



**SO ORDERED.**

**SIGNED this 07 day of November, 2005.**

*Dale L. Somers*

Dale L. Somers  
UNITED STATES BANKRUPTCY JUDGE

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In Re:**

**THOMAS L. ELDER and  
MARY E. ELDER,**

**DEBTORS.**

**CASE NO. 7  
CHAPTER 04-12898**

**J. MICHAEL MORRIS,**

**PLAINTIFF,**

**v.**

**ADV. NO. 04-5229**

**SOLOMON STATE BANK; THOMAS  
L. ELDER; and MARY E. ELDER,**

**DEFENDANTS.**

**MEMORANDUM AND ORDER PARTIALLY GRANTING TRUSTEE'S COMPLAINT  
TO AVOID AND PRESERVE SECURITY INTEREST**

The matter before the Court is the Chapter 7 Trustee's Complaint to Avoid and Preserve Unperfected Security Interest and Determine Rights. The Plaintiff, the Chapter 7 Trustee, J. Michael Morris (Trustee), is represented by J. Michael Morris, Klenda, Mitchell, Austerman & Zuercher, LLC. Defendant Solomon State Bank (Bank) is represented by Michael P. Alley, Clark, Mize & Linville, Chtd. There are no other appearances.<sup>1</sup> The Court has jurisdiction.<sup>2</sup>

In this adversary proceeding, the Trustee seeks pursuant to 11 U.S.C.A. §§544(a) and 551<sup>3</sup> to avoid and preserve for the benefit of the estate the lien of the Bank in a 2001 Schultz manufactured home (Manufactured Home), which is attached to the Debtors' homestead property. The parties have filed a Stipulation of Facts, to which is attached copies of the transaction documents as exhibits. They have also submitted briefs on the Trustee's lien avoidance action.<sup>4</sup> For the reasons set forth below, the Court holds that the Bank is the holder of an unperfected lien on the Manufactured Home and the Trustee may avoid the lien for the benefit of the estate.

## **I. FACTS.**

The Trustee and Bank have stipulated to the following facts:

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<sup>1</sup> A default judgment was previously entered against the Debtors, Thomas L. Elder and Mary E. Terry Elder, and they are not participating in this phase of the proceedings.

<sup>2</sup> 28 U.S.C.A. § 1334. This is a core proceeding which this Bankruptcy Court may hear and determine as provided in 28 U.S.C.A. § 157 (b)(1) and (b)(2)(K).

<sup>3</sup> Future references to the Bankruptcy Code in the text shall be to the section only.

<sup>4</sup> The issue of the apportionment of the lien between the real property and the Manufactured Home was reserved until resolution of the Bank's defense to lien avoidance. Because the Court holds that the Trustee may avoid and preserve the lien, the value of the lien attached to the Manufactured Home will need to be determined.

1. The Court has jurisdiction over the subject matter and parties, and venue is proper herein.

2. On September 11, 2003, Thomas L. Elder and Mary E. Perry Elder ("the Debtors") applied for a \$123,500 loan from Solomon State Bank ("the Bank") to refinance their homestead at 2618 N. Winchester Rd., Salina, Kansas 627401. A true and correct copy of the corresponding Residential Loan Application is attached hereto as Exhibit 1.

3. The Debtors' homestead is legally described as:

Lot twenty-four(24), Block one(1), in Sundowner West Meadows, Saline, County, Kansas (more commonly referred to as 2618 N. Winchester Rd., Salina, Kansas 67401).

4. The Debtors' homestead includes a 2001 Schultz 32' x 76' manufactured home ("Manufactured Home") affixed to a basement foundation. A 24' x 30' garage, 12.5' by 8.5' deck, and 10.5' x 8.5' porch have been added. A true or correct copy of an appraisal obtained by the Bank for the purposes of this case is attached hereto as Exhibit 2.

5. The Bank prepared an internal appraisal ("Internal Appraisal") of the Debtors' homestead as part of the loan approval process. A true and correct copy of the Internal Appraisal is attached hereto as Exhibit 3.

6. On or before October 7, 2003, the Bank approved the Debtors' loan application.

7. On October 14, 2003, the Bank loaned to Debtors \$123,500.00. On October 14, 2003, the Debtors executed a \$123,500.00 promissory note ("Note"). On October 7, 2003, the Debtors executed a real estate mortgage ("Mortgage") in favor of the Bank. A true and correct copy of the Note (two copies of the Note -- the first a "clean copy" and the second a carbon copy with some type-overs on the Debtors' name and address), together with the Balloon Payment

Note Rider is attached hereto as Exhibit 4. A true and correct copy of the Mortgage is attached hereto as Exhibit 5.

8. The Bank prepared the Note and Mortgage.
9. All signatures on the Note and Mortgage are genuine.
10. At all times relevant, the Debtors owned their homestead.
11. The \$123,500.00 in loan proceeds were distributed as follows:
  - a. \$107,583.02 to pay off mortgage of Oakwood Acceptance Corp., LLC;
  - b. \$11,464.99 to pay off mortgage of Old Republic Fin. Acceptance Corp.;
  - c. \$1,461.02 to pay settlement charges; and
  - d. \$2,990.97 in cash to the Debtors.

A true and correct copy of the Settlement Statement is attached hereto as Exhibit 6.

12. The Manufactured Home is a "manufactured home" as defined by K.S.A. §§58-4202(a) and 84-9-102(a) (53).

13. On June 21, 2002, the Kansas Department of Revenue issued a Certificate of Title on the Manufactured Home to be Debtors. A true and correct copy of the Certificate of Title is attached hereto as Exhibit 7.

14. The Bank is not listed, and has never been listed, as a lien holder on the Certificate of Title.

15. The Bank never filed a notice of security interest with the Kansas Department of Revenue.

16. The Certificate of Title has never been eliminated pursuant to K.S.A. § 58-4214.

17. At the time of making the \$123,500.00 loan to the Debtors, the Bank intended that the Note be secured by the Debtors' homestead, including the entire structure thereon.

18. At the time of receiving the \$123,500.00 loan from the Bank, the Debtors intended that the Note be secured by their homestead, including the manufactured home.

19. Prior to making the \$123,500.00 loan to the Debtors, two bank officers physically inspected the homestead and concluded that the structure thereon was a modular home.

20. At the time of receiving the \$123,500.00 loan from the Bank, the Debtors never surrendered the Certificate of Title to the Bank, and the Bank never requested the Certificate of Title from the Debtors.

21. This proceeding should be bifurcated, with the first issue being lien avoidance. Should the Plaintiff prevail on lien avoidance, the Court will take up valuation of any avoided lien on a later date.

## **II. ANALYSIS.**

Trustee seeks to avoid the Bank's lien on the Manufactured Home pursuant to subsection 544(a)(2), which provides:

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or any creditor, the rights and powers of . . .

(2) a creditor that extended credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists;

Controlling law is succinctly stated by the Tenth Circuit as follows:

Section 544(a) of the Bankruptcy Code "confers on a trustee in bankruptcy the same rights that an ideal hypothetical lien claimant without notice possesses as of the date bankruptcy petition is

filed.” *Pearson v. Salina Coffee House, Inc.*, 831 F.2d 1531, 1532 (10th Cir. 1987). Consequently, “[s]ection 544(a) allows the trustee to avoid any unperfected liens on property belonging to the bankruptcy estate.” *Id.* The determination of whether a creditor’s security interest is unperfected, and therefore avoidable under section 544(a) is controlled by state law. *Id.* at 1533.<sup>5</sup>

A lien creditor, as defined by Kansas law, includes a “creditor that has acquired a lien on the property involved by attachment, levy, or the like” and “a trustee in bankruptcy from the date of the filing of the petition.”<sup>6</sup> Article 9 of the Kansas UCC provides a security interest is subordinate to the rights of a person that becomes a lien creditor before the security interest is perfected.<sup>7</sup>

In this case, therefore, the right of the Trustee to avoid the Bank’s lien on the Manufactured Home is determined by whether the Bank had a lien on the home on the date of filing, May 26, 2004, and, if so, whether that lien was perfected. The parties agree that on the date of filing, the Bank had a perfected security interest in the Debtor’s real property on which the Manufactured Home is located. The parties also agree that if the Bank had a security interest in the Manufactured Home that security interest was unperfected.<sup>8</sup> The Trustee may therefore

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<sup>5</sup> *Morris v. CIT Group/Equipment Financing, Ins. (In re Charles)*, 323 F.3d 841, 842-43 (10th Cir. 2003).

<sup>6</sup> K.S.A. 2003 Supp. 84–9–102(52).

<sup>7</sup> K.S.A. 2003 Supp. 84–9–317(a).

<sup>8</sup> In Kansas, the exclusive means for perfecting a security interest in a manufactured home for which the certificate of title has not been surrendered is by notation on the certificate of title. K.S.A. 2003 Supp. 84–9–311(a)(2); K.S.A. 2003 Supp. 58-4204; *Morris v. Citifinancial (In re Tribble)*, 290 B.R. 838 (Bankr. D. Kan. 2003). Although the Bank intended to perfect a security interest in the Manufactured Home, it did not note its interest on the certificate of title for the Manufactured Home.

avoid the lien and preserve it for the benefit of the estate if the Bank had a lien on the Manufactured Home on the date of filing.

The position of the Bank is unusual. The Bank opposes lien avoidance on the theory that although it intended to acquire a perfected lien in the Manufactured Home, the loan documentation was insufficient to create even a security interest. It argues that a lien in the Manufactured Home did not attach because: The Promissory Note, Disclosure Statement & Security Agreement (Note) did not describe the Manufactured Home; the Real Estate Mortgage (Mortgage) did not adequately describe the Manufactured Home which could not become a fixture under Kansas law; and the parole evidence rule bars consideration of evidence of the uncontroverted facts that the Debtors intended to grant and the Bank intended to receive a lien on the Manufactured Home. The Trustee, on the other hand, argues that the Note and Mortgage evidence a security interest in the Manufactured Home, the evidence of intent may be considered by the Court, the Manufactured Home is a fixture, and that the Manufactured Home was sufficiently described for a security interest to attach to it.

The Court, for reasons stated below, holds in favor of the Trustee and finds that as of the date of filing the Bank had an unperfected security interest in the Manufactured Home which may be avoided and preserved for the benefit of the estate.

**A. The Mortgage Granted the Bank a Lien on Fixtures Attached to the Real Estate.**

The Mortgage, executed by the Debtors on October 7, 2003, granted to the Bank a mortgage on the following:

all property situated in the County of Saline and State of Kansas,  
described as follows, to wit:

Lot twenty-four (24), Block one (1), in Sundowner West Meadows, Saline County, Kansas

TO HAVE AND TO HOLD THE same with all appurtenances thereto belonging unto the said second party, its successors, and assigns, forever . . . The lien of this Mortgage also extends to any personal property which is now or hereafter attached to said real estate and is or becomes a fixture.

A lien therefore was granted in the described the real property, commonly known as 2618 Winchester Road, Salina, and all personal property attached to the real estate which at the time of the mortgage or thereafter became a fixture.

**B. The Manufactured Home was a Fixture for the Purpose of the Description in the Mortgage.**

The Court finds that the Manufactured Home was encompassed within the description of property subject to the Mortgage. For the purpose of the Mortgage description, the home was personal property which had become a fixture. When construing a mortgage, the cardinal rule of “interpretation is to ascertain the intention of the parties and to give effect to that intention if it can be done consistent with legal principles.”<sup>9</sup> When a contract is unambiguous, intent is determined from the four corners of the written document.<sup>10</sup> When applying this rule, the courts consider all of the documents which are part of the transaction; for example when a promissory note and a related mortgage are part of one transaction, they are considered together and all terms given effect.<sup>11</sup>

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<sup>9</sup> *Parsons v. Biscayne Valley Investors Limited*, 23 Kan. App.2d 718, 722, 935 P.2d 218, 222 (1997).

<sup>10</sup> *Metropolitan Life Insurance Co. v. Strnad*, 255 Kan. 657, 661, 876 P.2d 1362, 1366 (1994).

<sup>11</sup> *Id.*; see also *Emporia State Bank & Trust Co. v. Mounkes*, 214 Kan. 178, 519 P.2d 618 (1974); and *Parsons v. Biscayne Valley Investors, Ltd.*, 23 Kan. App.2d at 722, 925 P.2d at 221.



The Stipulation of Facts leaves no doubt that the parties intended that the property subject to the Mortgage include the Manufactured Home and that the Manufactured Home satisfied the definition of a fixture. A review of the transaction documents shows that the Debtors applied for a \$123,500.00 loan on their property located at 2618 N. Winchester Road, Salina. The loan application states that the loan will be “secured by a first mortgage or deed of trust on the property described” in the application and that the Debtors intend to “occupy that property as their primary residence.” The Note states that it is secured by a real estate mortgage for \$123,500.00 covering lot 24, Block 1, in Sundowner West Meadows, Saline County, Ks.<sup>12</sup> The Mortgage grants a lien in the real property at the stated address and any personal property that was or became a fixture attached to the described real property. The appraisals of the real property obtained by the Bank include the value of the Manufactured Home. The majority of the loan proceeds were used to pay off a mortgage for \$107,583.02 held by Oakwood Acceptance Corporation. The construction of the Mortgage that the property description includes that home is consistent with, but not dependent upon, the stipulated intent of the Debtors to grant a security interest in the Manufactured Home and the Bank’s stipulated intent to receive this security.<sup>13</sup>

It is reasonable that the parties evidenced their intent by describing the Manufactured Home as a fixture. “The general rule is that a building is normally considered part of the real

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<sup>12</sup> The Court agrees with the Bank that the security agreement portion of the Note did not grant a security interest in the Manufactured Home. The Note merely referred to the separate Mortgage. The security agreement portion of the form was not utilized in the transaction with the Debtors.

<sup>13</sup> The unambiguous loan documentation evidences the intent that the security interest granted to the Bank include the Manufactured Home without consideration of the stipulation that the parties intended to grant a security interest in the Manufactured Home. Unlike the loan documents at issue in *American State Bank v. Swearingen (In re Swearingen)*, 27 B.R. 379 (Bankr. D. Kan. 1983), cited by the Bank, the Court finds that the Manufactured Home was intended to be collateral for the Bank’s loan without consideration of parole evidence.

estate.”<sup>14</sup> The Kansas Supreme Court has held that the factors to consider when determining whether personal property has become a fixture are:

(1) Annexation to the realty; (2) adaptation to the use of that part of the realty with which it is connected; [and] (3) the intention of the party making the annexation to make the article a permanent annexation to the freehold.<sup>15</sup>

The facts establish that the Manufactured Home is affixed to a basement foundation. The loan was to refinance two existing mortgages on the Debtors’ homestead. The Bank did not finance the purchase of the Manufactured Home or agree to lend the funds before the home was in place on the Debtors’ property. At the time of the loan, a garage, deck, and porch had been added to the home. The appraisal valued the Manufactured Home and the real property on which it is located as a unit. It reported that the home is attached to a finished basement of 2280 square feet. Three bedrooms and one bath are below grade level. The Debtors have exempted the Manufactured Home as their homestead. The Court finds that the Manufactured Home is attached to the real property, is adapted to the residential lot on which it is located, and the Debtors intend to make it a permanent part of the real property. The factors indicating a fixture are satisfied. There is no reason why a person intending to include the Manufactured Home within the property subject to the Mortgage would have thought the description inadequate.

The Court rejects the Bank’s argument that, notwithstanding the parties’ intent, the Manufactured Home was not adequately described in the Mortgage because the title

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<sup>14</sup> *Stalcup v. Detrich*, 27 Kan. App.2d 880, 886, 10 P.3d 3, 8 (2000).

<sup>15</sup> *Board of Education, Unified School District No. 464 v. Porter*, 234 Kan. 690, 695, 676 P.2d 84, 89 (1984); see *In re Sand & Sage Farms & Ranch, Inc.*, 266 B.R. 507, 511 (Bankr. D. Kan. 2001).

requirements of the Kansas Manufactured Housing Act<sup>16</sup> require the home be considered personal property, thereby precluding a description of the home as a fixture. It is true that the act defines the personal property character of a manufactured home. K.S.A. 2003 Supp. 58-4204(a), providing for certificates of title, states that “for purposes of this section, a manufactured home or a mobile home shall be considered to be personal property.” The purpose of this declaration, that a manufactured home is personal property, is expressly limited to K.S.A. 2003 Supp. 58-4202. The statute does not address whether a manufactured home can be a fixture for purposes of description in a real estate mortgage. It does not say that a description of a manufactured home in a mortgage as a fixture is ineffective.

The Bank also cites K.S.A. 2003 Supp. 58-4214(a), which became effective on April 18, 2002, to support its view that a manufactured home cannot become a fixture unless the certificate of title is surrendered. That statute provides a procedure whereby the title to a manufactured home may be eliminated and ownership of the home be considered an incident of ownership of the real property where it is located. It states:

(a) Whenever a manufactured home or mobile home is permanently affixed to real property, by placement upon a permanent foundation of a type not removable intact from such real property, a manufactured home or mobile home shall be considered for all purposes an improvement to real property, if the certificate of title which has been issued or is required to be issued for such manufactured home or mobile home pursuant to K.S.A. 58-4204, and amendments thereto, is eliminated pursuant to this section. If the certificate of title has been eliminated pursuant to this section, the ownership of the manufactured home or mobile home shall be an incident of ownership of the real property where it is located under governing real property law. If the certificate of title has been eliminated pursuant to this section, a separate

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<sup>16</sup> K.S.A. 58-4201 through -4212 (1996) and as amended thereafter.

security interest in the manufactured home or mobile home shall not exist, and the manufactured home or mobile home shall only be subject to a lien as part of the real property where it is located.

The Court finds that this subsection addresses when a manufactured home ceases to have any personal property characteristics for purposes of the certificate of title laws applicable to manufactured homes. This statute, like K.S.A. 2003 Supp. 58-4202, does not address use of the word fixture to describe a manufactured home in a mortgage as a means of expressing the parties' intention that the lien include the home.

The legislature by enactment of the Kansas Manufactured Housing Act has removed manufactured homes from the general principles of law applicable to ownership, conveyance, and perfection of interests in personal and real property. It is the legislature, not the courts, which has required that a security interest in a manufactured home be perfected by notation on the certificate of title, even when a home has all of the characteristics of a fixture. This Court declines to extend this legislation, which creates a trap for those attempting to perfect a lien in a manufactured home, to also create a trap for those intending to describe a manufactured home in a mortgage or other security document. Kansas case law has recognized that a mobile home may become a fixture, even though such homes, like manufactured homes, are subject to the certificate of title provisions of the Kansas Manufactured Housing Act.<sup>17</sup> Although the act establishes that the Manufactured Home was not a fixture for purposes of perfection of a security interest and a security interest could be perfected only by notation on the certificate of title, the

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<sup>17</sup> See *Beneficial Finance Co. Of Kansas, Inc. v. Schroeder*, 12 Kan. App.2d 150, 737 P.2d 52 (1987) pet. rev. denied July 16, 1987 (recognizing that a mobile home may become a fixture). Although *Beneficial* was decided when mobile and manufactured homes were subject to the same title statutes as motor vehicles, the Court does not find that the enactment of the Kansas Manufactured Housing Act would change the courts' analysis. See *Prairie State Bank v. Superior Housing, Inc.*, 30 Kan. App.2d 273, 40 P.3d 336 (2002) (recognizing that a modular home may become a fixture).

act does not preclude parties from using the common law meaning of fixture when describing the Manufactured Home in a real estate mortgage, when that mortgage is relied upon to create a lien and not for the purpose of contending perfection through recording in the real estate records. The Mortgage sufficiently expressed the parties' intent that the Manufactured Home be included in the definition of property subject to the lien.

**C. The Bank's Security Interest in the Manufactured Home Attached.**

Next, the Bank contends that the Real Estate Mortgage, when considered to be a security agreement, does not sufficiently describe the home for there to be attachment of a lien pursuant to Article 9 of the UCC. The Court has concluded that the property described in the Mortgage includes the Manufactured Home, notwithstanding the Kansas Manufactured Housing Act. The Court now determines that although the Manufactured Home is not fully described in the Mortgage, for example by make or model, the description is sufficient for attachment under Article 9 of the UCC.

Article 9 addresses the grant and perfection of a security interest. It applies to a transaction "regardless of its form, that creates a security interest in personal property or fixtures by contract."<sup>18</sup> A security agreement is defined by Article 9 as "an agreement that creates or provides for a security interest."<sup>19</sup>

Whether an agreement creates a security interest depends not on whether the parties intend that the law *characterize* the transaction is a security interest, but rather on whether the transaction falls within the definition of "security interest" in Section 1-201. Thus, an agreement that the parties characterize as a "lease" of goods may be a "security agreement," notwithstanding

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<sup>18</sup> K.S.A. 2003 Supp. 84-9-109(a)(1).

<sup>19</sup> K.S.A. 2003 Supp. 84-9-102(72).

the parties' stated intention that the law treat the transaction as a lease and not as a secured transaction.<sup>20</sup>

“When a security interest is created, [Article 9] applies regardless of the form of the transaction or the name that the parties have given to it.”<sup>21</sup> Thus, a security interest in personal property may be contained in a document titled “mortgage.”<sup>22</sup> “The fact that the security agreement was contained in the mortgage instrument rather than in some other document does not affect its validity.”<sup>23</sup>

The Bank argues that a security interest did not attach to the Manufactured Home because the collateral description “fixtures” in the Mortgage did not satisfy K.S.A. 2003 Supp. 84–9–108(a) or the heightened description standards applicable to consumer goods established by K.S.A. 2003 Supp. 84–9–108(e). K.S.A. 2003 Supp. 84-9-108 states in relevant part:

(a) **Sufficiency of description.** Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) **Examples of reasonable identification.** Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

- (1) Specific listing;
- (2) category;
- (3) except as otherwise provided in subsection (e), a type of collateral defined to the uniform commercial code;
- (4) quantity;
- (5) computational or allocational formula or procedure; or

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<sup>20</sup> K.S.A. 2003 Supp. 84–9–102 off. UCC cmt. ¶ (3)(b).

<sup>21</sup> K.S.A. 2003 Supp. 84–9–109 off. UCC cmt.¶ 2.

<sup>22</sup> This Court has recently held that a mortgage of real property and fixtures, granted a lien in a manufactured home attached to the property. *Oakwood Mobile Homes, Inc. v. Robson (In re Robson)*, Case No. 03-42560; Adv no. 04-7015, Memorandum and Order filed September 22, 2005. Other jurisdictions recognize this principle. *E.g., Cervantes v. General Electric Mortgage Co. (In re Cervantes)*, 67 B.R. 816 (Bankr. E.D. Pa.1986); .

<sup>23</sup> *In re Cervantes*, 67 B.R. at 819.

(6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) **Supergeneric description not sufficient.** A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

(d) **Investment property.** . . .

(e) **When description by type insufficient.** A description only by type of collateral defined in the uniform commercial code is an insufficient description of:

(1) A commercial tort claim; or

(2) in a consumer transaction, consumer goods, a security entitlement, a security account, or a commodity account.

The Manufactured Home is not described in the Mortgage as simply personal property which has become a fixture. Rather, the description is only that portion of the Debtors’ personal property which was or would become a fixture on the real estate described in the Mortgage. This reference to the real property description specifically identifies personal property securing the Debtors’ obligation to the Bank and limits the description to the Manufactured Home. Without doubt, the standard of reasonable identification in subsection (a) is satisfied. The Court further finds that the description satisfies even the most stringent requirement of subsection (e)(2) applicable to consumer goods.<sup>24</sup> If personal property which has become fixtures is a type of collateral for Article 9 purposes, the collateral was described not only by a collateral type but also by its location. Subsection (e) was satisfied.

### **III. CONCLUSION.**

For the foregoing reasons, the Court holds the Bank on the date of filing held an unperfected lien on the Manufactured Home granted by the Debtors’ Mortgage, the Trustee may

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<sup>24</sup> The Bank argues that the Manufactured Home is consumer goods for purposes of Article 9. The Trustee questions this position. The Court does not resolve the issue, because it finds that the collateral description is sufficient even if the more stringent collateral description requirements applicable to the consumer goods controls.

avoid the lien on the Manufactured Home pursuant to section 544(a), and the lien is preserved for the benefit of the estate pursuant to section 551. The Court further grants the Trustee's request, not opposed by the Bank, that the Court leave this matter open to apportion the lien between the real property and the Manufactured Home.

**IT IS SO ORDERED.**

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