

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

IN RE:

In Proceedings

Under Chapter 7

FRED & HEATHER THOMPSON

Case No. 02-42739

Debtor(s).

OPINION

This matter is before the Court on the debtors' motion to avoid the second lien of creditor, Heights Finance, which is secured by the debtors' two vehicles. Each of the vehicles is subject to a first lien that exceeds the value of the vehicle. Because Heights Finance's second lien is wholly unsecured, the debtors seek to avoid the lien under 11 U.S.C. § 506(d).<sup>1</sup>

The issue of whether a Chapter 7 debtor can use § 506(d) to strip off an unsecured second lien has been addressed by several courts, with inconsistent results.<sup>2</sup> See e.g., In re Laskin, 222 B.R. 872 (B.A.P. 9th Cir. 1998); In re Webster, 287 B.R. 703 (Bankr. N.D. Ohio 2002) (collecting cases); In re

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<sup>1</sup>Section 506(a), relating to determination of the secured status of claims, provides:

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim.

Subsection 506(d) provides in pertinent part:

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void . . . .

<sup>2</sup>The Seventh Circuit Court of Appeals has not addressed this issue.

Zempel, 244 B.R. 625 (Bankr. W.D. Ky. 1999). In Zempel, relied upon by the debtors, the court held that the Chapter 7 debtors could use § 506(d) to avoid liens that were rendered totally unsecured by senior liens. Id. at 630. The Laskin court, by contrast, refused to allow Chapter 7 debtors to avoid liens under § 506(d), reasoning that § 506, by its terms, is applicable only in those instances involving a claims allowance process. The court concluded that, “absent either a disposition of . . . collateral or valuation of [a] secured claim for plan confirmation in [a] Chapter 11, 12, or 13 [case], there is simply no basis on which to avoid a lien under § 506(d).” Id. at 876. This Court, having reviewed the relevant case law, finds the reasoning of Laskin to be persuasive and adopts that court’s opinion as its own. Because § 506(d) does not explicitly confer an avoiding power on a Chapter 7 debtor, the debtors here, as in Laskin, are without standing to avoid Heights Finance’s unsecured lien under § 506(d). Id. at 874. Section 506(d) does not confer a “freestanding” avoidance power on debtors but, rather, provides the consequences of implementing a host of discrete powers conferred in other parts of the Code. Id. at 875. Thus, although § 506(d) is properly used in Chapter 13 cases where claims must be allowed or disallowed to determine the manner in which such claims are paid through the plan, the allowance of a secured claim or determination of secured status is meaningless in a Chapter 7 case where the trustee is not disposing of putative collateral. Id. at 876 (citing Dewsnup v. Timm, 502 U.S. 410, 417 (1992)). This Court finds, as did the court in Laskin, that § 506 was intended to facilitate valuation and disposition of property in the reorganization chapters of the Code, not to provide an additional avoiding power to Chapter 7 debtors. Id. at 876. The Chapter 7 debtors here may not use § 506(d) to strip off the unsecured second lien of Heights Finance. Accordingly, the debtors’ motion to avoid the lien of Heights Finance will be denied.

SEE WRITTEN ORDER.

ENTERED: February 27, 2003

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE