

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

FILED

JUL 22 1986

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CLERK  
U.S. BANKRUPTCY COURT

In re:

Case Number:

KURT C. BRANHAM  
KIM M. BRANHAM

WF7-86-00698

Debtors

ORDER

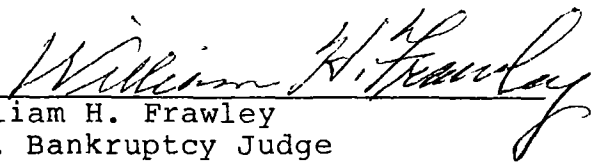
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The court having this day entered its memorandum opinion,  
findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS ORDERED that the objection of the  
Wisconsin Finance Corporation to the debtors' motion for lien  
avoidance is hereby denied.

IT IS FURTHER ORDERED that the debtors' application to avoid  
the lien of Wisconsin Finance Corporation is hereby granted.

Dated: July 22, 1986.

BY THE COURT:

  
William H. Frawley  
U.S. Bankruptcy Judge

cc: Attorney Frederick J. Voss  
Attorney Jack F. Owen

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MEMORANDUM OPINION,  
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The debtors, by Frederick Voss, have filed this motion pursuant to 11 U.S.C. § 522(f) to avoid the lien of the Wisconsin Financial Corporation (WFC) on a loveseat and sofa. WFC appears by Jack Owen and objects to the motion. A telephonic conference was held in this matter on May 23, 1986. At said conference the parties agreed that the written stipulation of facts filed May 12, 1986, stated the relevant facts involved in the dispute. The parties also agreed that the matter could be decided by briefs, and such briefs have been subsequently provided to the court.

The debtors entered into a retail installment contract and security agreement with Merman's Furniture Store (Merman's) on May 25, 1985, to purchase a sofa and loveseat. Under the terms of the contract the debtors took possession of the sofa and loveseat and were to tender payment of \$824.24 within 90 days. The debtors were not required to make a downpayment and interest was not charged on the debt. There were no finance charges on this

purchase. Merman's apparently did not file a financing statement with respect to this transaction. Subsequently, Merman's assigned its security agreement relating to the sofa and loveseat to WFC.

On August 8, 1985, the debtors and WFC entered into a new loan agreement. Under this new agreement the debtors' obligation was increased to \$1,000.00 and a check was issued to the debtors in the amount of \$175.76. This agreement provided for a 23% annual interest rate to be applied and charged against the indebtedness. Pursuant to this contract the debtors were to make 36 monthly payments of \$38.70 to WFC. The contract also provided for the retention of a security interest by WFC in the loveseat and sofa. After this contract was entered into, the retail installment contract and security agreement of May 25, 1985, was stamped "CANCELLED BY NEW MORTGAGE." WFC filed a financing statement perfecting a security interest in the loveseat and sofa on August 20, 1985.

The only issue that is the subject of dispute between the parties is whether WFC possesses a purchase money security interest in the loveseat and sofa. WFC argues that it has a purchase money security interest by the assignment of Merman's purchase money security interest. The debtors argue that the new agreement signed August 8, 1985, with the extension of additional credit was a novation. The debtors assert that the novation extinguished the original purchase money security interest. Matter of Richardson, 47 B.R. 113 (Bankr. W.D. Wis. 1985).

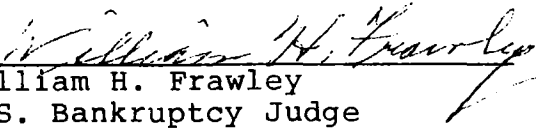
WFC argues that the portion of the \$1,000.00 debt financed by WFC that relates to the indebtedness incurred by the purchase of the loveset and sofa is a purchase money security interest. WFC asserts that such portion constitutes 82.424% of the indebtedness, and it is simple to allocate payments between the items purchased and the other obligation secured.

The loan agreement of August 8, 1985, increased the amount of debt financed to \$1,000.00 and provided the debtors with \$175.76 cash. It increased the annual interest rate from 0% to 23%. The original retail installment contract and security agreement of May 25, 1985, was cancelled. A financing statement was filed with respect to the latter loan contract on August 20, 1985. It is clear that the loan contract of August 8, 1985, was an enforceable contract based on good and sufficient consideration. In this regard, this second contract was not an extension of a former agreement, but was an entirely new contract. This new contract included the legal detriment of consideration and constitutes a novation. Matter of Weinbrenner, 53 B.R. 571, 581 (Bankr. W.D. Wis. 1985). This novation extinguished the purchase money security interest. Matter of Richardson, 47 B.R. 113, 117 (Bankr. W.D. Wis. 1985). It is the conclusion of the court that WFC does not possess a purchase money security interest in the loveseat and sofa.

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

Dated: July 22, 1986.

BY THE COURT:

  
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William H. Frawley  
U.S. Bankruptcy Judge