

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED

APR 21 2000

U.S. Bankruptcy Court
Greensboro, NC

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IN RE:)
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Suzanne L. Sergent,) Case No. 99-12084C-13G
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Debtor.)
)

ORDER

This case came before the court on April 18, 2000, for hearing upon a motion by Oakwood Acceptance Corporation for relief from stay to foreclose on Debtor's 1999 Oakwood mobile home. Appearing at the hearing were J. Gordon Boyett, attorney for the Debtor, Franklin Drake, attorney for Oakwood Acceptance Corporation, and the Chapter 13 Trustee, Anita Jo Kinlaw Troxler. Having considered the evidence offered by the parties and the arguments of counsel, the court finds and concludes as follows:

1. On July 8, 1998, the Debtor purchased a 1999 Oakwood mobile home from Oakwood Mobile Homes, Inc., pursuant to a retail installment contract. The Debtor made a cash down payment of \$3,000.00 and financed the sum of \$47,147.05 under the terms of the retail installment contract. The amount financed and the interest called for under the retail installment contract are payable as follows: 12 payments of \$332.92 per month beginning 9/1/98, 12 payments of \$378.09 per month beginning 9/1/99, 12 payments of

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\$424.38 per month beginning 9/1/2000, 263 payments of \$471.50 per month beginning 9/1/2001 and a final payment of \$477.27 due on 8/1/2023.

2. Under the retail installment contract, the Debtor agreed to grant a security interest in the mobile home pursuant to the following language in the retail installment contract:

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest or chattel mortgage security interest in the Manufactured Home and, unless prohibited by law, all parts, accessories, repairs, improvements, and accessions to the Manufactured Home and all proceeds, products, and benefits from it.

After the retail installment contract was assigned to Oakwood Acceptance Corporation ("Oakwood") on July 8, 1998, the security interest in the 1999 mobile home was perfected effective September 9, 1998, when the certificate of title for the mobile home was issued with Oakwood shown on the title as the first lienholder.

3. Following the execution of the retail installment contract, the mobile home was delivered to a lot owned by the Debtor in Rockingham County, North Carolina, where the mobile home was placed and made ready for occupation by the Debtor.

4. The Debtor then moved into the mobile home and began making payments to Oakwood in accordance with the retail installment contract.

5. Several months after the Debtor moved into the mobile home, it became necessary to move the mobile home because the mobile home was located on a utility right-of-way. Oakwood was notified of the problem with the location of the mobile home and, at some point prior to April of 1999, arrangements were made by or through Oakwood for the mobile home to be moved off the right-of-way. The cost of relocating the mobile home was \$4,650.00 which was advanced by Oakwood.

6. On April 7, 1999, the Debtor went to the offices of Oakwood and signed a promissory note payable to the order of Oakwood, pursuant to which the Debtor agreed to pay the sum of \$4,650.00 with interest from 05/02/99 at the rate of 10.5% per annum by means of 60 equal monthly payments of \$99.95 beginning on June 1, 1999. The promissory note was prepared by representatives of Oakwood. The preparation of the note involved inserting the date, amount and various other information into a form document utilized by Oakwood in the course of its business.

7. The Debtor has paid to Oakwood on a monthly basis the amounts called for under the terms of the retail installment

contract. In addition, commencing in June of 1999 and extending through August of 1999, the Debtor also paid to Oakwood the sum of \$99.95 per month as called for under the provisions of the promissory note. However, in September of 1999, the Debtor ceased making the monthly payments called for under the promissory note and since that time has paid Oakwood only the sums called for under the retail installment contract.

8. Oakwood contends that both Debtor's obligation under the retail installment contract and Debtor's obligation under the promissory note are secured by the Debtor's mobile home and that Oakwood therefore is entitled to relief from the automatic stay as a result of the Debtor's failure to make the monthly payments called for under the promissory note. The Debtor contends that the promissory note is not secured by her mobile home and, therefore, is an unsecured obligation which, under Debtor's plan, is to receive a 25% dividend from the monthly payments which the Debtor is making to the Trustee. The issue thus raised is whether the indebtedness due under the promissory note is secured by a security interest in Debtor's mobile home.

9. The retail installment contract contains language which grants a security interest to Oakwood. The pertinent language of the retail installment contract provides that the obligation which

is to be secured is "your payment and performance under the terms of this contract" (Emphasis supplied). Under this unambiguous language which was chosen by Oakwood for inclusion in its standard contract, the only obligations secured by the security interest are the Debtor's obligations under the retail installment contract. The security interest created under the retail installment contract therefore does not secure the separate obligation later incurred by the Debtor under the promissory note.

10. This leaves the question of whether the promissory note grants a security interest in Debtor's mobile home which secures Debtor's obligations under the promissory note, as contended by Oakwood. According to Oakwood's evidence, the business records of Oakwood include a promissory note signed by the Debtor which was offered into evidence by Oakwood. On the second page of Oakwood's exhibit the following language appears as a part of the original language of the form document: "This note is secured by a". Immediately after this language the following language has been added to the form document: "1999 Oakwood/Oakwood, HONC01134004AB." The foregoing language appears as the last line of the document before the signature lines, and, together, reads as follows: "This note is secured by a 1999 Oakwood/Oakwood, HONC01134004AB." According to Oakwood this language is sufficient to grant a

security interest in Debtor's mobile home pursuant to G.S. § 25-9-203. The Debtor argues that she did not agree to grant a security interest to secure the promissory note and that when she signed the promissory note it contained no reference to her mobile home.

11. The evidence at the hearing substantiated the contentions of the Debtor. In her testimony under oath, the Debtor testified that when she signed the promissory note no reference to her mobile home had been inserted in the note. The Debtor further testified that after she signed the promissory note, she was furnished a copy of the document which she had signed. This document was offered into evidence by the Debtor. The Debtor's exhibit does not contain a reference to her mobile home. Thus, the Debtor's copy of the promissory note is blank following the words "This note is secured by a". The Debtor maintains that the language "1999 Oakwood/Oakwood, HONC01134004AB" that appears on Oakwood's exhibit was added after she signed the document and without authority from her.

12. Without conceding that the description of collateral was blank when the promissory note was signed, Oakwood argues that if it was blank, the promissory note was an "incomplete instrument" and Oakwood was entitled under G.S. § 25-3-115 to add the description of collateral and thereby acquire a security interest in the mobile home. This contention is not accepted. Under G.S.

§ 25-3-115, if an "incomplete instrument" qualifies as a negotiable instrument under G.S. § 25-3-104,¹ it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. G.S. § 25-3-115(a) provides that an "incomplete instrument" means "a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers." Under this language, one of the requirements of an "incomplete instrument" which can be completed under G.S. § 25-3-115, is that its contents at the time of signing show "that the signer intended it to be completed by the addition of words or numbers." It is questionable whether the contents of the form promissory note as signed by the Debtor show that the Debtor intended that such document be

¹Under G.S. § 25-3-104, a "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money with or without interest or other charges described in the promise or order, if it (a) is payable to bearer or to order at the time it is issued or first comes into possession of a holder; (b) is payable on demand or at a definite time; and (c) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

"completed" by the addition of words or numbers granting a security interest. More importantly, however, is the fact that the evidence established that the addition was made without the authority of the Debtor. Under subsection (c) of G.S. § 25-3-115, if words or numbers are added to an incomplete instrument without authority of the signer, "there is an alteration of the incomplete instrument under G.S. 25-3-407." Under subsection (d) of G.S. § 25-3-115, the Debtor had the burden of establishing that the language was added without her authority. The Debtor carried this burden. The Debtor's evidence showed that she had no intention of granting a security interest, did not agree to do so and did not authorize the insertion of the language which was added to the second page of the promissory after she signed it. Based upon the Debtor's evidence, the court finds that the language "1999 Oakwood/Oakwood, HONC01134004AB" was added to the promissory note by Oakwood after the Debtor signed the promissory note and without the authority of the Debtor. It follows that such language could not operate to grant a security interest to Oakwood since it was not a part of any agreement which the Debtor had with Oakwood. Therefore, to the extent that the promissory note is enforceable, it is an unsecured obligation.

13. Under Debtor's plan, Debtor is required to pay Oakwood's secured claim by direct payments to Oakwood. Oakwood's secured claim consists only of the amount due under the retail installment contract. Debtor is current with respect to the payments due under the retail installment contract. The Debtor also is current on her plan payments to the Trustee. It follows that Oakwood is not entitled to relief from the automatic stay and that Oakwood's motion should be denied.

IT IS SO ORDERED.

This 21st day of April, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge