

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

IN RE:) CHAPTER 13
) CASE NO. 04-54126-JDW
DEBRA VERONICA TOLAND and)
MARK ANTHONY TOLAND,)
)
DEBTORS.)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtors: Ann Porges-Dodson
Post Office Box 1001
Macon, Georgia 31202-1001

For Origen Financial: Lisa Baggett
Robert J. Solomon
3675 Crestwood Parkway, Suite 500
Duluth, Georgia 30096

MEMORANDUM OPINION

This matter comes before the Court on Origen Financial, LLC's motion to modify the automatic stay and Debtors' objection to claim. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(G). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

On December 12, 1999, Debtors Mark and Debra Toland executed a Retail Installment Contract and Security Agreement (the "original contract") under which Origen Financial, LLC financed their manufactured home purchase and Debtors granted Origen a security interest in the manufactured home. Paragraph 4 of the contract sets forth the scope of the security interest as follows: "This security interest secures payment and performance of my obligations under this Contract, including any additional debt arising because of my failure to perform my obligations under this Contract, and includes any contractual extensions, renewals or modifications." The loan was to be repaid over 360 months at 10.25 percent interest, at a monthly payment of \$461.

Although they wanted to live in Forsyth, Georgia, Debtors placed the manufactured home on land owned by Mr. Toland's father in Fort Valley, Georgia. In October 2003, Debtors purchased another tract of land in Forsyth. Mrs. Toland contacted Origen to inquire about temporarily suspending loan payments so Debtors could afford to move the manufactured home to Forsyth. Origen responded with a letter dated October 24, 2003,

listing all the documents necessary for such an action, including a credit application and a hardship letter. In the hardship letter, under the space provided to explain the reason for delinquency, Mrs. Toland wrote, “My husband & I live on someone else’s land and we have to move. It is going to cost between \$4200-\$6000 to move our trailer [sic].” In the space provided to state the type of assistance requested, Mrs. Toland wrote, “I would like a 3 mt. extension or as long as possible.” The letter was signed and dated by both Debtors on October 27, 2003. Mrs. Toland testified that she sought a three month extension, which would have only allowed Debtors to save approximately \$1,300, because they expected to pay the additional costs of moving out of their tax refund. On the Manufactured Home Credit Application, also signed and dated by both Debtors on October 27, 2003, the space for collateral information was left blank.

The parties did not explain how a request to temporarily suspend payments resulted in a loan. Nevertheless, Debtors obtained an estimate to move the manufactured home dated November 10, 2003, from G&S Mobile Home Service. It quoted two prices: (1) \$3,600 for basic service of tearing down the manufactured home and setting it up to “code” at the new location, and (2) \$6,250 for turnkey service, including electrical, plumbing, water, decks, and skirting.

On February 23, 2004, Debtors and Origen entered into a Special Escrow Agreement (the “escrow agreement”) for the purpose of paying the expenses of moving the manufactured home. The escrow agreement provided in relevant part as follows:

Mark Toland and Debra Toland referred to herein as “MAKER” agrees to pay the Order of Origen Financial, LLC, referred to as “HOLDER”, or order, the sum of \$6,250.00 (Six Thousand Two Hundred Fifty and 00/100 Dollars) at P.O.

Box 163883, Ft. Worth, TX 76161.

Said monies shall be disbursed from escrow and funds shall be repaid by MAKER in 24 installments, payable on the 15th of each month beginning March 15, 2004, in the amount of \$260.42 (Two Hundred Sixty and 42/100 Dollars) along with you [sic] P & I of \$461.00 and additional Escrow of \$68.58, for total monthly payment of \$790.00 (Seven Hundred Ninety and 00/100 Dollars).

Origen cut a check to G&S for \$6,250 on February 26, 2004, and G&S moved the manufactured home. According to a predetermined arrangement, G&S gave \$400 of the money to Debtors. Mrs. Toland testified that Debtors used the \$400 to build a deck at the new location and to connect the plumbing, neither of which G&S did.

Debtors filed a Chapter 13 petition on September 10, 2004. Debtors' Chapter 13 plan proposed to pay Origen \$751 per month outside of the plan. The plan had a four-year term and provided no dividend to unsecured creditors. In an amended plan filed on October 13, 2004, Debtors proposed to pay Origen \$17 per month through the plan for an arrearage totaling \$982 and \$491 per month outside of the plan to pay the current payment. The plan had a five-year term and provided no dividend to unsecured creditors.

Origen filed a secured claim for \$59,598.24 for the amounts due under both the original contract (\$50,719) and the escrow agreement (\$6,480.48). Debtors filed an objection to the claim on the ground that the loan evidenced by the escrow agreement is unsecured. Additionally, Origen filed a motion for stay relief alleging lack of adequate protection and alleging that Debtors have no equity in the manufactured home and it is not necessary to an effective reorganization. The Court held a hearing on June 16, 2005, that focused on the status of Origen's claim and did not address the substance of the stay relief

motion. For the following reasons, the Court will grant Debtors' claim objection and will reserve ruling on the motion for stay relief.

Conclusions of Law

Debtors do not dispute that Origen has an enforceable security interest in their manufactured home. However, they argue that the escrow agreement, under which Origen loaned them \$6,250, is not covered by the security interest. Origen has argued that the escrow agreement is a modification of the original contract and that the advance was made pursuant to the terms of paragraph 4, which extends the security interest in certain circumstances.

The dispute in this case turns on basic principles of contract law. "The cardinal rule of construction is to ascertain the intention of the parties." O.C.G.A. § 13-2-3 (1982). In the absence of ambiguity, the Court must look solely to the written document to determine that intent. Id. § 13-2-2; Reuss v. Time Ins. Co., 177 Ga. App. 672, 673, 340 S.E.2d 625, 625 (1986).

In this case, the Court has before it two writings: the original contract and the subsequent escrow agreement. Origen has argued that the escrow agreement is a modification of the original contract. However, the escrow agreement uses no language of modification. It states that the funds "shall be disbursed from escrow," but does not state that they shall be disbursed from an escrow account established under a prior contract. The Court cannot assume Origen was referring to a pre-existing escrow account in the absence of language to that effect.

The escrow agreement also mentions the amount due under the original agreement. However, it is done in the context of providing a total amount due under both contracts each month. It does not say that the amount due under the original agreement is in any way modified. In fact, the escrow agreement sets forth a repayment term and interest rate different from those under the original contract, which further establishes that the escrow agreement is a separate loan rather than a modification of the original contract.

Because the escrow agreement is not a modification of the original contract and it contains no language granting a security interest, it cannot be a secured loan unless it falls within the scope of the security interest granted by the original contract. Under paragraph 4 of the original contract, the security interest covers “additional debt arising because of my failure to perform my obligations under this Contract, and includes any contractual extensions, renewals or modifications.” Thus, the Court must decide whether the debt arose because of Debtors’ failure to perform a contractual obligation. Debtors’ only relevant obligation under the original contract is found in paragraph 11, which provides that Debtors may not “move, use illegally, sell, lease or otherwise transfer the Manufactured Home.” However, Origen did not spend any money to keep the manufactured home in place; rather, it expended funds to do the opposite. Furthermore, nothing in the escrow agreement indicated that the loan was being advanced to secure performance of Debtors’ obligations under the original contract. The Court can find no basis for extending the security interest to the loan made under the escrow agreement. Thus, such funds were advanced as an unsecured loan.

It is true that Debtors were not entirely forthright in explaining their reason for

seeking the second loan. The statement that they had to move their home implied a nonexistent sense of urgency that casts Debtors in an unfavorable light. However, such considerations play no role in the analysis when the contract language is clear and unambiguous. In this case, Origen extended an unsecured loan to Debtors. Consequently, Debtors' objection to claim will be sustained, and Origen will be allowed a secured claim only to the extent of funds advanced under the original contract for purposes of purchasing the manufactured home and purchasing property damage insurance.

This Opinion does not address Origen's motion for stay relief. That motion has not been considered because Origen's status as a secured creditor was uncertain. The Court will hold a hearing on the motion for stay relief on August 29, 2005, at 10:30 a.m., at which time Origen may continue to urge its motion if it wishes to do so.

An Order in accordance with this Opinion will be entered on this date.

Dated this 8th day of August, 2005.

James D. Walker, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

IN RE:) CHAPTER 13
) CASE NO. 04-54126-JDW
DEBRA VERONICA TOLAND and,)
MARK ANTHONY TOLAND,)
)
DEBTORS.)

ORDER

In accordance with the Memorandum Opinion entered on this date, it is hereby ORDERED that Debtors' objection to the claim of Origen Financial, LLC be SUSTAINED.

It is further hereby ORDERED that any debt to Origen Financial, LLC arising under the Special Escrow Agreement between Origen and Debtors shall be disallowed as a secured claim.

It is further hereby ORDERED that a hearing be held on Origen's motion for stay relief on August 29, 2005, at 10:30 a.m. in Courtroom B, United States Bankruptcy Court, 433 Cherry Street, Macon, Georgia, .

So ORDERED, this 8th day of August, 2005.

James D. Walker, Jr.
United States Bankruptcy Judge