

that property since it in part is the subject of Rodger Dukes' affidavit.

FACTUAL BACKGROUND

1. on January 17, 1980 Bedford National Bank (Bank) loaned money to the debtors to purchase the IHC 756 tractor. There is no dispute that the Bank's security interest in the tractor was purchase money in nature. On March 17, 1980 the FMHA paid off the loan with funds from the debtors' supervised account.

2. Likewise the Bank financed the purchase of the MF 141 disc as evidenced by a note executed on February 25, 1980. There is no question that the Bank held a purchase money security interest in the disc. The FMHA paid off the note on March 17, 1980.

3. On September 24, 1980 the Bank loaned the debtors \$1,320.00 to purchase the Kory wagon. Again it is undisputed that the Bank held a purchase money security interest in the wagon. The FMHA satisfied the loan from funds from a supervised account on December 22, 1980. The parties dispute whether the funds used to pay the loan were the debtors' personal funds or government funds.

4. The debtors purchased the 8'x14' lowboy, the homemade seeder cart and the post hole digger with funds from a supervised account. The record indicates that the debtors initially paid for the equipment from their personal funds and were reimbursed later by the FMHA.

DISCUSSION

To the extent that a creditor holds a purchase money security interest in property, lien avoidance is not available to a debtor. 11 U.S.C. section 522(f)(2). "Purchase money security interest" (PMSI) is not defined in the Code. The court therefore turns to Iowa Code section 554.9107 which is based on section 9-107 of the Uniform Commercial Code (UCC) and which defines PMSI as follows:

A security interest is a 'purchase money security interest' to the extent that it is

- a. taken or retained by the seller of the collateral to secure all or part of its price; or
- b. taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

The FMHA is not the seller of the collateral; therefore, if it is to prevail, it must do so under subsection b. However, the official UCC comments to this provision indicate that the value given must be present consideration and cannot be taken as security for or in satisfaction of a pre-existing debt. Thet Mah & Assoc. v. First Bank of North Dakota (NA), 336 N.W.2d 134, 138 (N.D. 1983).

Moreover, the evidence must support finding that the nonseller lender has given value prior to the time the debtor acquired rights to the property. Matter of Richardson, 47 B.R. 113, 116 (Bankr. W.D. Wisc. 1985). The debtors in

this case acquired rights to the equipment on the dates they received loans from the Bank or, in the case of the lowboy, seeder cart, and post digger, on the date they paid for the equipment from their own funds. Nothing in the record reveals the existence of any FMHA commitment to refinance the purchase of the equipment prior to the actual purchases. Thus, the FMHA does not have a PMSI in the property in question.

Further support for this ruling can be found in decisions holding that money borrowed from a third party to satisfy an obligation owed to a holder of a PMSI extinguishes the PMSI. Matter of Janz, 67 B.R. 553, 556 (Bankr. D. N.D. 1986); Matter of Richardson, supra at 118.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing discussion, the court finds that the FMHA does not possess a purchase money security interest in the equipment in question.

THEREFORE, the relief prayed for in the debtors' motion is granted.

Dated this 28th day of June, 1988.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE