



SO ORDERED.

SIGNED this 28 day of June, 2005.

ROBERT E. NUGENT
UNITED STATES CHIEF BANKRUPTCY JUDGE

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

IN RE:)	
)	
BRADLEY A. WODKE,)	Case No. 03-16776
)	Chapter 11
Debtor.)	
_____)	

MEMORANDUM OPINION¹

This matter came before the Court for trial on the stay relief motion of Deere & Company² (“Deere”) and confirmation of Deere’s treatment as provided for in debtor’s chapter 11 plan,³ to which

¹ The Court initially issued its opinion in this matter on March 10, 2005 but upon receipt of Deere & Company’s motion to reconsider (Dkt. 179) the Court withdrew its opinion. After receiving debtor’s response to the motion to reconsider, the Court again took the matter under advisement. This Memorandum Opinion resolves the issues presented at trial on January 18, 2005 as well as those raised by Deere’s motion and is a final order.

² Dkt. 11.

³ Dkt. 118.

only Deere objects. In an order entered on January 21, 2005, this Court confirmed debtor's August 13, 2004 Plan ("Plan").⁴ In the confirmation order, entered by agreement of all interested parties, this Court stated, inter alia, that "upon confirmation . . . , payments to Deere and Company will be suspended until the Court determines (a) whether Deere and Company holds a perfected security interest in the collateral and if so (b) the valuation of Deere's collateral and the amount and duration of payments the debtor will be required to make in the future in order to retain the collateral." Under the confirmation order, if the Court today finds Deere's interest unperfected, Deere will be treated as an unsecured creditor.

Deere, which claims a security interest in a Deere compact utility tractor and tiller, objects to its treatment under the plan. The issues presented at trial were the value of the collateral and whether Deere is properly perfected. All exhibits were admitted into evidence by stipulation of the parties.

Jurisdiction

These contested matters are core proceedings over which this Court has jurisdiction.⁵

Factual Background

Debtor Brad Wodke lives and operates a sole proprietorship machine shop (Machine Speciality) in Hillsboro, Kansas. His machine shop was located in a largely undeveloped industrial park surrounded by 4.69 acres.

In June of 2001, he purchased a John Deere 4300 compact utility tractor and a John Deere 550 tiller from Suburban Equipment, Inc. in Wichita, a John Deere dealer. Wodke signed a fixed rate Retail Installment Contract which contained a security agreement describing the implements in question. Wodke

⁴ Dkt. 168

⁵ 28 U.S.C. § 157(b)(2)(G) and (L).

represented in the documentation of the transaction that the tractor and trailer were to be used primarily for personal, family or household purposes and for “residential” use.⁶ Wodke’s business name, Machine Speciality, appears nowhere in the documentation. Wodke, individually, is identified as the purchaser of the implements and his residential address, not his business address, is listed.

Wodke testified that he needed the equipment to establish and maintain a yard around his machine shop building and that it was to be used to blade a driveway to the building and for snow removal.⁷ Wodke communicated this information to the salesman he dealt with at Suburban Equipment. Even though the area in front of the building was planted to grass, Wodke testified that he never mowed with the tractor at his business location. Wodke admitted that he used the tractor and tiller in his home garden. According to Wodke, the tractor and tiller were delivered to Wodke’s place of business per Wodke’s direction.

Wodke agreed to pay some \$19,370.17 over 60 months at 5.9 per cent per annum, and his obligation was secured by a purchase money security interest in the equipment. Wodke did not completely read through the purchase documents. On June 15, 2001, John Deere Credit filed a financing statement in the office of the Register of Deeds of Marion County, Kansas.

Wodke filed this Chapter 11 bankruptcy case on December 16, 2003. In his plan, Wodke proposes to cram down Deere’s lien, if it is perfected, to some \$5,900, the same to be paid at 7 per cent per annum over 84 months.⁸ Wodke asserts that Deere’s security interest is unperfected. This equipment

⁶ Trial Ex. 1 and 9.

⁷ Wodke testified that he later purchased a blade elsewhere, but could not state when he acquired the blade. Deere’s witness indicated that a blade for grading and snow removal would have run Wodke about \$250.

⁸ The plan valued the tractor at \$5,500 and the tiller at \$400.

is also subject to a lien of Central National Bank which holds a valid and perfected security interest in all of Wodke's equipment. Deere objects to its plan treatment and seeks stay relief.

The parties evidentiary presentation focused on two points, the value of the implements and whether the transaction was a consumer or commercial transaction. The parties apparently believe that resolution of the latter dispute would determine whether Deere's security interest was properly perfected by the local filing.

With respect to value, debtor proposed to allow Deere's secured claim at \$5,900, attributing \$5,500 in value to the tractor and \$400 to the tiller. Deere strenuously objects to this treatment, asserting a much higher value. In support of his valuation, debtor presented the testimony of Ken Henry who is an independent engineer with experience in the machinery business. He has owned and operated Knight Machine Sales since 1995. Henry stated that he sells a tractor from time to time (2003 being the last time he recalled a tractor sale), but has not sold a tiller. Henry referred to the subject tractor as a "large garden tractor." He valued the tractor at \$6,000 and the tiller at \$500; Henry based these values on his rule of thumb that, at auction, used farm implements tend to bring 40 per cent of their sale price when new and his opinion that the used market was depressed. At the time Henry inspected the tractor in April of 2004, it had approximately 100 hours of use, a corroded battery, and a hydraulic leak. He estimated that these repairs would cost about \$400. Henry offered no comparative sales information.

In addition to Henry, Wodke gave his own opinion of value. Wodke estimated a value of \$6,000.

Deere offered the testimony of Mike Miller who is the manager of Suburban Equipment. He has been a John Deere dealer for 26 years and sells between 50 and 60 new and used Deere 4300 tractors

annually. Miller was the individual who set the prices of the used equipment for Suburban Equipment. When Miller inspected the equipment for his appraisal in May 2004, the tractor was located in a barn at Wodke's residential address. In the three years since Wodke had purchased the tractor, he had only accumulated some 100 hours on the tractor.⁹ Based on values taken from John Deere's Fall 2004 Official Price Guide, he concluded that a 2001 tractor with 100 hours use has a value of \$11,800. Based on a recent sale at Suburban, he concluded that the tiller was worth \$1,200.¹⁰ A copy of the applicable pages in Deere's official guide showed an average wholesale price of \$10,164, an average resale cash price of \$13,078, and an average retail price of \$14,972 for tractors similar to the one Wodke has.¹¹ Deere also offered the copy of its invoice to Wodke reflecting the tractor's sale price of \$16,123.¹² The Court concludes that, while Miller is an interested party, his appraisal is supported by competent evidence of comparative sales as well as Deere's historical experience with the resale of this equipment. Moreover, it appears this equipment is in very good shape and has been barely used.

Analysis and Conclusions of Law

A. Value of Implements.

Under the Supreme Court's decision in *Associates Commercial Corp. v. Rash*,¹³ the Court is

⁹ Miller testified that normal commercial usage would be around 500 hours per year.

¹⁰ Ex. 4. These were retail values. Miller opined that the wholesale values were \$10,000 and \$800 for the tractor and tiller, respectively.

¹¹ Ex. 5. The value guide was for the Northwestern Region, which included Kansas.

¹² Ex. 7.

¹³ 520 U.S. 953, 117 S.Ct. 1879, 138 L.Ed. 2d 148 (1997).

required to assess the replacement value of the collateral. This is the “price a willing buyer in the debtor’s trade, business or situation would pay a willing seller to obtain property of like age and condition.”¹⁴ Whether replacement value is the equivalent of retail value or of some other type of value is left to the bankruptcy court to determine, as a trier of fact, based upon the type of debtor and the nature of the property.¹⁵

Here, it appears that debtor intends to retain the equipment and use it both to maintain the premises of his business as well as at his home. The equipment is practically new and, according to Miller, in good shape, but for a dead battery and flat tire. Pictures of the equipment were received into evidence and they show the tractor and tiller as being in good condition, if a little dusty. Were Wodke to seek to replace this equipment, he would likely seek it at a John Deere dealer and could be expected to pay some amount between wholesale and cash resale value. Miller’s average of wholesale of \$10,164 and cash resale of \$13,078 for the tractor alone more than justify Miller’s \$13,000 appraisal for the whole. Under these circumstances, the Court concludes that the tractor is properly valued at \$11,800 and the tiller at \$1,200 which are the supported retail resale values assessed by Deere. These values are, in all the attendant circumstances, simply more credible than the fire sale value attributed to the equipment by the debtor’s appraiser’s unsupported estimate. Thus, if Deere is properly secured, Deere’s secured claim would be allowed at \$13,000.

B. Perfection of Security Interest.

Whether Deere’s claim is properly secured is largely a question of law. At trial, both parties here

¹⁴ 502 U.S. at 959 n. 2.

¹⁵ *Id.* at 965 n. 6.

focused on whether this transaction was a consumer sale or a commercial sale. Under the old version of Article Nine as adopted in Kansas, the commercial/consumer distinction was a critical one for determining where a financing statement should be filed. If the security interest were in consumer goods, the financing statement was filed locally with the register of deeds office; in nearly all other cases (except minerals, timber, and fixtures), the financing statement was filed centrally with the secretary of state's office.¹⁶ Former KAN. STAT. ANN. § 84-9-109(1) (1996) defined consumer goods as those “used or bought for use primarily for personal, family, or household purposes.” Revised Article Nine retains this essential definition.¹⁷

At trial, Deere asserted that because its sale documentation contains an express declaration on the part of the debtor that this is a consumer transaction, Deere was entitled to rely on the declaration in filing its financing statement locally in Marion County rather than centrally with the Secretary of State's Office. Wodke asserts that because the tractor was delivered to him at his place of business for use there, the purchase was strictly for commercial purposes and the financing statements should have been filed centrally. At trial, neither party addressed the impact of the 2001 revision of Article Nine on the perfection issue.

In its motion for reconsideration, Deere takes the position for the first time that it was *automatically* perfected without the necessity of filing any financing statement because it holds a purchase

¹⁶ KAN. STAT. ANN. § 84-9-401(1)(a) and (c) (1996).

¹⁷ KAN. STAT. ANN. § 84-9-102(23) (2003 Supp.)

money security interest in consumer goods. Deere cites to revised § 84-9-309.¹⁸ Had Wodke's transaction occurred after July 1, 2001, the effective date of Revised Article Nine, and if the implements are consumer goods, Deere would be correct.¹⁹ Because this transaction occurred on June 2, 2001, prior to the effective date of the revision, the Court must examine whether there was a like automatic perfection rule in place before the revision to Article Nine. The exceptions to perfection by filing a financing statement were formerly contained in KAN. STAT. ANN. § 84-9-302 (1996). Subsection (1)(d) is the pertinent exception here:

A financing statement must be filed to perfect all security interests except the following: . . . (d) a purchase money security interest in a consumer good *with a purchase price of \$1,000 or less*, . . . (Emphasis added.)

Because § 84-9-302(1)(d) was the applicable code provision at the time of Deere's sale to Wodke and Wodke's purchase price greatly exceeded the \$1,000 limitation, Deere was not automatically perfected and was required to file a financing statement in order to perfect its purchase money security interest in the implements.

This brings the Court to the question of *where* the financing statement should have been filed and turns on whether the implements were consumer goods. Former Article Nine provided that security interests in consumer goods were perfected by filing a financing statement locally. KAN. STAT. ANN. § 84-9-401(1)(a) (1996) provided that such filings were to be made in the office of the register of deeds of the county where the debtor resided, or, if the debtor did not reside in Kansas, where the goods were kept.

¹⁸ KAN. STAT. ANN. § 84-9-309(1) (Supp. 2004) provides: "The following security interests are perfected when they attach: (1) A purchase-money security interest in consumer goods"

¹⁹ See Revisor's Note, KAN. STAT. ANN. § 84-9-701 (Supp. 2004)

In nearly all other cases, the financing statement was to be filed in the office of the secretary of state.²⁰ Under the former code, then, if the implements were consumer goods, Deere filed its financing statement in the proper place.²¹

The Court finds that the sale transaction between Deere and Wodke was one for consumer goods. Wodke unequivocally represented to Deere in the Retail Installment Contract and Security Agreement that the purchase was a consumer-goods transaction:²²

Unless I otherwise certify below, THIS IS A CONSUMER CREDIT TRANSACTION and the Goods will be used primarily for personal, family or household purposes.²³

Consumer goods are defined under both the old law and revised Article 9 as goods used or bought for use primarily for personal, family, or household purposes.²⁴ Deere's witness, Mike Miller, testified that had Deere considered the transaction to be a commercial transaction, the debtor would have been required to pay 20% down rather than finance the entire purchase price. Wodke has in fact used the tractor and tiller

²⁰ KAN. STAT. ANN. § 84-9-401(1)(c) (1996)

²¹ Revised Article Nine eliminated the local filing exception for consumer goods entirely. KAN. STAT. ANN. § 84-9-501(a)(2) (Supp. 2004) now provides that in all cases, except those involving as-extracted collateral, timber to be cut, or fixtures, financing statements are to be filed in the office of the Secretary of State. And as previously noted, purchase money security interests in consumer goods are automatically perfected without the need to file any financing statement. *See* KAN. STAT. ANN. § 84-9-309(1) and § 84-9-310(b)(2) (Supp. 2004).

²² Revised Article 9 defines a consumer-goods transaction as one in which “[a]n individual incurs an obligation primarily for personal, family, or household purposes; and a security interest in consumer goods secures the obligation.” KAN. STAT. ANN. § 84-9-102(24) (Supp. 2004). *See also* KAN. STAT. ANN. § 84-9-102(26) (Supp. 2004) which defines a consumer transaction to include a consumer goods transaction.

²³ Trial Ex. 1, p. 1. Wodke did not complete the Commercial Purpose Affidavit contained on page 5 of the Agreement.

²⁴ KAN. STAT. ANN. § 84-9-109(1) (1996) and § 84-9-102(23) (Supp. 2004).

at his home garden. At least a portion of the time that the equipment has been in his possession, it has been maintained at his residential address. In his secured transactions treatise, commentator Barkley Clark notes that the courts are “holding with some consistency” that a creditor is entitled to rely upon the debtor’s representation in the security agreement that the goods are being purchased for personal, family or household purposes and rely upon automatic perfection.²⁵ The Court so holds in this case.

Having concluded that Deere had a security interest in consumer goods and properly perfected its security interest by filing its financing statement with the register of deeds, one last issue remains. Did Deere remain perfected when revised Article Nine became effective on July 1, 2001 or did its security interest become unperfected and require Deere to take additional action to retain its perfected security interest? For the answer to this question, the Court must resort to the transition rules of Part 7 of Revised Article Nine.²⁶

KAN. STAT. ANN. § 84-9-703 (Supp. 2004) contains the transition rules for security interests that were perfected prior to the effective date of revised Article Nine. This is the case here. Deere’s local filing of its financing statement properly perfected its security interest in the implements under former law, KAN. STAT. ANN. § 84-9-401(1)(a) (1996). Under § 84-9-703(a) (Supp. 2004) Deere remains perfected after the effective date of revised Article Nine if no further action is required to perfect its security interest under the revision.

A security interest that is enforceable immediately before this act takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a

²⁵ Barkley Clark, THE LAW OF SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE, VOL. 1, ¶ 2.07[1], p.2-101-102 (Rev. Ed. 2004)

²⁶ KAN. STAT. ANN. § 84-9-702(a) (Supp. 2004) (Revised Article Nine made applicable to transactions or liens created before the effective date of the act.)

perfected security interest under this act if, when this act takes effect, the applicable requirements for enforceability and perfection under this act are satisfied without further action.

For example, if the rules for perfection remain the same for the transaction under the old law and the revision, the creditor remains continuously perfected. The Official UCC Comment 1 to § 84-9-703 states:

This section deals with security interest that are perfected (i.e., that are enforceable and have priority over the rights of a lien creditor) under former Article 9 or other applicable law immediately before this Article takes effect. *Subsection (a) provides, not surprisingly, that if the security interest would be a perfected security interest under this Article (i.e., if the transaction satisfies this Article’s requirements for enforceability (attachment) and perfection), no further action need be taken for the security interest to be a perfected security interest.* (Emphasis added).²⁷

As applied here, the method of perfecting a purchase money security interest in consumer goods changed under the old law from the local filing of a financing statement to automatic perfection under revised Article 9. However this change in perfection does not require the creditor to take further action.²⁸

A purchase money security interest in consumer goods is automatically perfected upon attachment under revised Article 9.²⁹ Accordingly, Deere’s security interest in the implements was automatically perfected on the effective date of revised Article 9 and Deere has been continuously perfected.

Conclusion

Based upon the foregoing, Deere’s secured claim in the compact utility tractor and tiller is allowed

²⁷ See also, Barkley Clark, THE LAW OF SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE, VOL. 2, ¶ 16.11[2], p. 16-44 (Rev. Ed. 2004) [hereafter “Clark”] (“As a baseline rule, the security interest remains perfected if it was perfected under prior law (old UCC or common law) and no further acts are required to perfect under the revision.”); Clark, Vol. 1, ¶ 1.01[4].

²⁸ For example, revised Article 9 may change the place of filing a financing statement from a local filing to a central filing.

²⁹ KAN. STAT. ANN. § 84-9-309(1) and § 84-9-310(b)(2) (Supp. 2004).

in the amount of \$13,000. Under the debtor's plan dated August 13, 2004, debtor proposed to pay Deere the value of the collateral at 7% per annum over 84 months.³⁰ Deere objected to the lengthy term of repayment, noting that the original 2001 contract provided for a 60 month payout. During the pendency of this case, Wodke made monthly adequate protection payments to Deere in the amount of \$125.³¹ There is no evidence before the Court that Wodke failed to make any of the adequate protection payments. Upon confirmation of the debtor's plan on January 21, 2005, the payments were suspended pending a resolution of the validity of Deere's security interest and the valuation of its claim.³² The Court concludes that a repayment term of 60 months from January 21, 2005, the date the Order Confirming Debtor's Plan of Reorganization dated August 13, 2004 was entered, is reasonable.

Debtor's plan treatment of Deere is CONFIRMED as modified by this Order. Because the Court confirms Deere's plan treatment as set forth above, Deere's motion for stay relief is DENIED.

IT IS SO ORDERED.

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³⁰ Dkt. 118.

³¹ Dkt. 120 and 136.

³² Dkt. 168, pp. 9, 15.