

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

DATED: January 3, 2020



  
G. Michael Halfenger  
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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In re:

Brian Wilbert Mulder and  
Katie Lynn Mulder,

Case No. 19-30817-gmh  
Chapter 7

Debtors.

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**ORDER DENYING DEBTORS' MOTION TO AVOID FIXING OF LIEN**

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On November 19, 2019, the debtors filed a motion under 11 U.S.C. §522(f)(1)(B), which provides that “[a] debtor may avoid the fixing of a lien on an interest . . . in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under [§522(b)], if such lien is . . . a nonpossessory, nonpurchase-money security interest in” certain kinds of personal property. The motion states that the debtors “have an ownership interest in certain household items” with a combined value of over \$11 thousand; the debtors exempted these items under 11 U.S.C. §522(d)(3); and the debtors’ exemption is impaired by World Finance Corporation’s nonpossessory, nonpurchase-money security interest in the items. ECF No. 8, at 3–4.

The debtors, though, did not properly schedule or clearly exempt most of the items listed in their motion. The motion lists 4 televisions, but only 3 are listed in the debtors' schedules of assets and exemptions (respectively, their amended schedules A/B and C); several items listed in the motion are not discretely listed in the debtors' relevant schedules, at all, including a Blu-ray player, an Apple iPad, a Craftsman Edger, and a diamond-and-sapphire ring; and one, a surround-sound system, is listed in the debtors' schedule of assets but not in their exemption schedule. Compare ECF No. 8, at 3, with ECF No. 13, at 2–3 & 6, and ECF No. 14, at 1–2. In fact, apart from 3 of their 4 televisions, the only item of property described in the debtors' §522(f) motion that is specifically both listed in the debtors' amended schedule A/B and claimed as exempt in their amended schedule C is a camera. Compare ECF No. 8, at 3 (listing "1 Digital Camera - Nikon"), with ECF No. 13, at 2 (listing "Camera" under "Electronics"), and ECF No. 14, at 1 (claiming "Camera" as exempt under §522(d)(3)).

The debtors' schedules include a few broad categories of items that arguably subsume some of the otherwise unscheduled property mentioned in their motion. For example, on their schedules, the debtors disclosed and exempted "Miscellaneous Jewelry", which might include the ring, earrings, and necklace listed in their motion. Compare ECF No. 8, at 3, with ECF No. 13, at 3, and ECF No. 14, at 2. But the official bankruptcy forms for schedule A/B and C direct the debtor to "**separately** list and describe items" of property in which the debtor has an interest and to provide certain information with respect to "**each item** of property . . . claim[ed] as exempt". See ECF No. 13, at 1 (emphasis added); ECF No. 14, at 1 (emphasis added). Where, as here, a debtor schedules generic categories of items, the court cannot determine whether the debtor has exempted a particular item—or, for that matter, whether the item is property of the estate that the debtor "may exempt" in the first place, §522(b)(1); see also 11 U.S.C. §541(a)—so the court cannot assess whether a lien "impairs an exemption", with respect to the item, "to which the debtor would have been entitled". §522(f)(1).

Even with respect to most of the items at issue that the debtors clearly disclosed as assets and exempted in their schedules, the debtors have not shown that they are entitled to the relief they seek. The debtors moved under §522(f)(1)(B) to avoid the fixing of World Finance Corporation's lien on their interests in 3 scheduled televisions, but a debtor may only avoid the fixing of such a lien, under paragraph (1)(B), on the debtor's interest in 1 television. See §522(f)(1)(B) (permitting the debtor to "avoid the fixing of . . . a nonpossessory, nonpurchase-money security interest in . . . household goods"); §522(f)(4)(A)(v) (defining "household goods", "for purposes of paragraph (1)(B)", to include only "1 television"). Moreover, the debtors' schedules disclose and exempt the 3 televisions collectively, rather than separately, so the court cannot determine "the amount of the exemption", if any, "that the debtor could claim" with respect to any of the 3 televisions individually "if there were no liens on [it]". §522(f)(2)(A)(iii). As a result, the court cannot determine whether, much less to what extent, World Finance Corporation's lien impairs an exemption to which the debtors would have otherwise been entitled with respect to 1 television.

Finally, the court cannot grant relief with respect to the debtors' camera—the one item of property they listed in their motion, individually scheduled as an asset, and discretely exempted from property of the estate—because they have not shown that they properly served their motion for relief under §522(f). In a chapter 7 case, like this one, "[a] proceeding under § 522(f) . . . shall be commenced by motion in the manner provided by Rule 9014". Fed. R. Bankr. P. 4003(d). Rule 9014 requires service of a motion on "the party against whom relief is sought. . . . in the manner provided for service of a summons and complaint by Rule 7004". Fed. R. Bankr. P. 9014(a) & (b). Rule 7004 provides for service "[u]pon a domestic or foreign corporation", like World Finance Corporation, "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process". Fed. R. Bankr. P. 7004(b)(3). The

debtors' attorney provided a certificate of service indicating that their §522(f) motion was mailed to "Ken Proctor, Agent". ECF No. 8, at 5. Agent for what purpose? A corporation's night watchman and its groundskeeper are agents for some purposes, but neither is likely authorized to receive service of process. Nothing in the record shows that Mr. Proctor is an agent "authorized by appointment or by law to receive service of process" on behalf of World Finance Corporation, as required by Rule 7004. Without proof of proper service, the court cannot find that World Finance Corporation has been afforded "reasonable notice and opportunity for hearing", as required by Rule 9014(a), and the court will not grant the debtors' motion.

For these reasons, the debtors' motion under 11 U.S.C. §522(f)(1)(B) to avoid the fixing of a lien on their interests in property is **denied without prejudice**.

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