UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

Cite as: [unpublished]

Kevin R. and Laurie J. Reigle, Plaintiffs v.
First American Credit Union, Defendant
(In re Kevin R. and Laurie J. Reigle, Debtors)
Bankruptcy Case No. 00-34495-7
Adversary Case No. 00-3217-7

United States Bankruptcy Court
W.D. Wisconsin, Madison Division

July 31, 2001

Jeffrey D. Friebert, UAW-GM Legal Services Plan, Janesville, WI for Plaintiffs
Timothy F. Nixon, LaFollette Godfrey & Kahn, Madison, WI for Defendant

Robert D. Martin, United States Bankruptcy Judge

MEMORANDUM DECISION

On December 21, 2000, the chapter 7 debtors initiated this adversary proceeding to challenge the secured claim of First American Credit Union ("FACU"). At issue is whether a car pledged as security for a direct loan also secures a credit card debt by virtue of a dragnet clause in the loan contract. Both parties moved for summary judgment on the following stipulated facts.

On September 3, 1998, FACU mailed the debtors an offer for a VISA GOLD credit card. The debtors signed the application and returned it. After the application was approved, but before the card was issued, the debtors received by mail the "First American Credit Union VISA GOLD Rules" ("Rules"). The Rules included the following dragnet clause:

> Security for This Account. If you have other loans or credit extensions from Issuer, or take out other loans or credit extensions with Issuer in the future, collateral securing those loans or credit extensions will also secure your obligations under this Agreement. However, unless you expressly agree otherwise, your household goods and dwelling will not secure your obligations under this Agreement even if Issuer has or later acquires a security interest in

> the household goods or mortgage on the dwelling. If you have executed a written agreement granting a security interest in any deposit accounts (checking, savings, or share accounts) or other funds held by Issuer to secure your obligations under this credit card plan, such accounts and/ or funds [are] additional security for your obligations to Issuer arising from the use of your Card. [Emphasis in the original].

On October 2, 1998, the debtors financed the purchase of a car with a loan from FACU and granted FACU a security interest in the car. Included in the loan agreement was the following dragnet clause:

> **WHAT THE SECURITY INTEREST COVERS –** The security interest secures the loan described in the Truth in Lending Disclosure and any extensions, renewals, or refinancings of that loan. It also secures any other loans you have with the credit union now or in the future including any credit card loans and any other amounts you owe the credit union for any reason now or in the future, except any loan secured by your principal residence. [Emphasis in the original].

On October 13, 2000, the debtors filed their chapter 7 petition. FACU filed a claim in the amount of $2,666.04 for purchases charged on the VISA card and claimed to be secured by the car. The debtors object to the characterization of the claim as secured and assert that the dragnet clause in the car loan contract is not effective.

The debtors make three arguments. First, they argue that FACU never explained the meaning of the dragnet clauses in the car loan contract. Second, the debtors argue that they never read the dragnet clauses and had no intention of pledging the car as security for the VISA debt. Finally, they contend that the dragnet clauses in the Rules and car loan contract "were in boiler-plate fine print."

The FACU counters that the dragnet clauses were customary and ordinary provisions. It argues that the debtors' intent to pledge the car as security for the VISA debt is evident from the fact that the debtors received the Rules and signed the car loan contract, both of which included dragnet clauses. It further argues that it had no obligation to explain the meaning or effect of the dragnet clauses to the debtors and that its failure to do so did not render the clauses invalid.

In In re James, 221 B.R. 760 (Bankr. W.D. Wis. 1998), this Court upheld the validity of a dragnet clause on facts similar to those presented here. In James, the debtors signed a security agreement in connection with a car loan. The agreement provided that the security interest in the car would secure "all of any debtor's present and future debts, obligations and liabilities whatever in nature" to the bank-lender. At the time the agreement was executed, the debtors were also obligated to the bank for a credit card debt. The bank's credit cards regulations provided that credit card debts were secured by all collateral held for other loans

whenever the credit card balance exceeded $1,000. After the debtors filed bankruptcy, the bank asserted that a credit card debt of $3,159 was secured by the debtors' car by virtue of the dragnet clauses in the security agreement and the credit card regulations. The debtors countered that they were never orally advised of the effect of the dragnet clauses and that they did not fully read the security agreement.

In James, this Court held that the dragnet clause was valid based on its clear language and that the clause would be valid even under a relatedness test because both the car loan and credit card debt were of the same class:

> [T]he dragnet clause in our case should be enforced. The clause could not be clearer in specifying its wide reach and is literally the first line of the security agreement. In addition, Debtors were given a second notice of the potential for cross- collateralization in the credit card regulations.
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> Assuming that Wisconsin requires a "class and relatedness" inquiry even if the clause is clearly written, the two debts are both of the consumer class. [C]onsumer debts constitute a class. Although not identical in character, the two obligations are not nearly so dissimilar as those in John Miller Supply, and bear sufficient relation to each other to meet the second prong of the test. Moreover, the credit limit in excess of the security floor also allows consent to be inferred, particularly when combined with the clear language of the security agreement and the credit card regulations.
>
> Nonetheless, this case may point out the very reason that courts have read a "relatedness" requirement into the law regarding dragnet clauses if Debtors' contentions are true. Both agreements have some characteristics of contracts of adhesion, although it could not be credibly argued that the dragnet clause appeared in fine print.
>
> Ultimately, however, I cannot countenance Debtors' argument that they innocently signed various agreements, had no idea what they were signing, and were shocked that they had given such a broad security interest to [the bank]. It may not be intuitively obvious to the average consumer that a credit card debt would be subject to an earlier security agreement, and the dragnet clause as written might potentially be viewed as "overly broad" when it simply refers to "all" obligations and does not provide even an illustrative list of potential liabilities that might become subject to it, but there is no reason why [the bank] should be said to have a duty to inform Debtors orally about the effect of the dragnet clause which was clearly set forth in the first line of the security agreement they signed. If Debtors' argument were to prevail, consumers would be allowed to escape any otherwise valid agreements simply by arguing that they did not read them and did not know what they were signing. Fairness does

> not permit us to give consumers the benefit of such agreements but not hold them to their side of the bargain.

James, 221 B.R. at 766-767 (footnote omitted).

Application of the analysis in James requires that the dragnet clause in this case be enforced. James addressed and rejected all the arguments presented by the debtors in this case. The debtors nonetheless attempt to distinguish the facts of James from the facts of this case. They argue that the "key distinguishing" factor between the dragnet clause in this case and the one at issue in James was that the latter clause was "clearly set forth in the first line of the security agreement" so that it "could not be credibly argued that the dragnet clause appeared in fine print." James, 221 B.R. at 766. The debtors contend the dragnet clauses in the Rules and the car loan contract were "buried in the boilerplate and fine print of pre-printed forms." A review of the Rules and the loan contract does not support this assertion.

The Rules comprise two pages and 29 numbered paragraphs. Each paragraph is set out by a separate underlined caption. The dragnet clause is found in paragraph 10 below the underlined caption "Security for This Account." Although the font size is not indicated, all the words and letters contained in the Rules are legible and not printed in comparatively small type.

The dragnet clause in the car loan contract is also clearly set forth. The contract itself is comprised of one page with two sides. Side one explains the terms of the loan and contains the signature line. The following instructions are printed in block bold type immediately above the signature line:

> NOTICE TO CUSTOMER: 1. DO NOT SIGN THIS BEFORE YOU READ THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED. 2. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES. 3. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN. 4. YOU HAVE THE RIGHT TO PREPAY THE UNPAID BALANCE UNDER THIS AGREEMENT AT ANY TIME AND MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

Side two of the contract, to which the instructions refer, features the title heading "SECURITY AGREEMENT" typed in bold block type. Under this heading, there are 10 separate sections each of which bears a caption in bold capitalized letters. It is in the second section, captioned "WHAT THE SECURITY INTEREST COVERS," that the dragnet clause is found. Again, the font size is not indicated, but the letters and words in the contract are legible and clearly set out.

The dragnet clauses in the Rules and car loan contract appear to be valid. James does not require that a dragnet clause be placed in the first sentence of an agreement in order

for it to be enforced. Indeed, James does not make any specific requirement as to the placement of the dragnet clause. Rather, that case holds that the validity of a dragnet clause depends on whether the future liabilities sought to be secured were within the contemplation of the parties based on a reasonable reading of the clause's language. In this case, the intent of the debtors to grant FACU a security interest in the car for other debts is evident from the clear language of the dragnet clauses in the Rules and the car loan contract. The complaint must therefore be dismissed. It may be so ordered.