

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
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November 19, 2001

Marilyn A. Durante
Debtor *pro se*
840 North Spruce, Lot 88
Rapid City, South Dakota 57701

Brian Utzman, Esq.
Counsel for Advantage Title Loans, Inc.
Suite 3, 2902 West Main
Rapid City, South Dakota 57702

Subject: *In re Marilyn A. Durante,*
Chapter 7; Bankr. No. 01-50181

Dear Ms. Durante and Mr. Utzman:

The matter before the Court is Debtor's Motion to Avoid Lien Pursuant to 11 U.S.C. § 522(f) and the objection thereto filed by Advantage Title Loans, Inc. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying Order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052 and 9014. As set forth below, the Court concludes that Debtor's Motion must be denied.

Summary. Marilyn A. Durante ("Debtor") filed a Chapter 7 petition on April 4, 2001. In her schedules, Debtor listed Advantage Title Loans, Inc., ("Advantage") as holding a "Title" loan on her 1997 Champion Forest Park mobile home. Debtor also filed a statement that she intended to retain her mobile home and that she was declaring the mobile home exempt under S.D.C.L. 43-45-3.

On October 25, 2001, Debtor filed a Motion to Avoid Lien Pursuant to 11 U.S.C. § 522(f). Therein, she sought an order by the Court that would avoid Advantage's lien on her mobile home because it impaired her claimed homestead exemption in the mobile

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home.¹ Advantage timely objected. It argued that § 522(f) does not apply to the facts presented because Advantage's lien is not a judicial lien subject to removal on exempt property under § 522(f)(1)(A), and because Debtor's mobile home is not the type of property on which a nonpossessory, nonpurchase-money security interest may be avoided under § 522(f)(1)(B).

Discussion. Debtor admits that Advantage has a nonpossessory, nonpurchase-money security interest. Advantage admits that Debtor's mobile home is exempt property. Thus, the only question for the Court is whether the mobile home is the type of property on which a nonpossessory, nonpurchase-money security interest may be avoided under § 522(f)(1)(B). See generally *In re Mason*, 254 B.R. 764, 767-68 (Bankr. D. Idaho 2000) (discussing application of § 522(f)(1)(B) in general). Debtor bears the burden of proof by a preponderance of the evidence. *Alessandro v. People's Bank (In re Alessandro)*, 243 B.R. 611, 613 (Bankr. D. Conn. 2000).

Section 522(f)(1)(B) provides:

[T]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which debtor would have been entitled under [§ 522(b)], if such lien is --

...

(B) a nonpossessory, nonpurchase-money security 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;

(ii) implements, professional books, or tools, of the trade of the debtor or a trade of a dependent of the debtor; or

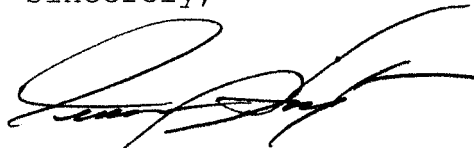
¹ Debtor had filed an earlier motion to avoid Advantage Title Loans, Inc.'s lien. That motion was denied without prejudice on August 29, 2001, because a certificate of service was not timely filed.

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(iii) professionally proscribed health aids
for the debtor or a dependent of the debtor.

Based on the language of the statute and applicable case law interpreting that section, it is clear that Debtor's mobile home does not fall under subsections (B)(i), (ii), or (iii). A mobile home is a house, separate from the assorted personalty found in a house that is listed in subsections (B)(i), (ii), and (iii). *American General Finance, Inc. v. Hoss (In re Hoss)*, 233 B.R. 684, 686-87 (W.D. Va. 1999) (cites therein); *In re Rogers*, 225 B.R. 755, 756 (Bankr. D. Idaho 1998). Accordingly, Advantage's lien on Debtor's mobile home is not avoidable under § 522(f)(1)(B). An order denying Debtor's Motion will be entered.

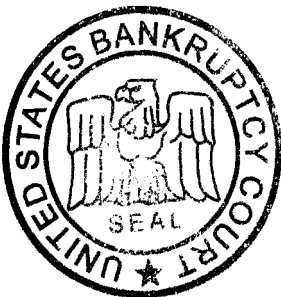
Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve parties in interest)



NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
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NOV 19 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

I hereby certify that a copy of this document
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NOV 19 2001

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U.S. Bankruptcy Court, District of South Dakota
By *CLN*

Case: 01-50181 Form id: 122 Ntc Date: 11/19/2001 Off: 3 Page : 1
Total notices mailed: 5

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