

**In the United States Bankruptcy Court**  
**for the Northern District of Iowa**  
**Western Division**

RICHARD MILLER and  
RITA MILLER  
*Debtor(s).*

Bankruptcy No. X90-01745S  
  
Chapter 7  
Contested No. 2152

**MEMORANDUM OF DECISION AND ORDER RE: MOTION TO AVOID LIEN**

The matter before the court is a motion filed by the debtors, Richard and Rita Miller (MILLERS), to avoid the lien of Williams TV and Appliance Co. (WILLIAMS) on an air conditioner. Hearing on the motion was held in Sioux City on January 9, 1991. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (0).

**FINDINGS OF FACT**

On June 27, 1990, Richard Miller purchased an Amana 18,000 BTU air conditioner for \$994.00 from Williams Appliance Co. in South Sioux City, Nebraska. The air conditioner was purchased for debtor's personal use in Nebraska. The terms of the purchase were set forth in a "Retail Sales Contract, Disclosure and Security Agreement" (the "Agreement") executed between Richard Miller and Williams. The agreement provided that Miller would pay Williams \$39.35 per month over a 24-month period.

At Williams, credit sales of appliances are typically processed by computer. Relevant information concerning the sale is entered into the computer; the computer processes the information to fill in the appropriate blanks of a sales contract/ security agreement form which has been fed manually into the computer's printer. This procedure was used by Williams in processing Miller's purchase.

Due to misalignment of the form in the printer, much of the information included on Miller's agreement was not printed within the appropriate blanks. Most information, including purchase price, finance charges, and payment terms, is easy to discern; the terms of the agreement can be easily understood once the problem is noted. Less discernible is the information provided in the portion of the agreement labeled "Security Agreement." This section contains form language otherwise sufficient to create an enforceable security interest in personal property. However, as a result of the misalignment, the make and model number of the air conditioner is superimposed on the agreement's request for a description of collateral. Rather than appearing in the blank space provided below the description request, the make/model number was printed directly over the request, making the number nearly impossible to read completely. Also, the misprinting caused an "x" mark to fall somewhat below and to the left of the targeted box used to indicate that the creditor was taking a purchase money security interest. The "x" is printed over other form information but is visible. Printed all or partially within the area intended for a description of col- lateral were the following: "25.00--INSTALL" and "SALES TAX 30.56".

According to testimony by Williams personnel, the air conditioner is described in the security agreement by its model number--18C3SA. The serial number of the air conditioner purchased by Miller was not identified on the form because at the time of the completion of the contract, the air conditioner had not yet been selected from warehouse inventory. Model number 18C3SA specifically refers to an Amana, 18,000 BTU air conditioner. However, the agreement contains no verbal reference to the brand or name of the item.

## II.

## DISCUSSION

Millers, having claimed the air conditioner as exempt, seek to avoid Williams' purported security interest in it pursuant to 11 U.S.C. § 522(f)(2)(A). They contend that the security agreement is not enforceable because it does not adequately describe the collateral. **(Fn.1)**

**(Fn.1)** It is apparently undisputed that the security interest, if enforceable, is a purchase money interest. Therefore, if the interest is enforceable against the debtors, it may not be avoided under 11 U.S.C. § 522(f)(2)(A) which permits avoidance only of non-purchase money security interests in exempt household goods. Perfection of the security interest is not an issue between the debtors and the creditor. If the security interest attached, it was automatically perfected pursuant to the provisions of Neb.Rev.Stat. U.C.C. § 9-302(l)(d) which eliminates the necessity of a filed financing statement for purposes of perfecting a purchase money security interest in consumer goods. If the collateral description is inadequate to permit attachment of the security interest, Williams has no interest in the collateral to avoid. This dispute is, therefore, more precisely one to determine the extent or validity of Williams' lien. The court concludes that any objection to the procedure used to bring the dispute before the court has been waived. See Fed.R.Bankr.P. 7001(2).

When a creditor relies on a written agreement for the creation of a security interest, the agreement signed by the debtor must contain a description of the collateral. Neb.Rev.Stat. U.C.C. § 9-203(l)(a). A description of personal property collateral "is sufficient whether or not it is specific if it reasonably identifies what is described." Neb.Rev.Stat. U.C.C. § 9-110. The section's test of sufficiency is explained in the Official Code Comment--does "the description do the job assigned to it-- . . . make possible the identification of the thing described." (Emphasis added.) United States v. First National Bank in Ogallala, Neb., 470 F.2d 944, 947 (8th Cir. 1973).

Millers argue that the description is insufficient because: (1) it is illegible, and (2) it is limited merely to a series of six numbers and letters which stands for the make and model. The court concludes that the security agreement's description of collateral is sufficient to create a security interest in the air conditioner of the debtors. The printing misalignment has created an ambiguity in the contract. For the most part, information typed on the contract by the computer/printer fell below the intended line. This error generally does not affect a correct understanding of the amounts charged and the terms of repayment. There is an "x" slightly below and to the left of the box which is used to indicate a purchase money security agreement. Williams personnel testified they intended Williams to take a security agreement in the item purchased. Miller did not testify to any lack of intent to create a security interest. But, no description of the collateral appeared in the appropriate blank. However, on the line introducing the area to be used for description, a series of numbers were typed. As indicated in the findings of fact, these numbers were unreadable. Considering the contract as a whole, it is "capable of being understood in more senses than one" and is therefore "ambiguous." Frank McGill, Inc. v. Nucore Corp., 195 Neb. 448, 238 N.W.2d 894, 899 (1976). Parol evidence is admissible for the purpose of explaining an ambiguous description of collateral in a security agreement. In re Waters, 90 B.R. 946, 963 (Bankr. N.D. Iowa 1988); see Owens v. Doyle, 152 Conn. 199, 205 A.2d 495, 498-499 (1964); Washington Trust Co. v. Keyes, 79 Wash. 61, 139 P. 638, 640 (1914). Parol evidence has established that a purchase money security agreement was created in an "18C3SA." The remaining issue is whether that description is sufficient to permit attachment of a security interest. The court concludes that a description of collateral by make and model number is sufficient for the attachment of a security interest in collateral being purchased by a debtor from a dealer in such collateral. Personal Thrift Plan of Perry, Inc. v. Georgia Power Co., 242 Ga. 488, 249 S.E.2d 72, 74 (1978); see also, International Harvester Credit Corp. v. Nicholls (In re Richards), 455 F.2d 281, 284 (6th Cir. 1972); In re Bengston, 3 UCC Rptg. Serv. 283 (D. Conn. 1965) (in the latter two decisions, courts held sufficient financing statement descriptions by model and serial number.)

In summary, the court is convinced that the debtor intended to create a security interest in "something." The ambiguous description may be explained by parol evidence. The evidence sustains the proposition that the debtor granted Williams a purchase money security interest in the air conditioner which he was purchasing from it. The description of the air conditioner by make and model number is sufficient to make possible the identification of the collateral.

## CONCLUSIONS OF LAW

Williams has a valid purchase money security interest in debtors' air conditioner, which is a household good. Williams'

purchase money lien may not be avoided under 11 U.S.C. § 522(f)(2)(A) .

**ORDER**

IT IS ORDERED that the debtors' motion to avoid lien is denied.

SO ORDERED ON THIS 28th DAY OF JANUARY, 1991.

William L. Edmonds  
Chief Bankruptcy Judge