

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

BRADFORD I. PITTS

BK 89-12058 M

Debtor

On December 12, 1989, a hearing came on before the Court to determine the secured status of the debt owed to ITT Financial Services, Inc. ("ITT"). That hearing was the result of an objection made at the time of the confirmation hearing by Albert Mogavero, the Chapter 13 Trustee. That objection argued that the claimed purchase money security interest ("PMSI") was never created in this instance.

The facts involved in this controversy are as follows: The debtor purchased certain household appliances on credit from Madd Maxx and the evidence seems to show that the debtors granted Madd Maxx a PMSI in those goods. The note and security interest were subsequently assigned by Madd Maxx to ITT. The note called for payment in full in ninety days. ITT and the debtor thereafter refinanced the loan, resulting in a new agreement (new loan documents, new terms, new amounts, and different parties). The debtor thereafter filed a petition for relief under Chapter 13 of the Bankruptcy Code.

The sole issue presented for determination by the Court is whether a PMSI exists between ITT and the debtor. On this issue, the case law is clear.

The Ninth Circuit Court of Appeals in *Matthews v. Transamerica Financial Services*, on almost the identical fact situation, held that "the refinancing of the original loan destroyed the purchase money nature of the lender's security interest.... In arriving at its holding, the court noted:

The vast majority of courts that have considered the issue we face here have held that refinancing or consolidating loans by paying off the old loan and extending a new one extinguishes the purchase money character of the original loan because the proceeds of the new loan are not used to acquire rights in the collateral." *In re Matthews*, 724 F.2d 798 (9th Cir. 1984).

The cases referred to in that passage all deal with the definition of a PMSI which is very similar and, in certain instances, identical to that which is controlling upon this court.

That definition is set out in U.C.C. § 9-107 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.

In the instant case, the debtor did not incur the obligation with ITT in order to acquire rights in the collateral. In fact, the debtor had the collateral on hand for approximately three months prior to the creation of the agreement with ITT.

In re *Franklin*, a case which had an identical fact situation and involved the same creditor, favorably referred to the *Matthews* case in finding that no PMSI existed. See 75 B.R. 268, 270 (Bankr. M.D. Ga. 1986).

The Court chooses to follow the majority position expressed above. Accordingly; it is hereby

ORDERED that the interest of ITT Financial Services, Inc. is termed a non-purchase-money security interest.

Dated: Buffalo, New York
March 1, 1990

/s/ JOHN W. CREAHAN
U.S.B.J.