

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

IN RE:

In Proceedings  
Under Chapter 7

LEE & MARY SUMMERS

Case No. 02-42222

Debtor(s).

ORDER

This matter is before the Court on the trustee's objection to the debtors' amended schedule C, in which they claim an exemption in a 1996 Polaris four-wheeler. The debtors amended their exemption schedule after the trustee avoided the lien of Citifinancial Services, Inc., on the vehicle. The trustee alleges that the lien avoidance was for the benefit of unsecured creditors rather than the debtors and that the debtors' claim of exemption should be disallowed.<sup>1</sup>

The debtors respond that under 11 U.S.C. § 522(g), they are entitled to exempt property recovered for the estate by the trustee to the extent they could have exempted the property under 11 U.S.C. § 522(f).<sup>2</sup> The debtors contend that the 1996 Polaris four-wheeler

---

<sup>1</sup> Section 551 of the Bankruptcy Code provides:

Any transfer avoided under [§ 544] . . . of this title . . . is preserved for the benefit of the estate[.]

11 U.S.C. § 551. Citifinancial's lien was avoided by the trustee under 11 U.S.C. § 544. See Adv. No. 03-4022.

<sup>2</sup> Section 522(g) provides in pertinent part:

Notwithstanding sections 550 and 551 of this title,

recovered by the trustee qualifies as a "household good" subject to lien avoidance under § 522(f)(1)(B), while the trustee asserts that the four-wheeler constitutes a "motor vehicle." Determination of the trustee's objection in this case, therefore, depends on whether the four-wheeler is properly classified as a "household good" or "motor vehicle" for purposes of § 522(f)(1)(2).<sup>3</sup>

Subsection (f)(1)(B) allows debtors to avoid liens on various types of property, including "household goods." "Motor vehicles," however, are not included in the list of property subject to such lien avoidance. See In re Brennan, 208 B.R. 448, 454 (Bankr. S.D. Ill. 1997); In re Michel, 140 B.R. 92, 101 (Bankr. E.D. Pa. 1992). Debtors have cited no authority, and the Court has found none, to support the debtors' position. Illinois law, however, amply supports the trustee's position. The Illinois Motor Vehicle Code

---

the debtor may exempt under subsection (b) of this section property that the trustee recovers . . . to the extent that the debtor could have exempted such property . . . if such property had not been transferred, if-

(2) the debtor could have avoided such transfer under subsection [(f)(1)(B)] of this section.

11 U.S.C. § 522(g)(2). Although the statute actually refers to transfers avoided under "subsection (f)(2)," this is obviously a Congressional oversight in failing to update subsection (g)(2) in 1994, when subsection (f)(2) was renumbered as (f)(1)(B). See 4 Collier on Bankruptcy, ¶ 522.12[1] n.2, at 522-97 (15th ed. rev. 2003).

<sup>3</sup> There is no dispute as to the facts.

governing motor vehicles specifically includes a provision requiring owners of "all terrain vehicles," commonly referred to as "four-wheelers," to make application for and obtain a certificate of title for such vehicles. See 625 Ill. Comp. Stat. 5/3-101(d). In addition, Illinois courts considering the classification of "all terrain vehicles" have consistently held that such vehicles are "motor vehicles." In People v. Martinez, 694 N.E.2d 1084, 1086 (Ill. App. 1998), the court found that the defendant's all terrain vehicle ("ATV") was a "motor vehicle" under the plain language of the Illinois Vehicle Code. Similarly, the court in Roberts v. Country Mutual Insurance Co., 596 N.E.2d 185, 186-87 (Ill. App. 1992), held that an ATV was a "motor vehicle" for purposes of the uninsured motorist statute.

Upon this authority, the Court finds that the debtors' 1996 Polaris four-wheeler constitutes a "vehicle" under Illinois law and that debtors could not have avoided the creditor's nonpossessory nonpurchase money lien on such vehicle under § 522(f)(1)(B). Accordingly, the debtors' argument under 11 U.S.C. § 522(g)(2) is without merit, and the trustee's objection to debtors' claim of exemption must be sustained.

SEE WRITTEN ORDER.

ENTERED: September 18, 2003

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE