

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

Cite as: [Unpublished]

In re Mary B. Rye, Debtor
Bankruptcy Case No. 91-21421-7

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

October 7, 1991

Marvin Davis, for the debtor.

Jerome F. Lynch, for Sears, Roebuck & Company.

Thomas S. Utschig, United States Bankruptcy Judge.

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

This matter comes before the Court on the debtor's motion to avoid the lien of Sears, Roebuck & Company pursuant to 11 U.S.C. § 522(f)(2)(A). The debtor is Mary B. Rye and she is represented by Marvin Davis. Creditor Sears is represented by Jerome F. Lynch.

The parties have stipulated to the following facts:

1. Mary B. Rye (hereafter Rye or debtor) purchased a washer and dryer, for use as a combined unit, on or about May 13, 1989, from Sears, Roebuck and Company (hereafter Sears).
2. Mary B. Rye used her Sears charge account, account number 2-50723-52249-7, to purchase a washer for \$399.89 plus tax and a dryer for \$299.89 plus tax. She charged those amounts to her Sears charge account on the same day on a single purchase slip.
3. The contract between Sears and Rye as to use of a Sears credit card provided that Sears would have a security interest in any item purchased by use of the card.
4. Sears had a purchase money security interest in the washer and dryer that Rye purchased.
5. Sears' security interest in the washer and dryer was never perfected by filing with a filing officer under Chapter 409 of the Wisconsin Statutes. Sears claims that its security interest is perfected without filing. Debtor claims that filing was necessary to perfect Sears security interest.
6. Debtor claimed in her bankruptcy schedules the washer and dryer purchased from Sears as exempt property under Wisconsin Statute, Section 815.18(3)(d), Stats.

7. Debtor's claim that the washer and dryer from Sears were exempt has been allowed.

8. Mary Rye has had, and continues to have, possession and use of the washer and dryer purchased from Sears. Debtor uses the washer and dryer for her personal use and they are household appliances within the meaning of 11 U.S.C. Section 522(f)(2)(A).

9. But for the filing of the bankruptcy by the debtor, the sum due Sears on the credit card installment loan to the debtor would have been \$1,366.15 as of June 24, 1991.

10. That sum includes purchases unrelated to the washer and dryer.

The debtor's motion is made pursuant to 11 U.S.C. § 522(f)(2)(A) which states:

(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 (6) of this section, if such lien is--

. . .

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

(A) household furnishings, household goods, . . . appliances, . . . held primarily for the personal, family, or household use of the debtor . . .

11 U.S.C. § 522(f)(2)(A) (West 1991). The parties have stipulated to the fact that the washer and dryer are "household appliances" within the meaning of § 522(f)(2)(A). The parties have also stipulated that Sears had a purchase money security interest.

The debtor asserts, however, that since the combined purchase price of the washer and dryer was more than \$500.00, Sears was required to file a financing statement to perfect its security interest. The debtor reaches this conclusion on the basis of § 409.302 of the Wisconsin Statutes, which provides in relevant part:

(1) A financing statement must be filed to perfect all security interests except the following:

. . .

(d) A purchase money security interest in consumer goods having a purchase price not in excess of \$500.00

WIS. STAT. ANN. § 409.302(1)(d) (West Supp. 1990).

Since Sears was required to file a financing statement and didn't, the debtor continues, "[i]t's security interest was invalidated for failure to perfect." See Brief of Mary B. Rye, Debtor at 2. The debtor then asserts that the trustee, as a "lien creditor" pursuant to § 409.301 of the Wisconsin Statutes, takes priority over the interest of the creditor Sears and thus "[a]n unperfected security interest would be invalid as against the trustee." Brief of Mary B. Rye, Debtor at 3. The final step in the debtor's argument is the assertion that "[w]hat was invalid as against the trustee should remain invalid as to the debtor." Debtor's Brief at 4. The debtor therefore alleges she is entitled to

avoid the lien of Sears pursuant to 11 U.S.C. § 522(f)(2).

Sears, in reply, argues that its security interest was automatically perfected pursuant to WIS. STAT. § 409.302(1)(d) since the purchase prices of the washer and dryer, taken separately, were each less than \$500.00. Since it has a valid purchase money security interest, Sears continues, its lien cannot be avoided pursuant to § 522(f)(2).

Having examined the arguments of the parties and taking the stipulated facts as true, the Court concludes that the debtor's motion must be denied. In reaching this conclusion, the Court need not address the issue of whether the \$500.00 limit in WIS. STAT. § 409.302(1)(d) for automatic perfection of a security interest in consumer goods was meant to apply per item purchased or per the aggregate total of purchases for each transaction. The Court need not do so because the issue of perfection is irrelevant here. Contrary to the assertion of the debtor, even if Sears' purchase money security interest is unperfected, it still remains valid between the parties to it. See Clark, *The Law of Secured Transactions*, para. 3.02[2] at 3-7 - 3-8 (2nd ed. 1988). In addition, the fact that a purchase money security interest is unperfected does not destroy its purchase money character. See, e.g., *In re Brown*, 73 B.R. 740, 741, 745 (Bankr. W.D. Wis. 1987). The parties stipulated that Sears had a purchase money security interest and since the perfection question is irrelevant as to that status, Sears continues to have a purchase money interest. The debtor therefore cannot avoid Sears' lien pursuant to 11 U.S.C. § 522(f)(2)(A) since that provision only applies to nonpurchase money security interests.

Although under some circumstances the bankruptcy trustee can take priority over a creditor holding an unperfected security interest, the trustee here took no position whatsoever as to Sears' lien since the debtor claimed the items as exempt. The debtor's assertion notwithstanding, moreover, a Chapter 7 debtor does not possess all of the same rights and powers as the Chapter 7 trustee. See *In re Weaver* 78 B.R. 135, 138 (Bankr. N.D. Tex. 1987). For a case involving similar facts as those at issue here which discusses the various means by which a debtor can avoid a creditor's lien and which reaches a result consistent with that of this Court, see *Styler v. Local Loan Financial Services, (In re Lanctot)*, 6 B.R. 576 (Bankr. D. Utah 1980). See also *In re Savage*, 92 B.R. 259 (Bankr. S.D. Ohio 1988); *In re Carroll*, 89 B.R. 1007 (Bankr. N.D. Ga. 1988); *In re Milcher*, 86 B.R. 103 (Bankr. W.D. Mich. 1988); *In re James*, 7 B.R. 73 (Bankr. D. Me. 1980).

The debtor, therefore, has presented no statutory basis upon which this Court can avoid the purchase money security interest of the defendant Sears. Accordingly, the debtor's motion is denied.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.