N.D.Ga.1984); *In re Langley*, 21 B.R. 772 (Bankr.D.Me.1982); *In re Reed*, 18 B.R. 1009
19 (Bankr.W.D.Ky.1982); *In re Dillon*, 18 B.R. 252 (Bankr.E.D.Cal.1982); *In re Eagan*, 16 B.R. 439
20 (Bankr.N.D.N.Y.1982); *In re Goosey*, 10 B.R. 285 (Bankr.D.Neb.1981); *In re Damron*, 5 B.R. 357
21 (Bankr.W.D.Ky.1980); *In re Dubrock*, 5 B.R. 353 (Bankr.W.D.Ky.1980); and *In re Meyers*, 2 B.R. 603
22 (Bankr.E.D.Mich.1980).

24 Among those cases holding or opining that a motor vehicle or motorized farm machinery is by definition not a tool
25 of the trade are: *In re Patterson*, 825 F.2d 1140 (7th Cir.1987); *In re Nowak*, 48 B.R. 290 (W.D.Wis.1984); *In re*
26 *Harrell*, 72 B.R. 107 (Bankr.N.D.Ala.1987); *In re Trainer*, 56 B.R. 21 (Bankr.S.D.Tx.1985); *In re Ramey*, 45 B.R.
27 562 (Bankr.W.D.Va.1984); *In re Curry*, 18 B.R. 358 (Bankr.N.D.Ga.1982); *In re Steele*, 8 B.R. 94
28 (Bankr.S.D.1980); and *In re Sweeney*, 7 B.R. 814 (Bankr.E.D.Wis.1980) (dicta).

1 **First**, this debtor did not invoke an exemption in a motor
2 vehicle, or even a tool of the trade, but instead she invoked a
3 grubstake exemption. To allow this to also suffice for purposes of
4 lien avoidance is to say that in California there are simply no limits
5 beneath about \$19,000 to the lien avoidance powers in non-
6 possessory, non-purchase money security interests. The Court
7 doubts this is what Congress had in mind.

8
9 **Second**, some deference must be given to the legislative
10 history as noted in *Harrell*. The original purpose was to discourage
11 overreaching creditor leverage over items of collateral with little or
12 no resale value, but vital to the debtor's fresh start. It is one thing to
13 say that a tractor or a truck might be a tool of the trade, or that
14 other kinds of expensive machinery might also be. But to extend
15 this concept further still to luxury automobiles like a Mercedes Benz
16 that *are* readily re-saleable under the argument that realtors drive
17 their prospective customers around and want to make an
18 impression, is going too far in this Court's view. Presumably, stock
19 brokers also want to make an impression, or, for that matter, any
20 professional, executive or entrepreneur. Shall we soon see
21 motions to avoid liens in expensive automobiles, or party boats and
22 even country club memberships, or any other luxury that is
23 susceptible to financing? The Court is not prepared to go this far
24 under a "tool of the trade" or grubstake rubric absent a better
25 showing of either legislative intent or binding authority.

26
27 *Deny*
28

1 At the invitation of the court, the parties have submitted their further briefs. After
2 reviewing the briefs and carefully considering the matter, the Court is persuaded that its
3 decision as announced in the tentative was correct for not only those reasons but further, as
4 discussed below. It must be remembered that 11 U.S.C. §522(f) does not purport to govern
5 what may be claimed as exempt in an opt-out state such as California. Rather, it provides that
6 if certain kinds of property are validly claimed as exempt, then to the extent that those items
7 also meet the narrowly-defined categories of property set forth in §522(f), the non-possessory,
8 non-purchase money liens thereon may be avoided within certain limits. One enumerated
9 category in §522(f)(1)(B)(ii) is “tools of the trade of the debtor....” On debtor’s Schedule “C,”
10 she does not specifically claim “tools of the trade,” nor does she even invoke one of
11 California’s versions of this phrase which is slightly different, found at CCP §704.060(a)(1), i.e.:

12 Tools, implements, instruments, materials, uniforms, furnishings,
13 books, equipment, *one commercial motor vehicle*...to the extent
14 that the aggregate does not exceed (1) six thousand seventy-five
15 dollars (\$6,075), if reasonably necessary to and actually used by
16 the judgment debtor in the exercise of the trade, business, or
17 profession by which the judgment debtor earns a livelihood...
18 (emphasis added)

19
20 Rather, debtor invokes the “grubstake” found at CCP §703.140(b)(5) which affords a floating
21 exemption “in any property” up to the unused portion of the homestead exemption found in
22 (b)(1) of the same section. Specifically and separately enumerated are subsections (b)(6)
23 which affords \$1,750 in “tools of the trade” and (b)(2) another separate sum “in one motor
24 vehicle.”
25

26 But particularly noteworthy is that the CCP§703.140(b) schedule of exemptions may be
27 elected “in lieu of all other exemptions provided by this chapter...” CCP §703.140(a). The
28

1 reference to an automobile under California law exemptible if used “in the exercise of the
2 trade, business or profession...” appears in another portion entirely of the California
3 exemptions chapter, i.e. Article 3 at §704.060, and so is therefore outside of the grubstake.
4 So, even under California’s scheme, a debtor may elect the grubstake (as debtor did here) but
5 not simultaneously the generous definition at §704.060 which readily accepts a “commercial”
6 motor vehicle as a property “used in the exercise of the trade, business or profession.” This is
7 not mere mincing of words. Rather, this discussion is intended to highlight that even under
8 California law, the grubstake, “motor vehicle,” “tools of the trade,” all found in §703.140(b) and
9 “commercial motor vehicle ...used in the exercise of a trade, business or profession” found at
10 §704.060, are separately defined, have separate meanings, represent separate and distinct
11 approaches to exemptions and are not necessarily interchangeable.
12
13
14

15 But even more persuasive to the Court is the rather narrow definition found in the
16 federal statute at 11 U.S.C. §522(f)(1)(B). Although “tools of the trade” are specifically
17 described at subsection (ii), “motor vehicles” conspicuously are not found anywhere within the
18 lien avoidance subsections. This is noteworthy in that “motor vehicles” are specifically called
19 out at other places in the statute, for example at §522(d)(2). This implies to the Court that
20 motor vehicles were specifically not within the contemplation of Congress when considering
21 non-possessory, non-purchase money lien avoidance. See *In re Harrell*, 72 B.R.107, 110-11
22 (Bankr. N.D.Ala.1987). It deserves repeating; this is not a question of what property may be
23 exempted, which in opt-out states clearly is a question of the state’s separate definitions.
24 Rather, it is a question of what subset of exemptible property *may also be the subject of lien*
25 *avoidance*, which requires an interpretation of the federal statutory language. The Court is
26
27
28

1 persuaded that Congress did not intend to extend this power to avoiding liens on automobiles.
2 When added to the legislative history discussed in the tentative regarding the purposes behind
3 avoiding liens in tools of the trade [see H.R. Rep. No. 95-595, at 127-27 , cited in *Harrell* 72
4 B.R. at 111], it becomes clear to the Court that the tentative was correct.
5

6 Therefore, the motion to avoid the non-possessory, non-purchase money lien in the
7 vehicle is denied. As necessary, this statement of decision shall also serve as findings in the
8 case. Orange County Credit Union is directed to submit an order consistent with this decision.
9

10
11 ###
12
13
14
15
16
17
18
19
20
21
22
23
24

25 DATED: June 8, 2010
26
27
28


United States Bankruptcy Judge

NOTE TO USERS OF THIS FORM:

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
- 4) **Category II.** below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) STATEMENT OF DECISION ON DEBTOR'S MOTION TO AVOID LIEN was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of June 8, 2010, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

Anerio V Altman lawclerklojls@cox.net
Charles W Daff cdaff@epiqtrustee.com, cdaff@ecf.epiqsystems.com
Jason E Goldstein jgoldstein@buchalter.com, bkgroup@buchalter.com
United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov
Joseph M Welch jwelch@buchalter.com

☐ Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail to the following person(s) and/or entity(ies) at the address(es) indicated below:

Angie M Garcia
1133 Buckingham, Unit D
Costa Mesa, CA 92626

☐ Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below:

☐ Service information continued on attached page