

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

IN RE:	)	CHAPTER 13
	)	
WALTER MARC HOFFMAN,	)	CASE NO. 04-64391
	)	
Debtor.	)	JUDGE RUSS KENDIG
	)	
	)	
	)	<b>MEMORANDUM OF OPINION</b>
	)	<b>(WRITTEN OPINION)</b>
	)	

Debtor's motion to avoid lien, filed June 21, 2006, is before the court. Debtor moves the court for an order avoiding a nonpossessory, nonpurchase money security interest in a 1988 Chevrolet Corvette. The motion is made pursuant to Federal Rule of Bankruptcy Procedure 4003(d) and 11 U.S.C. § 522(f). No objections were filed.

Debtor commenced the Chapter 13 case on August 18, 2004 and listed his interest in a 1988 Chevrolet Corvette on Schedule B. Citifinancial was included as a secured creditor with an interest in the Corvette on Schedule D. The confirmed plan failed to provide for payment of the secured claim owing Citifinancial and Citifinancial did not file a proof of claim. Thus, Citifinancial has not recovered any portion of its claim and will not be entitled to future payments under the confirmed plan. Debtor seeks to avoid the lien held by Citifinancial in the Corvette.

Debtor's motion is premised on 11 U.S.C. § 522(f) which allows a debtor to avoid a lien-

to the extent that such lien impairs an exemption to which the debtor would have been entitled . . . if such lien is . . .

(B) a non-possessory, nonpurchase money security interest in any--

(i) 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.

Upon review of Schedule C, Debtor has not exempted any portion of the Corvette. The available exemption for an automobile has been applied to a pick-up truck owned by Debtor and Debtor's "wild card" exemption has been applied to his firearms. Debtor did not identify the specific exemption which would be impaired and the Court cannot

identify an exemption to which Debtor would be entitled. Therefore, Debtor has failed to demonstrate that the lien held by Citifinancial "impairs an exemption to which debtor would [be] entitled." Additionally, an automobile is not a household good for the purposes of section 522(f). *See, e.g., Lorson v. Avco Financial Services Consumer Discount Co. One (In re Lorson)*, 1997 WL 702982 (Bankr. M.D. Pa. 1997) (unpublished) (citing nine cases finding that a motor vehicle is not a household good for 522(f) lien avoidance purposes). For these reasons, Debtor's motion to avoid the lien is not well-taken.

The Court also finds that Debtor is not entitled to the relief sought in the motion due to the provisions of 11 U.S.C. § 506(d)(2). The creditor has a secured interest in the vehicle as recognized by debtor in the schedules. While liens that are secured by claims other than allowed secured claims are generally void, an exception found in 11 U.S.C. § 506(d)(2) provides that if the only reason the claim is not an allowed secured claim is due to the failure to timely file a proof of claim, then the lien is not void. Consequently, the lien survives. *See, e.g., In re Lee*, 182 B.R. 354 (Bank. S.D. Ga. 1995); *Southtrust Bank of Alabama v. Thomas (In re Thomas)*, 91 B.R. 117 (Bankr. N.D. Ala. 1988); *see also Lee Servicing Co. V. Wolf (In re Wolf)*, 162 B.R. 98 (Bankr. D. N.J. 1993). This applies even in cases where a proof of claim has not been filed or where the plan does not provide for creditor's claim. *See id.*

Debtor's motion to avoid the non-possessory nonpurchase money security interest held by Citifinancial is not well-taken and is hereby **DENIED**.

It is so ordered.

**/s/ Russ Kendig**  
RUSS KENDIG  
U.S. BANKRUPTCY JUDGE  
JUL 20 2006

**Service List:**

Walter Marc Hoffman  
1254 Woodville Road  
Mansfield, OH 44907

Brian J. Chisnell  
P.O. Box 2668  
1075 National Parkway  
Mansfield, OH 44906-198

Toby L. Rosen  
Charter One Bank Building, 4<sup>th</sup> Floor  
400 W. Tuscarawas St.  
Canton, OH 44702