

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

TIMOTHY & TONI LEWIS

Debtors.

In Proceedings
Under Chapter 7

Case No. 05-40270

IN RE:

LONI & WILLIAM PAGE,

Debtors.

In Proceedings
Under Chapter 7

Case No. 04-42622

OPINION

In these two cases, consolidated for purposes of opinion, the trustee objects to exemptions claimed by the debtors in their motor vehicles. At the time of bankruptcy, the debtors' vehicles were subject to purchase money security interests granted by the debtors. The trustee avoided the purchase money liens as unperfected and recovered the vehicles for the estate. The trustee now objects to the exemptions claimed by the debtors in the vehicles, asserting that the debtors are precluded by 11 U.S.C. § 522(g) from claiming such exemptions because they voluntarily transferred their interests in the vehicles prior to bankruptcy.

Section 522(g) provides in pertinent part:

Notwithstanding sections 550 and 551 of this title,¹ [a] debtor may exempt . . . property that the trustee recovers . . . to the extent that the debtor could have exempted such property . . . if such property had not been transferred, if –

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property[.]

11 U.S.C. § 522(g)(1) (emphasis added).

¹ Under § 551, property recovered by the trustee through use of the trustee's avoiding powers is automatically preserved for the benefit of the estate. See 11 U.S.C. § 551.

This Court has not ruled on the issue of whether a debtor who has granted a security interest in a vehicle prior to bankruptcy may exempt the vehicle once it is recovered by the trustee and preserved for the benefit of the estate. However, courts that have considered the issue agree that such debtors are prohibited from exempting the equity in the vehicle that is created by the trustee avoiding the lien. See e.g., In re Buelow, 287 B.R. 446, 449 (Bankr. N.D. Iowa 2002); In re Witt, 273 B.R. 573, 578 (Bankr. W.D. Wis. 2000); see also In re Richards, 275 B.R. 586, 592-93 (Bankr. D. Colo. 2002); In re Ulrich, 203 B.R. 691, 693 (Bankr. C.D. Ill. 1997); In re Baumgarten, 154 B.R. 66, 68 (Bankr. S.D. Ohio 1993). As the Witt court explained, if a debtor's vehicle is subject to a consensual lien,

[t]he debtor would ordinarily be entitled to exempt only the equity in the car that exceeds [such] lien. Consensual liens are not defeated by a debtor's exemptions unless they can be avoided under § 522(f)(1)(B). Section 522(g) acknowledges this rule by prohibiting a debtor from exempting equity created by [the trustee] avoiding a voluntary lien.

Id., at 578.

The debtors in the present cases have cited no contrary authority, and the Court has found none. In addition, in neither case have the debtors asserted that equity exists in their vehicles in excess of the avoided liens. The Court must assume, therefore, that no equity exists that the debtors could claim as exempt. Accordingly, the Court will sustain the trustee's objection to the debtors' claim of exemption in each case

SEE WRITTEN ORDER.

ENTERED: June 27, 2005

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE

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ORDER

Pursuant to the Court's opinion entered this date, IT IS ORDERED that the trustee's objection to the debtors' claim of exemption in each case is SUSTAINED.

ENTERED: June 27, 2005

/s/ Kenneth J. Meyers

UNITED STATES BANKRUPTCY JUDGE