

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**IN RE: JOSEPH SHANE HUFFMAN
 and PATRICE HUFFMAN**

**5:01-bk-51707E
CHAPTER 13**

**ORDER GRANTING MOTION TO AVOID JUDICIAL LIEN
AND DENYING JOE MILLS USED CARS, INC.'S
MOTION FOR RELIEF FROM STAY**

Debtors' Motion to Avoid Judicial Lien and Joe Mills Used Cars, Inc.'s Motion for Relief From Stay was heard on June 5, 2002, and the Court ruled in favor of the Debtors on both motions. This Order serves to clarify the Court's oral ruling. Kyle Havner, Esq. appeared for the Debtors, Shane and Patrice Huffman, who were also present. Ben E. Rice, Esq. appeared for Joe Mills Used Cars, Inc. ("**Mills**"). Joe Mills appeared on behalf of Mills. Lonnie Grimes, Esq., was present on behalf of the standing Chapter 13 Trustee, Jo-Ann Goldman. This Court also heard Debtor's Complaint for Return of Property to the Debtor's Estate, and the Court is entering a separate order granting turnover in that adversary proceeding.

The Debtors owned a 1995 Ford Ranger. On September 28, 2001, Mills repossessed the vehicle under a writ of execution to enforce a default judgment against Debtors. The Debtors filed a Chapter 13 plan the same day. Mills was subsequently notified of the Debtors' bankruptcy but did not return the vehicle to Debtors. Mills maintained that it became a secured creditor upon repossession of the vehicle, or alternatively, that it held a mechanics lien by virtue of the repairs it performed. The Court finds that Mills does not hold a mechanics' lien on the vehicle because it made these repairs after notice that a bankruptcy was filed, and consequently, Mills must bear the

loss of the risk it knowingly took. Evidence introduced in court revealed that Mills held no security interest in the vehicle prior to its repossession. However, pursuant to Ark. Code Ann. § 16-66-112, Mills held a judicial lien on the property upon delivery of its writ of execution. As discussed below, the Court is avoiding that judicial lien, and accordingly, Mills has no security interest in the vehicle.

On November 16, 2001, Debtors moved under 11 U.S.C. § 522(f) to avoid the judicial lien held by Mills on Debtors' 1995 Ford Ranger. Pursuant to § 522(f), a debtor may avoid the fixing of a judicial lien on the debtor's property to the extent it impairs an exemption to which he is otherwise entitled. Under 11 U.S.C. § 522(b), and Ark. Code Ann. § 16-66-217, a debtor may exempt from property of the estate either (1) certain property listed in § 522(d) of the bankruptcy code, or (2) property that is exempt under applicable non-bankruptcy federal law and the state and local laws of the place where the debtor has been domiciled for the longest portion of the 180 days preceding the bankruptcy filing. In this case, the Debtors claimed an exemption of \$2,400 for the 1995 Ford Ranger under § 522(d)(2). However, Mills incorrectly asserts that the value of Debtors' claimed exemption (*i.e.*, \$2,400 which is also the stipulated value of the truck) exceeded the allowable exemption amount. Because Debtors elected to exempt their automobile under the bankruptcy code which allows an exemption of up to \$2,775 for an automobile, the judicial lien held by Mills on the 1995 Ford Ranger impairs the Debtors' allowable exemption under § 522(b). Accordingly, Mills' judicial lien may be avoided by Debtors under § 522(f).

The remaining issue before the Court is Mills' motion for relief from stay. Mills alleges no basis for relief from stay "for cause" under 11 U.S.C. § 362(d)(1). Rather, Mills maintains it is entitled to relief from stay under 11 U.S.C. § 362(d)(2) because the Debtors have no equity in the vehicle and because the vehicle is not necessary for the Debtors' effective reorganization. Because

relief under § 362(d)(2) requires a debtor's lack of equity in the property regarding which relief is sought, it is only appropriately granted when the creditor moving for relief has a security interest in that property. *In re U.S. Physicians, Inc.*, 236 B.R. 593, 605 (Bkrcty. E.D. Pa. 1999). Because the Court has avoided Mills' judicial lien, Mills no longer has a security interest in the Debtor's vehicle. In any case, Debtor Shane Huffman's testimony demonstrated the necessity of the vehicle to the Debtors' reorganization, and the Court finds that the vehicle is necessary to the Debtors' reorganization. Mr. Huffman testified that he needed the vehicle to drive approximately 30 miles to work. Mr. Huffman also testified that the Debtors' own no other vehicle and are currently borrowing a 1984 Impala from Debtor Patrice Huffman's mother. According to Mr. Huffman's testimony, the Impala may not be available for their use much longer due to the work schedule of Mrs. Huffman's mother. For these reasons, Mills' Motion for Relief from Stay must be denied.

The Court orally stated that Mills could file a claim in the bankruptcy case for the debt owed it; however, a review of the file reveals that the deadline for filing claims has passed. Proofs of claim were required to be filed by January 31, 2002. Federal Rule of Bankruptcy Procedure 9006 governs extensions of time but expressly limits the Court's authority to extend the time period for filing proofs of claim. Fed. R. Bankr. P. 9006(b)(3). Federal Rule of Bankruptcy Procedure 3002(c) authorizes the Court to enlarge the time for filing claims in very limited circumstances. Unless one of the specific exceptions applies, this Court has no authority to extend the time for filing proofs of claim. *In re Armstrong*, 238 B.R. 438 (Bankr. W.D. Ark. 1999) (citing *Jones v. Arross*, 9 F.3d 79 (10th Cir.1993); *In re Coastal Alaska Lines*, 920 F.2d 1428 (9th Cir.1990)). The facts of this case are not the facts under which a court may enlarge the time within which to file a proof of claim. As a consequence, Mills is barred from filing a claim in the debtors' bankruptcy estate.

Debtors' Motion to Avoid Judicial Lien is **GRANTED** and Mills' Motion for Relief from Stay is **DENIED**.

IT IS SO ORDERED.

HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATED: _____

cc: Mr. Kyle Havner, Esq. for Debtor
Mr. Ben E. Rice, Esq. for Mills
Ms. JoAnn Goldman, Chapter 13 Trustee
U.S. Trustee