

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

**In re James F. Wagner, Renee K. Wagner,
d/b/a Wagner Enterprises, Debtors**
Bankruptcy Case No. 86-01504-7

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

February 4, 1987

Stephen D. Willett, for debtors.
John W. Slaby, for Park Falls State Bank.
Peter J. Thompson, for Park Falls Credit Union.
Wagner, Johnston & Falconer, Ltd., for Borg-Warner Acceptance Corporation.

Thomas S. Utschig, United States Bankruptcy Judge.

**MEMORANDUM OPINION, FINDINGS OF FACT,
AND CONCLUSIONS OF LAW**

The debtors, by Stephen D. Willett, have brought a motion pursuant to § 522(f) of the Bankruptcy Code and Bankruptcy Rule 4003(d) to avoid liens on property that impair exemptions to which the debtors would have been entitled. Park Falls State Bank (PFSB) appears by John W. Slaby and objects to the motion. Park Falls Credit Union (PFCU) appears by Peter J. Thompson and objects to the motion. Borg-Warner Acceptance Corporation (BWAC) appears by Wagner, Johnston & Falconer, Ltd., and also objects to the motion. A hearing was held in this matter on October 15, 1986, and the issues have been submitted to the court for determination through briefs.

The debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code on June 18, 1986. The debtors' motion requests lien avoidance of all security interests on property listed in their schedules as exempt. The creditors object to any lien avoidance with respect to a 1979 Chevrolet Silverado automobile, a 1983 Arctic Cat snowmobile, and business inventory. PFCU also has a security interest in various tools that the debtors use in their repair business. PFCU concedes that some of the items that the debtors are claiming as exempt are "tools of the trade" in which liens may be avoided. However, they strenuously object to any lien avoidance with respect to business inventory. The court notes that the debtors are the moving parties and bear the burden of proving that the listed property constitutes property in which liens may be avoided pursuant to § 522(f) of the Bankruptcy Code. Matter of Weinbrenner, 53 B.R. 571 (Bankr. W.D. Wis. 1985).

The creditors argue that Mrs. Wagner was not engaged in the business and, therefore, cannot exercise lien avoidance in accordance with § 522(f) for the "tools of the trade" of Wagner Enterprises. The court disagrees. The evidence presented at the hearing on this matter indicated that Mrs. Wagner was a very important part of

the business venture. The facts revealed that the debtors considered themselves to be, and were in fact, working together in a common enterprise. See, Matter of Flake, 33 B.R. 275, 276 (Bankr. W.D. Wis. 1983).

The debtors claimed \$2,400.00 of the value of a 1979 Chevrolet Silverado automobile as exempt. They now attempt to avoid the lien on this automobile pursuant to § 522(f) of the Bankruptcy Code. The court notes that the general rule in this jurisdiction is that one may not avoid a lien on an automobile. In re Nowak, 48 B.R. 290 (W.D. Wis. 1984). The debtors have not established any facts that would allow an exception to this general rule.

The debtors also attempt to avoid a lien on an Arctic Cat snowmobile as a "tool of their trade." The debtors allege that they are engaged in the business of racing snowmobiles. The debtors further allege that snowmobile racing is an important facet of their repair business. Apparently snowmobile racing is a good method of advertising, attracting clients, and developing public relations. The court is not persuaded by the arguments of the debtors. The facts presented at the hearing in this matter indicated that the snowmobile was only incidentally related to their repair business. The evidence also revealed that snowmobile racing was not a bona fide trade of the debtors. See Matter of Weinbrenner, 53 B.R. 571 (Bankr. W.D. Wis. 1985). The debtors did not succeed in carrying their burden of proving that the snowmobile is a "tool of their trade."

Finally, the debtors seek to avoid liens on business inventory. The debtors argue that business inventory is a "tool of the trade" of the debtors within the meaning of § 522(f) of the Bankruptcy Code.

(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is--

...

(2) a nonpossessory, nonpurchase-money security interest in any--

...

(B) implements, professional books or tools, of the trade of the debtor or the trade of a dependent of the debtor; (emphasis added)

The court is not aware of any precise definition of the phrase "tool of the trade." The word "tool" has been defined as "any implement used by a craftsman or laborer at his work; an instrument employed in the manual arts for facilitating mechanical operations." The New Webster Dictionary of the English Language, 881 (1980). "Tool" has also been defined as "an instrument used by a handcraftsman or laborer in his work." Websters Third New International Dictionary, 2408 (1986). Generally, when interpreting statutes courts should use the plain and ordinary meaning of words. Business inventory is not a "tool" or an "implement" within the meaning commonly ascribed to those words. It is the opinion of the court that the debtors were not able to sustain their burden of proving that their business inventory constitutes property in which liens may be avoided under § 522(f). The debtors may not avoid liens on business inventory that they hold for sale as part of their business enterprise.

It is the conclusion of the court that the debtors may not avoid the lien on the 1979 Chevrolet Silverado automobile. It is further the conclusion of the court that the

business inventory held by the debtors and the Arctic Cat snowmobile used by the debtors in racing are not tools of the trade of the debtors in which lien avoidance may be exercised. The debtors may avoid the lien on the actual tools and implements they use in their repair business and which they do not hold out for sale.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.