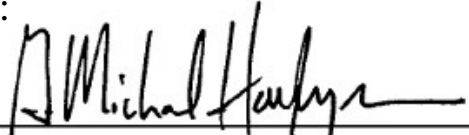




THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: March 31, 2016


G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In RE:

Roger Jacob Birschbach,

Case No. 15-22376-GMH

Debtor.

Chapter 7

DECISION AND ORDER

The debtor, Roger Jacob Birschbach, seeks, pursuant to 11 U.S.C. §522(f), to avoid the lien held by Heights Finance Corporation (“Heights Finance”) on (1) a 2001 John Deere riding lawn mower GT235, (2) a 1998 John Deere riding lawn mower GT275-17, and (3) an HP push mower (collectively, the “lawn mowers”). Section 522(f) allows a debtor to avoid certain types of liens to the extent those liens impair an exemption to which the debtor is entitled. Birschbach has elected to exempt the lawn mowers under Wisconsin law. For the reasons that follow, I conclude that §522(f) allows him to avoid the lien on the push mower but not on the two riding lawn mowers.

I

Birschbach filed a voluntary chapter 7 petition. CM-ECF Doc. No. 1. Among other personal property, he scheduled a “riding lawn[]mower” and a “push[]mower”. *Id.* at 11. He stated that these lawn mowers, together with a gas grill, were worth \$500. *Id.* Although he reported only one riding lawn mower on Schedule B’s list of personal property, he reported on Schedule D that his debt to Heights Finance is secured by three items: a “2001 John Deere riding lawn[]mower GT235, 1998 John Deere Riding Lawn[]mower GT275[-]17[, and an] HP push[]mower.” *Id.* at 13. Schedule D lists \$500 as the combined value of these three items. *Id.* His Schedule C exempts his interests in the “riding lawn[]mower” and the “push[]mower” under Wis. Stat. §815.18(3)(d). CM-ECF Doc. No. 17.

Birschbach filed a motion to avoid Heights Finance’s lien on the three lawn mowers, arguing that the lien impairs his exemptions. CM-ECF Doc. No. 11. Heights Finance objected. CM-ECF Doc. No. 13. At a preliminary hearing, I asked the parties to submit briefs explaining the facts and legal principles supporting their positions. The briefs dispute only the law.

II

Whether a security interest is subject to §522(f)’s lien-avoidance power is ultimately a question of federal law. *Tower Loan of Miss., Inc. v. Maddox (In re Maddox)*, 15 F.3d 1347, 1356 (5th Cir. 1994) (“we hold today that, although states remain free to define the property eligible for exemptions under § 522(b), the particular liens that may be avoided on that property are determined by reference to federal law; specifically, § 522(f) of the Bankruptcy Code”); *Cleaver v. Warford (In re Cleaver)*, 407 B.R. 354, 357 (B.A.P. 8th Cir. 2009) (“lien avoidance is a federal remedy”).

Section 522(f) limits the exempt property that qualifies for lien avoidance. See *In re Gifford*, 688 F.2d 447, 455 (7th Cir. 1982). As relevant here, §522(f)(1)(B)(i) provides that a debtor may avoid a lien “if such lien is . . . a nonpossessory, nonpurchase-money security interest in any . . . **household goods** . . . [or] **appliances**”. 11 U.S.C. §522(f)(1)(B)(i) (emphasis added).

Section 522(f)(4) defines “household goods” for purposes of §522(f)(1)(B)’s lien-avoidance power. See §522(f)(4)(A) (“for purposes of paragraph [522(f)](1)(B), the term ‘household goods’ means . . .”) (emphasis added). “Household goods” is defined to *include*, among other things, “appliances”, see §522(f)(4)(A)(iii); and to *exclude*, among

other things, any “*motor vehicle (including a tractor or lawn tractor)*”. §522(f)(4)(B)(v) (emphasis added).

III

The debtor’s ability to avoid the lien on his lawn mowers depends on whether those mowers are household goods or appliances subject to §522(f)(1)(B)’s lien-avoidance authority. See 11 U.S.C §522(f)(1)(B). The answer depends on the type of mower.

A

Lawn tractors, of which the debtor’s riding lawn mowers are a species, are not household goods. Section 522(f)(4)(B) excludes certain types of collateral from the set of household goods to which §522(f)’s lien-avoidance power applies. Among the excluded collateral is “lawn tractor”. If the debtor’s riding lawn mowers are lawn tractors, they are not “household goods” subject to §522(f) lien avoidance.

The Bankruptcy Code does not define “lawn tractor.” Common usage warrants understanding “lawn tractor” to include what are colloquially called “riding lawn mowers.” Some writings differentiate between “lawn tractors” and “riding lawn mowers”. For example, a 2015 article written by a self-proclaimed “Landscaping Expert” explains, “The difference between riding lawn mowers and lawn tractors lies in the location of the cutting deck. Lawn tractors have a mid-mounted cutting deck, while for riding lawn mowers the cutting deck is located under the front of the vehicle.”¹

A Google search for “lawn tractor,” however, results in merchandizing information for motorized vehicles with mid-mounted cutting decks called, “lawn tractors,” and a vast array of writings that use “lawn tractor” and “riding lawn mowers” interchangeably.² Troy-Bilt®, for example, describes its Pony™ Lawn Tractor as a “42” 7-Speed Riding Mower / Tractor”.³ Sears, in advertising sales of “Lawn Tractors”, states, “Craftsman, Poulan and Husqvarna are just a few of the manufacturer names associated

¹ David Beaulieu, *What’s the difference between riding mowers and lawn tractors?*, ABOUT.COM (Aug. 6, 2015), http://landscaping.about.com/cs/giftideas1/f/lawn_tractors.htm.

² See, e.g., THE HOME DEPOT, <http://www.homedepot.com/p/Cub-Cadet-XT1-Enduro-Series-GT-50-in-25-HP-V-Twin-Kohler-Hydrostatic-Garden-Tractor-with-Cub-Connect-Bluetooth-GT50/205617449> (last visited Mar. 22, 2016); HUSQVARNA, <http://www.husqvarna.com/us/products/riding-lawn-mowers> (last visited Mar. 28, 2016); *Riding Mowers by Troy-Bilt®*, TROY-BILT®, <http://www.troybilt.com/equipment/troybilt/lawn-mowers/riding-mowers> (last visited Mar. 22, 2016).

³ *Riding Mowers by Troy-Bilt®*, TROY-BILT®, <http://www.troybilt.com/equipment/troybilt/pony-lawn-tractor> (last visited Mar. 29, 2016).

with riding mowers.”⁴ Mowers Direct® advertises “Riding Lawn Mowers” including “Lawn Tractors”, “Rear-Engine Riders”, and “Zero Turn Mowers”.⁵ And John Deere, the manufacturer of the collateral at issue, refers to its contemporary 100-series and 200-series products as “[l]awn [t]ractor[s].”⁶

Nothing in the Bankruptcy Code suggests that Congress’s use of “lawn tractor” is anything other than the common one that includes all riding lawn mowers. The legislative history to the 2005 amendments, which added §522(f)(4)’s definition of “household goods”, is unilluminating on this score. And, in the context of the lien-avoidance authority, it is difficult to imagine a reason that Congress would have adopted a meaning of “lawn tractor” limited by either the location of the cutting deck or anything else, for example, by horsepower, size, or design.

Consequently, the two riding lawn mowers are presumptively “lawn tractors” excluded by §522(f)(4)(B)(v). The debtor, moreover, has not submitted proof that his riding lawn mowers are not among a class of “lawn tractors” excluded by §522(f)(4), even presuming that §522(f)(4) uses “lawn tractors” in a way that excludes some types of grass-cutting vehicles. The debtor has not demonstrated that the riding lawn mowers are “household goods” subject to lien-avoidance under §522(f).

B

Riding lawn mowers are not “appliances” because they are excluded lawn tractors. Section 522(f)(1)(B) authorizes debtors to avoid nonpossessory, non-purchase-money security interests in “appliances,” as well as in “household goods”. 11 U.S.C. §522(f)(1)(B)(i). Section 522(f) does not define “appliances,” so one starts with a presumption of standard usage.

The standard meaning of an “appliance” includes “an instrument or device designed for a particular use or function”. See MERRIAM-WEBSTER DICTIONARY ONLINE, <http://www.merriam-webster.com/dictionary/appliance> (last visited March 15, 2016). Courts have concluded that lawn mowers, even riding lawn mowers, are appliances for purposes of state exemption law. See, e.g., *In re Zieg*, 409 B.R. 917, 920–21 (Bankr. W.D.

⁴ *Lawn Tractors*, SEARS, <http://www.sears.com/lawn-garden-riding-mowers-tractors-lawn-tractors/b-1021803> (last visited Mar. 22, 2016).

⁵ *Riding Lawn Mowers*, MOWERS DIRECT®, <http://www.mowersdirect.com/lawn/riding-lawn-mowers.html> (last visited Mar. 22, 2016).

⁶ JOHN DEERE, <https://e-marketing.deere.com/ViewAllProducts.do#100> (last visited Mar. 31, 2016); JOHN DEERE, <https://e-marketing.deere.com/ViewAllProducts.do#S240> (last visited Mar. 31, 2016).

Mo. 2009); *In re Wiford*, 105 B.R. 992, 1002 (Bankr. N.D. Okla. 1989).

If the debtor's riding lawn mowers are "appliances" under §522(f)(1)(B)(i), perhaps he can avoid the lien in those mowers even though §522(f)(4)(B)(v) excludes "lawn tractors" from the household goods category. But reading "appliance" in §522(f)(1)(B)(i) to include collateral specifically excluded from §522(f)(4)'s definition of "household goods" is problematic. The only purpose of excluding specific collateral from §522(f)(1)(B)(i)'s definition of "household goods" is to insulate liens on that collateral from the debtor's avoidance power. One would not expect the statute to relieve a debtor from §522(f)(4)(B)'s exclusions by recasting excluded collateral as "appliances", "jewelry", or any of the other §522(f)(1)(B)(i) categories. Only a strained construction of the statute would allow evasion of §522(f)(4)(B)(iv)'s dollar limitation on avoiding liens on jewelry, for example, because §522(f)(1)(B)(i) lists "jewelry" separately from "household goods".

The better construction is to read "household goods" as an umbrella category that encompasses some of the other collateral types listed in §522(f)(1)(B)(i). Under this reading, if collateral is excluded from "household goods" by §522(f)(4)(B), then the lien-avoidance power is unavailable, even if the collateral might be considered an appliance or jewelry or within another §522(f)(1)(B)(i) subcategory. The reasoning is syllogistic:

If,

1. all appliances are household goods, and
2. no lawn tractor is a household good, then
3. no lawn tractor is an appliance.

This simple logic excludes lawn tractors from being appliances for purposes of §522(f)(1)(B), as long as one presumes that the meaning of "appliance" remains the same throughout the subsection. This presumption is standard. See *Roberts v. United States*, 134 S. Ct. 1854, 1857 (2014) ("Generally, identical words used in different parts of the same statute are . . . presumed to have the same meaning") (internal quotation marks omitted); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("A court must . . . interpret the statute as a symmetrical and coherent regulatory scheme . . . and fit, if possible, all parts into an harmonious whole") (internal citations and quotation marks omitted); *Sullivan v. Stroup*, 496 U.S. 478, 484 (1990) ("the normal rule of statutory construction [is] that identical words used in different parts of the same act are intended to have the same meaning") (internal quotation marks omitted). Indeed, the uniform-

meaning principle is fundamental to understanding every written text. No reasonable person attempts to read a text presuming that repeated words change meaning chameleon-like without textual clues.

Section 522(f) affords no context for concluding that liens on lawn tractors may be avoided because those vehicles are “appliances” for purposes of §522(f)(1)(B). Section 522(f)(4)(A) and (B) together demonstrate that lawn tractors are not “appliances”. Consequently, lawn tractors cannot qualify for lien avoidance pursuant to §522(f), because they are excluded by §522(f)(4)(B).

C

Liens on push mowers can be avoided because those mowers are appliances and household goods. Push mowers fall easily within the common understanding of “appliance”: “an instrument or device designed for a particular use or function”. See MERRIAM-WEBSTER DICTIONARY ONLINE, *supra*. Because a push mower does not transport its user (unlike a riding mower), a push mower cannot sensibly be understood to be an excluded lawn tractor, which is contextually and as a matter of common sense a motor *vehicle*. See §522(f)(4)(B)(v). Therefore, the debtor may avoid Heights Finance’s lien on his push mower under §522(f)(1)(B)(i).

IV

Accordingly, Birschbach’s motion to avoid the lien of Heights Finance is granted in part and denied in part. The debtor may avoid Heights Finance’s security interest in his HP push mower but cannot avoid Heights Finance’s security interests in his John Deere riding lawn mowers.

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