

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF WISCONSIN

In the Matter of

IN BANKRUPTCY

RODNEY K. SATHER  
and  
CYNTHIA A. SATHER

No. 78-00955 Vol.  
No. 78-00956 Vol.

Bankrupts.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND JUDGMENT

The Trustee in the above entitled matter having filed an Application with the Court to determine the validity of the claim of a secured creditor as a lienholder on certain items of personal property hereinafter described; and said matter coming on for hearing before the Court; and the Trustee appearing in person and as his own attorney; and the lien claimant, Consumers Co-op Credit Union of Eau Claire having appeared by Steven Christianson, Loan Officer, and by Jerold E. Aubry, its attorney; and the bankrupts having appeared in person and by Richard L. Wachowski, their attorney; and witnesses having been duly sworn and testimony taken; and counsel having orally stated their positions; and the Court being fully advised in the premises, FINDS:

1. That each of said bankrupts filed a petition in bankruptcy on the 5th day of September, 1978.
2. That Lawrence J. Kaiser is the duly appointed, qualified and acting Trustee in said matters.
3. That on or about the 9th day of October, 1976, the above named bankrupts entered into a security agreement, being Exhibit #2 in these proceedings, covering the following described property, to-wit:

Silvertone 19" Color T.V. #T42511366  
Teac tape model 40102 #109257  
Sansui speakers Model 2000 #979112199 #99074734  
Sansui Amp Model 5000 #220021503  
Dual 1019 turntable

4. That thereafter the said bankrupts filed a petition for a Chapter XIII proceedings and the Trustee made certain payments to said Credit Union in the sum of \$50.00 per month; that the original payments were in the sum of \$61.26;

5. That on or about November 8, 1977, the said Credit Union, after telephone calls to Mrs. Sather relative to payments, sent new loan papers to her, which payments would have been in the sum of \$50.00 per month.

6. That on February 2, 1978, the said Credit Union wrote the Sathers relative to the loan papers not being returned as shown by Exhibit #4, and thereafter on April 12, 1978, again wrote requesting the execution of the November papers, and in the event they had been lost they included new papers and requested that they be returned to them. It was stipulated that at no time did any representative of the Credit Union talk to Mr. Sather relative to the re-signing of any papers for financing. Mrs. Sather's testimony is to the effect that she did not agree to the signing of any new papers and that none were ever signed.

7. That on the same date that the new papers were sent to the Sathers the Credit Union terminated its original financing statement and duly filed the same in the office of the Register of Deeds of Eau Claire County, Wisconsin, as shown by Exhibit #3 which is a photostatic copy of said release of lien.

8. That at no time prior to the date of the filing of the bankruptcies herein did the Credit Union take any steps to revoke or set aside said release of lien; now did said Credit Union endeavor to reform said instruments or make any application to the Court for the reinstatement of its original loan financing agreement.

9. That said Credit Union is guilty of laches as to the making of any lien claim herein, and is estopped from now asserting any lien claim on the items listed in said original financing statement.

10. That as of the date of said bankruptcies, to-wit: September 5, 1978, and the appointment of Mr. Kaiser as Trustee on the 25th day of September, 1978, there was no lien on said property.

11. That said Credit Union has failed to sustain its position of having a valid lien herein.

CONCLUSIONS OF LAW

That an Order and Judgment be entered determining that said Credit Union has no lien on said items hereinabove described, and that it is a general unsecured creditor herein.

ORDER AND JUDGMENT

NOW, THEREFORE, IS ORDERED AND ADJUDGED:

That the Consumers Co-op Credit Union has no lien on the following described property, to-wit:

Silvertone 19" Color T.V. #T42511366  
Teac tape model 40102 #109257  
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Sansui Amp Model 5000 #220021503  
Dual 1019 turntable

and that the Trustee is entitled to take the same free and clear of any claim of said Credit Union herein.

Dated: May 11, 1979.

BY THE COURT:

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Bankruptcy Judge