

**THIS OPINION IS NOT INTENDED FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE:	)	
	)	Case No. 94-51365
DAVID WOOD	)	
	)	
MUFFIN DEE WOOD	)	
	)	
Debtor(s)	)	Chapter 7
	)	
) ORDER IN RE: DEBTORS'	)	MEMORANDUM OPINION AND
	)	MOTION TO AVOID
	)	LIENS PURSUANT TO 11 U.S.C.
	)	§522(f)

This matter is before the Court on the Debtors' Motion to Avoid Liens pursuant to 11 U.S.C. §522(f). The lien holder, Beneficial Ohio, Inc. has objected to that motion, first arguing that Resolution Trust Co. v. Moreland, (In re Moreland), 21 F.3d 102 (6th Cir., 1994) requires this Court to overrule Debtors' motion, and second that, assuming that Moreland does not require a blanket overruling of the Debtors' motion, certain items included in the collateral in which Beneficial Ohio holds a security interest do not come within the "household goods" as used in O.R.C. §2329.66 (A)(4)(b).

As to the first argument, the Court notes that Moreland dealt with the Ohio exemption and that any extension of that decision to the household goods exemption would be inappropriate in light of Owen v. Owen, 500 U.S.305(1991). This conclusion is based upon the following case development.

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In 1984 the Sixth Circuit held that a debtor could not avoid a nonpossessory, nonpurchase-money security interest under 11 U.S.C. §522 (f) if under the state law on which the debtor relied for its exemption, that exemption was limited only to the debtor's interest in such property. In short, if the debtor had granted a security interest in such property, the debtor's interest was limited to the residue after considering the secured loan amount. In re Pine, 717 F.2d 281(6th Cir., 1983); In re Spears, 744 F.2d 1224 (6th Cir., 1984). The Ohio exemption for household goods is framed in terms of the debtor's interest.

In 1991, In re Pine was one of two cases that the Supreme Court specifically cited to exemplify an approach to §522(f) that was being specifically rejected in its decision in Owen v. Owen, 500 U.S. 305 (1991). That case required that state and federal exemptions be treated uniformly for the purpose of 11 U.S.C. §522(f), in essence interpreting §522(f) as permitting states to define what items of property are subject to exemption but creating a uniform federal approach as to in extending such exemption to the entire item of property. Since the Owen this has been the uniform interpretation of bankruptcy courts in Ohio. See In re Higgins, 159 B.R. 212 (S.D. Ohio 1993); In re Boswell, 148 B.R. 31 (N.D. Ohio 1992); In re Wheeler, 140 B.R. 445 (N.D. Ohio 1992); In re Puhl, 136 B.R. 487 (N.D. Ohio 1992); In re Sullins, 135 B.R. 288 (S.D. Ohio 1991).

Moreland, supra, limits its holding to the application of 11 U.S.C. §522(f)(1) to judicial liens that impair homestead exemptions under Ohio Rev. Code Section 2329.66(A)(1). The discussion of Owen by the panel in Moreland deals only with its effect the Ohio Homestead Exemption. 81 F3d at 107. Nowhere in the Moreland decision is there a discussion of Pine or Speers, nor is there any discussion of lien avoidance as it pertains to personal property

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including household goods.

Accordingly, the issue before this Court is whether the term "household goods" as it is used in Ohio Rev. Code Section 2329.66(A)(4)(b) includes a video camera. Term household goods is not defined in either the Bankruptcy Code nor in the Ohio Revised Code. Because Ohio has elected to opt out of the federal Exemption approach, as it is permitted to do under 11 U.S.C. §522(b), the Court views the question before to be an issue of state law. However, the Court has been unable to find any Ohio decisions which address the question.

In 1984 the Sixth Circuit held that the debtor could not avoid an Ohio nonpossessory, nonpurchase money security interest under 11 U.S.C. Sec. 522(f) because under the state law that exemption applied only to the debtor's interest after deducting liens and security interests. See In re Pine, 717 F.2d 281 (6th Cir. 1983); In re Spears, 744 F.2d 1225 (6th Cir. 1984). However, in 1991, the Supreme Court decided Owen v. Owen, 500 U.S. 305 (1991), a case which required that state and federal exemptions be treated uniformly for purposes of 11 U.S.C. 522(f). Furthermore, In re Pine, was one of two cases that the Supreme Court cited to exemplify the approach to Sec. 522(f) that the Court was rejecting. Owen, 500 U.S. at 309. As such, many Ohio Bankruptcy cases have interpreted Owen as overruling Pine and Spears. See In re Higgins, 159 B.R. 212 (S.D. Ohio 1993); In re Boswell, 148 B.R. 31 (N.D. Ohio 1992); In re Wheeler, 140 B.R. 445 (N.D. Ohio 1992); In re Puhl, 136 B.R. 487 (N.D. Ohio 1992); In re Sullins, 135 B.R. 288 (S.D. Ohio 1991).

Resolution Trust Corp. v. Moreland (In re Moreland), 21 F.3d 102 (6th Cir. 1994), appears to limit its holding to the effect of 11 U.S.C. Sec. 522(f)(1)'s application to judicial liens that impair homestead exemptions under R.C.

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2329.66(A)(1). Although the Moreland Court discusses Owen, that discussion deals only with its effect upon lien avoidance and the Ohio homestead exemption. Moreland, 21 F.3d at 107. Nowhere in its text does the Moreland decision mention Pine or Spears, nor does it discuss lien avoidance as to personal items and household goods.

To date, no other opinions have cited to the Moreland case. However, given Moreland's discussion of lien avoidance only as it applies to the Ohio homestead exemption, it is more likely that the Sixth Circuit did not intend for that opinion to be applied in any other context.

The term "household goods" is not defined in the Bankruptcy Code, thereby leading to a panoply of definitions by Bankruptcy Courts that are forced to decide the term's scope. Whatever the scope that a deciding court adopts will dictate whether or not a camcorder fits within the meaning of "household goods."

For instance, in In re Farson, 1994 Bankr. LEXIS 1456 (N.D. Ohio 1994), the court adopted "items of personal property reasonably necessary for the day-to-day existence of people in the context of their home" as the definition of "household goods" and held that a video camera die not fit into that definition. In In re Reid, 121 Bankr. 875, 878 (D.N.M. 1990), the court stated that "[given] our complex society, items that were once regarded as luxuries in past years, particularly home entertainment items such as televisions and stereo systems, are now commonplace and are viewed as necessities to the well-being of the family unit.." As such, the court concluded that "household goods" should include items that a person might expect to find in today's average household,

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<sup>1</sup> Cases which favor a broader definition of "household goods" seem to rely on Congress' intention to allow debtors to begin again without requiring them to

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such as televisions, VCRs, computers, and video cameras. Id. at 878-79.<sup>1</sup>

The court in In re Gonshorowski, 110 B.R. 51, 55 (N.D. Ala. 1990) adopted a rebuttable presumption that items used by debtors or their dependents in or around their residence are "household goods." The court then enunciated a list of factors to be considered when a lien avoidance question arises. Those factors are: (1) whether the item in question is included within those items defined as household goods under the FTC definition<sup>2</sup>; (2) the

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give up each and every item of property that they owned. The legislative history of 11 U.S.C. Sec. 522 states in pertinent part:

Prior to the enactment of the 1978 Bankruptcy Code consumer lenders would take a nonpossessory, nonpurchase money security interest in household goods, furnishings and appliances essential to the Debtor's ability to maintain his household. The inherent value of most of such collateral was quite often of little importance, for as a practical matter not much more than "garage sale" prices could be obtained for such used chattels on liquidation by the secured party. Nevertheless, the and inconvenience of replacement by the Debtor could be considerable ... if in fact the secured party were to repossess or foreclose. Accordingly, when the Debtor filed a bankruptcy petition the secured party often used the threat of repossession, rarely carried out, to extract more than he would be able to get if he did a foreclosure or repossession. Section 522(f)(2)(A) was enacted to prevent such a secured creditor from

exerting undue financial pressure based on chattels that had limited intrinsic value, but were essential to the Debtor.

In re Reid, 1221 B.R. 875, 877 (D.N.M. 1990).

<sup>2</sup> The FTC defines "household goods" as "clothing, furniture, appliances, one radio, one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included...: (1) works of art; (2) electronic entertainment equipment (except one television and one radio); (3) items acquired as antiques; and (4) jewelry (except wedding rings)."

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number of other like or similar items owned by the debtor; (30) the ages, sex and number of the debtor's dependents; 94) the standard of living to which the debtor and his family have become accustomed to, viewed in light of the debtor's annual income; (5) the standard of living of members of the debtor's neighborhood; (6) the use to which the item is put (i.e. recreational, personal, or business); (7) whether the item is one for which a certificate of title is issued; and (8) whether the items are luxury goods. Id. at 55. Based upon the presumption and an analysis of all the factors, the court went on to find that a Kodak movie camera was a "household good." Id.

In In re Vale, 110 B.R. 396 (N.D. Ind. 1989), the court, faced with whether certain items including a video camera were "household goods," reviewed over 18 cases and analyzed the diverse results obtained. After the court's in depth analysis, it concluded that "even though a movie camera, ... is] tangible personal property kept in and around the Debtor's household [it is] not household goods or appliances upon which a lien thereon may be voided in the sense of Sec. 522(f)(2). Id. at 406. "[It is] not essential to the need of the Debtors or their dependents. i.e. although they are the types of leisure, entertainment or unessential items that the average, reasonable and prudent consumer would desire to keep if he could afford them, he would not feel compelled to reaffirm a debt to the holder of a security interest therein in an extortionate amount on the basis that if he did not do so he would not be able to maintain and preserve his household and carry out the normal day to day function of living in and running a contemporary household without discomfort or inconvenience." Id.

Based upon the foregoing, it appears that whether or not a camcorder falls within the meaning of "household goods" has no uniform answer.

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Dependent upon the definition adopted by the deciding court, the debtor may or may not be able to avoid a lien on his video camera pursuant to 11 U.S.C. Sec. 522(f).

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Marilyn Shea-Stonum  
Bankruptcy Judge

**DATED: 12/27/94**