

OUTLINE BANKRUPTCY CODE 11 U.S.C. §522 EXEMPTIONS

- The initial question to determine under §522 is whether or not the Debtor is attempting to avoid the fixing of a lien on property in which he or she had an interest prior to the attachment of the lien.

In other words, the lien does not attach to after acquired property.

- Then the focus shifts to whether or not the fixing of an avoidable lien would impair an exemption to which the Debtor would otherwise have been entitled under the law.

Alabama is an opt-out state meaning we have opted out of the Federal Exemption scheme and we use only the state law exemptions which currently are \$7,750.00 for personal property and \$15,500.00 for real property.

- Section 522(f) covers both judicial liens and what are commonly referred to as non-possessory non-purchase money security interest which are liens created by the Debtor in property in which they already own. This definition excludes liens created for the purchase of after acquired real and personal property.

While 522 deals with judicial liens and non-purchase money liens, I am going to focus on the later as most loans made by finance companies involve a debtor putting up personal property as collateral. However, to avoid the non-purchase money lien, the debtor must meet the requirement that the lien impairs the state law exemption (Ala. \$7,550.00), and further they meet the additional requirements of 522(f).

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- §522 provides the mathematical formula for determining if a lien should be considered as impairing the Debtor's personal property exemption to the extent that the sum of ...
 - (i) the lien;
 - (ii) all other liens on the property; and
 - (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in absence of any liens.
- In the case of a property subject to more than [1] lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to the other liens; and
- §522 states that in order for a secured interest to be avoided, it must impair an exemption in one of the three (3) categories of property:

1. household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor... 11 U.S.C. § 522(f)(1)(B)(i).
 2. implements, professional books or tools, of the trade of the debtor or the trade of a dependent of the debtor... 11 U.S.C. § 522(f)(1)(B)(ii).
 3. professionally prescribed health aids for the debtor or a dependent of the debtor. 11 U.S.C. § 522(f)(1)(B)(iii).
- As you can imagine, tons of litigation evolved over what constitutes household goods on which a non-purchase money security interest that may be avoided.
 - On cases filed after October 17, 2005, Congress attempted to define household goods. When they amend 522 and added 522(f)(4)(A) and (B), they used the term "means" instead of "includes" when setting up the list in subsection A that states "for the purposes of this section household goods means..."
 1. Clothing;
 2. Furniture;
 3. Appliances;
 4. One radio;
 5. One TV;
 6. One VCR;
 7. Linens;
 8. China;
 9. Crockery;
 10. Kitchenware;
 11. Educational materials and educational equipment primarily for the use of minor dependent children of the debtor;
 12. Medical equipment and supplies;
 13. Furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;
 14. Personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and
 15. One personal computer and related equipment.
 - Congress then added 522(f)(4)(B) which defines what household goods "does not include"..
 1. Works of art (unless by or of the debtor, or any relative of the debtor);
 2. Electronic entertainment equipment with a fair market value of more than \$500.00 in the aggregate (except one television, one radio, and one VCR);

3. Items acquired as antiques with a fair market value of more than \$500.00 in the aggregate.
 4. Jewelry with a fair market value of more than \$500.00 in the aggregate (except wedding rings); and
 5. A computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.
- One would think that defining what is and what is not within the definition of household goods would so solve the problem. Well, guess what, it didn't. Again, tons of litigation has evolved.
 - Let me give you one example...

What is a lawn tractor which is excluded from the definition as opposed to a lawn mower that is included and which can be avoided?

- There is a case out there of the Northern District of Mississippi; In re Evans, 548 B.R. (Bankr. N.D. Miss. 2016) which is now being followed in Alabama. See also, In re Goodman, 566 B.R. 80 (Bankr. N.D. Ala. 2017). That discusses what is, or is not a lawn tractor.

SEE FORM ATTACHED "A"

- It appears it depends on whether or not the "lawn mower" is capable of doing more than just cutting grass; i.e., does it have a power takeoff or can you hook attachment to it.
- Some of the Bankruptcy courts have forms that the debtor's counsel can fill out when filing a motion to avoid a lien.

SEE FORM ATTACHED "B"

This form was prepared by Judge Calloway in the Southern District of Alabama. As you can see, he follows right along with the Code section.

ALSO SEE ATTACHED "C"

This form was prepared for use in the Northern District of Alabama, which includes the mathematical calculation that we talked about earlier.

A

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 16-80809-WRS
Chapter 13THEORA R. GOODMAN
JANIE H. GOODMAN,

Debtors

MEMORANDUM DECISION

A Debtor in bankruptcy may avoid certain security interests in household goods to the extent the security interest impairs an exemption to which the debtor is entitled. In this case, the Debtor moved to avoid the nonpossessory, nonpurchase money security interest of Republic Finance in certain household goods. (Doc. 18). Republic objected to the avoidance of a 42" John Deere Riding Lawn Mower, claiming it was not a household good because it qualified as a lawn tractor. Republic does not oppose the motion with respect to any other item of collateral described in the Debtor's motion. The question is whether the John Deere is a lawn mower, which could be the subject of a motion to avoid a security interest, or a lawn tractor, which could not.

I. FACTS

On January 22, 2015, Debtor Theora R. Goodman borrowed money from Republic Finance ("Republic") and granted it a security interest in the following collateral: (1) a 42" John Deere Riding Lawn Mower (the "John Deere"); (2) a Craftsman Skill Saw; (3) a Ryobi Cordless Drill; (4) a 42" Samsung Flat Screen HDTV; (5) a 32" Sceptre Flat Screen HDTV; (6) a Pioneer Surround Sound System; (7) a Weed Eater brand weed eater; and (8) an Echo Leaf Blower. On June 30, 2016, Goodman and his wife filed a petition in bankruptcy pursuant to Chapter 13 of the

Bankruptcy Code. (Doc. 1). On August 12, 2016, Goodman filed a motion to avoid Republic's security interest pursuant to 11 U.S.C. § 522(f)(1)(B). (Doc. 18). Republic filed a timely objection to the motion, but only as to the John Deere. (Doc. 21).

The dispute centers on whether the John Deere is a "lawn tractor" within the meaning of 11 U.S.C. § 522(f)(4)(B)(v). If it is, as contended by Republic, then Goodman's motion must be denied, as to the lawn mower, or lawn tractor. Both the Debtor and the local office manager for Republic testified at the evidentiary hearing. Not surprisingly, the Debtor testified that the John Deere in question was a riding lawn mower and Republic's office manager testified that it was a lawn tractor. The Debtor offered a photograph of the lawn mower into evidence, which depicted a riding lawn mower. Republic noted that it is possible to connect a wagon to the back of the John Deere, while counsel for the Debtor argued that it did not have a PTO (power take off) or any attachments that could make the mower do anything other than cut grass. Moreover, given the nature of the attachment and the size of the lawn mower, it appears that any wagon to be attached to the mower could not carry any significant amount of weight. The parties did not offer any other evidence. The Court finds that the mower in question is capable of carrying one seated operator and cutting a swath of grass 42 inches in diameter, and no other material task.

II. LAW

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(K). This is a final order.

A debtor may avoid a nonpossessory, nonpurchase money security interest in "household furnishings, household goods, wearing apparel, [and] . . . appliances" to the extent that it impairs

an exemption to which the debtor would have been entitled. 11 U.S.C. § 522(f)(1)(B). Republic does not dispute that its security interest impairs the Debtors' exemptions, however, it contends that the John Deere in question is not a "household good" within the meaning of the statute. Instead, Republic contends it is a lawn tractor. In 2005, the statute was amended to add the following provision: "[t]he term 'household goods' does not include— . . . (v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft." 11 U.S.C. § 522(f)(4)(B)(v).

The statute does not further define the term "lawn tractor." Employing the *noscitur a sociis* canon of statutory construction, to determine the meaning of an unclear term, one looks at the words immediately surrounding it. See, Black's Law Dictionary 1087, (8th ed. 2004). In this statute, one notes that the term "lawn tractor" is contained in a parenthetical following the term motor vehicle, suggesting that "lawn tractor" may be used for transportation. While a riding lawn mower can theoretically be used for transportation, it is poorly suited to such a task. A farm tractor, on the other hand, while not suitable for cross country travel, is nicely suited for short trips. For example, if one traveled to a neighboring farm, one might well use a farm tractor but would not use a riding lawn mower. The structure of the sentence containing "lawn tractor," which modifies "motor vehicle," suggests that the meaning of lawn tractor is intended to mean smaller tractors capable of some speed in excess of a brisk walk, which would exclude riding lawn mowers such as the John Deere in question.

In one of the few reported cases on this point, the Bankruptcy Court in the Northern District of Mississippi recently considered the distinction between a riding lawn mower, which

could be the subject of a motion to avoid a security interest, and a lawn tractor, which could not. In re Evans, 548 B.R. 449 (Bankr. N.D. Miss. 2016). The Court in Evans concluded that a lawn tractor is a vehicle used to haul or power implements, not limited to just cutting grass with a rotary blade, and that is capable of diverse lawn functions. Id. at 456. Whereas, a lawn mower is not suited to perform any significant task other than to cut grass. Id. The ability to use simple attachments and haul insignificant amounts of weight does not make a lawn tractor. Id. This Court finds the Court's reasoning in Evans persuasive and adopts its rule here.

III. ANALYSIS

Republic argues that trade usage requires that the John Deere is labeled as a lawn tractor; yet, no expert testified as to trade usage at the evidentiary hearing. (Doc. 30). Instead, website screen shots of three industry manufacturers were submitted into evidence with little explanation as to how they prove trade usage. (Doc. 30, Ex. 2). The John Deere in question is not shown in any screen shot provided. (Doc. 30, Ex. 2). Furthermore, trade usage, while persuasive, is not determinative.

Referencing John Deere's website, one will notice that the John Deere in question is not listed, presumably because it is more than two decades old. Nevertheless, Republic claims it is a lawn tractor per the manufacturer's description. However, that subsection—"Lawn Tractor"—on John Deere's website is located under "Riding Mowers" and is one of two subsections, the other being "Zero-Turn Mowers." Reliance on the John Deere website poses two problems. First, it implies that lawn tractors fall into the broad category of riding lawn mowers, which is contrary to the statutory language of § 522(f)(4)(B)(v) implying that a lawn tractor is more akin to a motor vehicle than a riding lawn mower. Second, the website suggests that every riding

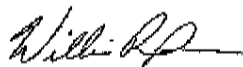
mower other than a zero-turn mower is a lawn tractor. Considering the ambiguity as to trade usage presented on the manufacturer's own website, the Court focuses instead on the characteristics and functions of the John Deere in question to determine its classification.

The lawn mower, a John Deere 42" Deck STX 38, has a rotary blade and one main function: to cut grass. Although it was argued that a one can attach a small wagon, the John Deere cannot haul any significant weight or perform other material tasks. Neither does it have a PTO to operate additional equipment. The John Deere was manufactured for the purpose of cutting grass and any other function would be a secondary, less efficient use. "This piece of equipment is little more than a glorified push mower, a push mower minus the push." Evans, 548 B.R. at 451. Therefore, the John Deere is not a lawn tractor within the meaning of § 522(f)(4)(B)(v).

IV. CONCLUSION

For the reasons set forth above, the John Deere is not a lawn tractor within the meaning of § 522(f)(4)(B)(v) and the Debtor's motion is GRANTED.

Done this 12th day of January, 2017.



United States Bankruptcy Judge

c: Charles G. Reynolds Jr., Attorney for Debtors
William M. Hancock, Attorney for Republic Finance
Sabrina L. McKinney, Acting Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE: _____)
)
) Case No. _____
)
 Debtor(s).)

COMBINED MOTION TO AVOID NONPOSSESSORY, NONPURCHASE-MONEY
SECURITY INTEREST, MOTION TO VALUE REMAINING COLLATERAL,
AND OBJECTION TO CLAIM

Motion to Avoid Security Interest

Debtor(s) move the court, pursuant to Bankruptcy Code § 522(f), to avoid the nonpossessory, nonpurchase-money security interest of _____ (“the Lienholder”) in the following items because the Lienholder’s security interest impairs an exemption to which the debtor(s) would otherwise be entitled:

- Household furnishings, wearing apparel, appliances, books, animals, crops, musical instruments, and jewelry held primarily for the personal, family, or household use of debtor(s) or a dependent of debtor(s). Description: _____

- Personal effects of debtor and dependents (including toys and hobby equipment of minor dependent children). Description: _____

- 1 television. Description: _____
- 1 personal computer and related equipment. Description: _____

- 1 VCR or DVD player. Description: _____
- Implements, professional books, or tools used by debtor(s) or dependents in their trade. Description: _____

- Clothing. Description: _____
- Furniture. Description: _____
- 1 radio. Description: _____
- Linens, china, crockery, and kitchenware. Description: _____
- Educational materials and educational equipment for minor dependent children. Description: _____
- Medical equipment and supplies. Description: _____
- Professionally prescribed health aids for debtor(s) or a dependent of debtor(s). Description: _____
- Other. Description: _____

Motion for Valuation

Debtor(s) move the court, pursuant to Bankruptcy Code § 506(a) and Bankruptcy Rule 3012, to determine the value of the Lienholder's claim on any personal property of Debtor(s) as to which its lien has not been avoided.

Objection to Lienholder's Claim

Debtor(s) object to Lienholder's claim no. ____ to the extent that the secured portion exceeds the value of its collateral as determined by the court. The claim should be reclassified as secured only to the extent of that value with the remainder of the claim treated as unsecured.

Attorney for Debtor(s)

Certificate of Service

I certify that I have served this pleading on all entities listed on the matrix by first-class mail and on the Lienholder by first-class mail at the following notice address as listed on its proof of claim: _____

C

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

In re:

Case No.

Chapter

NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST FOR HEARING

PLEASE TAKE NOTICE THAT, if you object to the relief requested in this motion (the "Motion"), you must file an objection with the Clerk of Court (an "Objection") within **30** days of the date of service of the Motion (the "Objection Deadline"), and you must serve the Objection on the filer and all other appropriate persons. If you received service of the Motion by mail, three days are added to your Objection Deadline by Rule 9006(f) of the Federal Rules of Bankruptcy Procedure (the "Rules"). If your Objection Deadline falls on a Saturday, Sunday, or legal holiday, your Objection Deadline shall not expire until the end of the day that is not a Saturday, Sunday, or legal holiday, pursuant to Rule 9006(a).

PLEASE TAKE FURTHER NOTICE THAT Objections must be filed with the Clerk of Court electronically, by hand delivery, or by mail. The Clerk's Office is located at
If you mail your Objection to the Clerk's Office, you must send the Objection in time for the Clerk's Office to receive your Objection by your Objection deadline. The Court will not consider any untimely Objections.

PLEASE TAKE FURTHER NOTICE THAT, if you timely file and serve an Objection, the Court will hold a hearing to consider the Motion and your Objection, and the Clerk's Office will notify you, and all other appropriate persons, of the time, date, and place of the hearing. **If you fail to file an Objection by the Objection Deadline, you will be deemed to have admitted the allegations in the Motion, and the Court may grant the relief requested in the Motion without a hearing.**

**SECTION 522(f) MOTION TO AVOID JUDICIAL LIEN OR NONPOSSESSORY, NONPURCHASE MONEY
SECURITY INTEREST AND DETERMINE SECURED STATUS**

Check one.

- Total Lien Avoidance.** Debtor(s) seek to totally avoid the judicial lien or nonpossessory, nonpurchase money security interest (the "Lien") securing the claim listed below (the "Claim") because the Lien impairs the Debtor(s)' available exemption(s) and the extent of the impairment equals or exceeds the amount of the Lien. Upon entry of an order granting the Motion, the Lien will be avoided in its entirety, and, unless otherwise ordered, the Claim, to the extent allowed, will be treated as wholly unsecured. *See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). (This section should be used if, after deducting the amount(s) of Debtor(s)' available exemption(s) and of any mortgage lien(s) or other unavaoided lien(s) and security interest(s) that encumber the subject property, Debtor(s) have no equity in the property.)*

Name of creditor	Amount of Lien	Proof of claim number (if a claim is filed)	Property description (see Debtor(s) schedules for the property value(s) and information regarding the mortgage(s) and other lien(s) and security interest(s) that encumber the property)	Lien identification (such as date of Lien recording, book and page number, county of recording)

Partial Lien Avoidance. Debtor(s) seek to partially avoid the judicial lien or nonpossessory, nonpurchase money security interest (the "Lien") securing the claim listed below (the "Claim") because it impairs Debtor(s)' available exemption(s) and the extent of the impairment is less than the amount of the Lien. Upon entry of an order granting the Motion, the Lien will be avoided to the extent that it impairs such exemption(s) (see line "g"), and, unless otherwise ordered, the Claim, to the extent allowed, will be treated as a secured claim in the amount listed in line "e." See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d).

Information regarding lien	Calculation of lien avoidance
Name of creditor:	a. List the value of Debtor(s)' interest in the Property (see also Debtor(s) schedules): \$
Proof of claim number (if a claim is filed):	b. List the total value of all mortgage lien(s) and other unsecured lien(s) or security interest(s) encumbering the Property: \$
Lien identification (such as date of lien recording, book and page number, county of recording):	c. Subtract line "b" from line "a": \$
Description of property (the "Property") (e.g., the real and personal property of the judgment debtor situated in the count(ies) where the lien is recorded):	d. List the total amount of all available exemption(s): \$
	e. Subtract line "d" from line "c" (This is the amount of the remaining secured claim.): \$
	f. Amount of the judicial lien to be avoided: \$
	g. Subtract line "e" from line "f" (This is the portion of the lien that is avoided.): \$

Date _____

Signature of Debtor(s) or Debtor(s)' Attorney

Name/Address/Telephone/Email: